FIRST NATIONS TREATY PARTIES STATEMENT REGARDING THE OBSERVANCE AND ENFORCEMENT OF TREATIES

CONTEXT

INDIGENOUS LAW

Indigenous Nations have occupied our territories since the beginning of time. Indigenous Nations have an elaborate system of governance structures to care for our lands and resources for our future generations. When the non-Indigenous Peoples arrived on Turtle Island, they met many Nations and entered into diplomatic relations with our ancestors for peace and friendship. These agreements were in conformity with international and commonwealth legal norms. In order to enter into the territories of Indigenous Nations, treaties were required by both the British Crown and Indigenous Nations. The British Crown's principles of Treaty making were reduced to the written instructions of the Royal Proclamation of 1763. The Royal Proclamation of 1763 is part of the Constitutional laws of Canada. Treaties are fundamental constitutional instruments that require full implementation.

Treaty is a sacred covenant, a solemn agreement that is truly the highest form of agreement, binding as long as the sun rises, the grass grows and the rivers flow. So solemn is a treaty that it centres around one of our most sacred ceremonies, the Pipe. The pipe is alive with a spirit – each pipe has its own spirit. The treaties were entered into using Indigenous laws and the use of the pipe. The treaty provides on a daily basis for the lives of the Indigenous Peoples and non-Indigenous people within Indigenous territories. The Crown requested that their subjects be allowed to co-exist within our territories in peace and friendship without interference. Indigenous Nations have lived in peace and friendship but our resources and lands have been used without compensation to our nations. This must end.

It is in the interest of the state of Canada to build on the treaty relationship. The polishing of the Treaty relationship each year with the payment of treaty money is a symbolic polishing of that relationship. There is a call for an increased implementation of the treaty relationship. It is the desire of Treaty First Nations to advance the First Nations Canada relationship on the basis of the existing Treaties. Canada is illegally using our lands and resources without compensation to the Indigenous Nations. This is a daily and continuing violation by the state.

Treaty First Nations consider that it is inappropriate for the First Nations –Canada relationship to have been framed and controlled by unilaterally imposed law, policies and programs that are a violation of the treaty relationship and dishonourable Crown conduct. It is a recognition that the Indigenous Nations on Turtle Island exercised our inherent of self-determination to enter into treaty relations with the Crown.

DIFFERENT WORLDS, COMMON APPROACHES

At contact, the Indigenous Peoples and the Crown each had their own extensive experience with the Treaty making processes. Both brought their prior experience and expectations to the Treaty Councils that took place. The international character of treaties and treaty making creates the legal relationship between Indigenous and non-Indigenous. Indigenous Peoples have witnessed an incorrect and inappropriate interpretation of the treaties by the successor state government.

The existence of Canada and its' constitutional evolution, has the Treaty relationship as its foundation. The Treaties made with Indigenous Nations give the state of Canada authority to live in our territories. The Treaties provide a mechanism by which these differences could be managed and resolved.

THE CROWN'S UNDERTAKINGS

The Royal Proclamation of 1763 is a codification of Crown legal obligations in relations with the Indigenous Nations. It is the result of over a century's experience in Treaty making and political relations with the eastern First Nations and contained a renewal of certain commitments that had already been made by the Crown in these Treaties.

The Proclamation obligated the Crown to prevent "frauds and abuses" against the Indigenous Nations; to stand between the Indigenous nations and the colonial governments, in order to protect the integrity of its commitments, and to ensure that the interests and rights of the Indigenous nations were protected; to restrict non-Indigenous settlement to specific areas of land; to establish a protocol for Treaty making with the Indigenous nations for obtaining access to lands and resources, which was founded on Free, Prior and Informed Consent.

In January 1897, The Hon. J.J. Curran, Q.C., Solicitor General for Canada stated in a treaties arbitration case involving the Robinson treaties: "We contend that these treaties are governed by international, rather than municipal law. They were made with the tribes under the authority of the Sovereign, and the faith of the nation was pledged in dealing with those annuities. The Crown is a trustee in those matters, and occupies a special relationship towards those Indians, and is bound to watch over their interests and enforce their rights, and will not be allowed to set up its own laches as a defense against these claims. All these claims are safeguarded in a manner that is quite a different manner from any claim that would arise between two subjects of her Majesty who might come before any Court to have their matters adjudicated upon."

On July 5, 1973 Queen Elizabeth affirmed the Treaties in an address to the Chiefs in Alberta, stating "You may be assured that my Government of Canada recognizes the importance of full compliance with the spirit of your Treaties".

On January 28, 1982, Justice Lord Denning, Court of Appeals for the United Kingdom affirmed the integrity and durability of the First Nation – Crown relationship by proclaiming that "There is nothing, so far as I can see, to warrant any distrust by the Indians of the Government of Canada. But, in case there should be, the discussion in this case will strengthen their hand so as to enable them to withstand any onslaught. They will be able to say that their rights and freedoms have been guaranteed to them by the Crown, originally by the Crown in respect of the United Kingdom, now by the Crown in respect of Canada, but, in any case, by the Crown. No Parliament shall do anything to lessen the worth of these guarantees. They should be honoured by the Crown in respect of Canada 'as long as the sun rises and the river flows'. The promise must never be broken."

On April 17, 1982 the *Constitution Act, 1982* came into force which includes the recognition and affirmation of treaty rights as part of the supreme law of Canada. There are two key sections: 52 and 35. Section 52 directs that all laws in Canada cannot violate the provisions of the *Constitution* which includes the treaty rights set out in section 35. The restriction within section 52 takes up the legal decision of Lord Denning in 1982.

STATEMENT OF TREATY IMPLEMENTATION

According to the Chief Justice of the Supreme Court of Canada in the *Haida Nation v. British Columbia* decision issued on November 18, 2004:

> *"Treaties serve to reconcile pre-existing Aboriginal sovereignty with assumed Crown sovereignty, and to define Aboriginal rights guaranteed by s. 35 of the Constitution Act, 1982."*

The First Nations established solemn relationships with the Crown through Treaties. Today, First Nations leadership continue to emphasize the importance of the Honour of the Crown in all dealings with all First Nations, the importance of implementing the Treaties fully and effectively and also of further utilizing Treaty making as a central vehicle for fair dealings with all First Nations throughout Canada.

The United Nations Declaration on the Rights of Indigenous Peoples recognizes the continuing relevance and reality of the treaties through article 37:

> *"Indigenous Peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements."*

The imperative established in international, Canadian Constitutional and Commonwealth laws is harmonious and cooperative relations consistent with treaty relations.

In order for harmonious and cooperative relations to be achieved, certain commitment and action is required, including:

1. **The Treaty parties are committed to treaty processes. There needs to be a clarification of the treaty relationship for implementation of treaty rights.**
2. **Treaty implementation and treaty-making should include:**
    a. **governance, including justice systems, stable financial/fiscal arrangements, and jurisdictional arrangements;**
    b. **territories and resources;**
    c. **economic rights including, resource revenue sharing, annuities and to use our territories to sustain ourselves including our hunting, fishing, gathering and trapping rights;**
    d. **specific rights flowing from our treaties that are obligations owed by the Crown; and**
    e. **other matters relevant to treaty relationships.**
3. **The Treaty Nations along with the state successor are the appropriate participants in the processes and should be guided by the following principles:**
    a. **the nature of the relationship, content of the rights and obligations would be determined with reference to oral as well as written sources;**
    b. **the process be non-adversarial, respectful of the treaty relationship; and**
    c. **any conflicts be reconciled in the spirit and intent of the treaty as understood by the Indigenous Nations.**
4. **When disputes cannot be resolved in relation to such treaties, these shall be submitted to competent bodies established by the Treaty Nations and the Crown.**
5. **The state of Canada should not use their legal systems to punish Treaty Peoples who are standing up for their inherent rights within their treaty territories.**