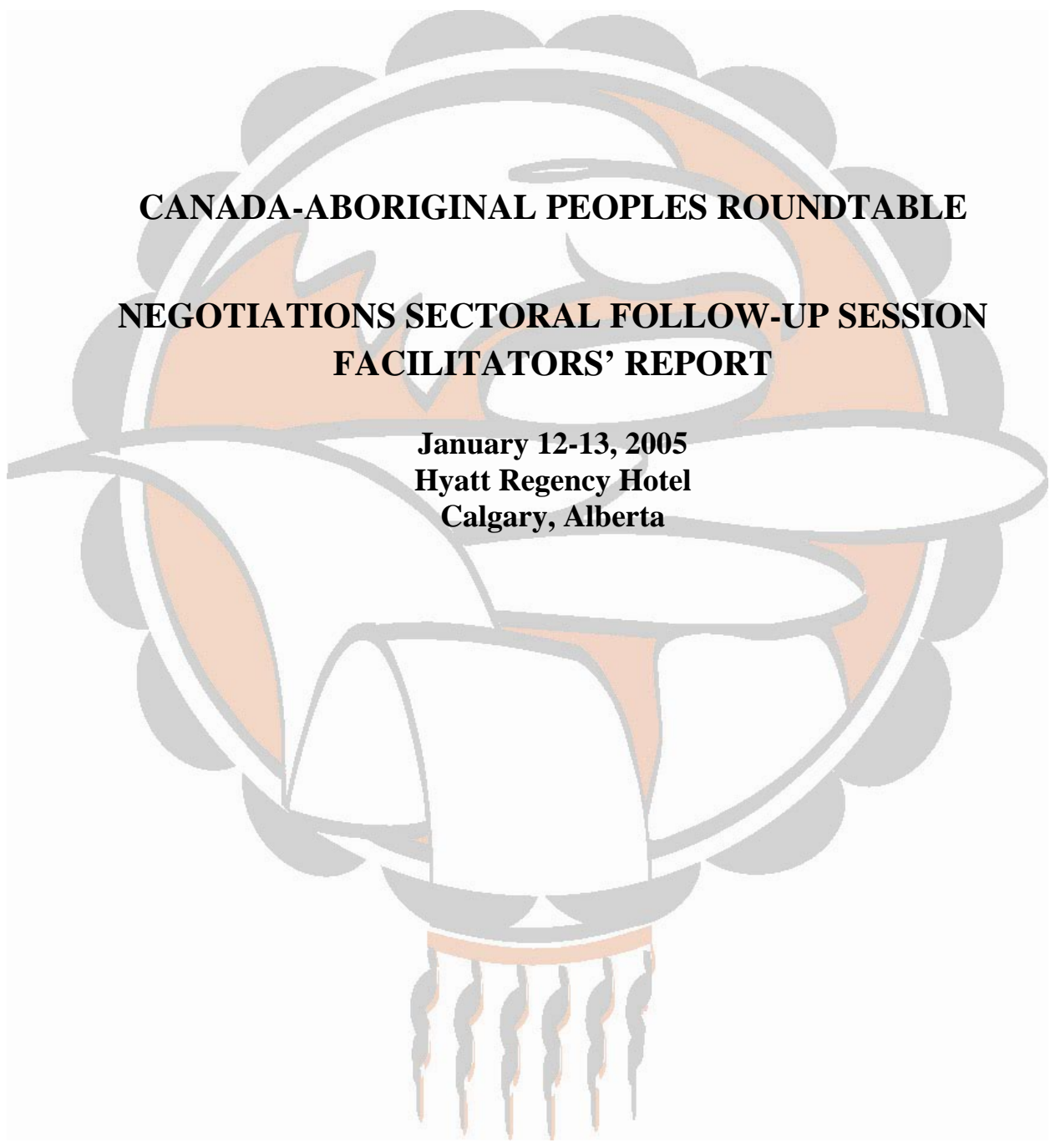




**CANADA-ABORIGINAL PEOPLES ROUNDTABLE**  
**NEGOTIATIONS SECTORAL FOLLOW-UP SESSION**  
**FACILITATORS' REPORT**

**January 12-13, 2005**  
**Hyatt Regency Hotel**  
**Calgary, Alberta**







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## 1) INTRODUCTION

The January 12-13, 2005 Sectoral Follow-up Session on Negotiations was the sixth in a series of sessions intended to fulfill the commitment made by Prime Minister Paul Martin at the conclusion of the April 19, 2004 Canada-Aboriginal Peoples Roundtable on Strengthening the Relationship. The sectoral sessions were intended to explore new and innovative ideas through which the Government of Canada and national Aboriginal leaders can work together to close the quality-of-life gap between Aboriginal peoples and all Canadians. In addition to Negotiations, sectoral follow-up sessions were convened for Lifelong Learning (Early Childhood Development and Kindergarten to Grade 12, Post-secondary Education and Skills Training), Health, Housing, and Economic Opportunities and Accountability for Results.

Following the distribution of the report on the April 19, 2004 Canada-Aboriginal Peoples Roundtable, the Aboriginal Affairs Secretariat (AAS) within the Privy Council Office (PCO) established an overall Planning Committee to develop the proposed sectoral follow-up sessions. The overall planning committee comprised five National Aboriginal Organizations (NAOs) including the Assembly of First Nations (AFN), the Inuit Tapiriit Kanatami (ITK), the Métis National Council (MNC), the Congress of Aboriginal Peoples (CAP), and the Native Women's Association of Canada (NWAC), key federal departments and agencies that served as lead departments or

had related responsibilities, including Indian and Northern Affairs Canada (INAC), Health Canada (HC), Canada Mortgage and Housing Corporation (CMHC), Industry Canada, Treasury Board Secretariat (TBS), and provincial and territorial officials.

A planning subcommittee, chaired by the lead department, in this case INAC, and comprising a similar combination of federal, Aboriginal and provincial/territorial members, applied the overall session planning guidelines to the particular needs of the negotiations field. The planning subcommittee responsibilities included the following:

- identification of policy priority topics, launch questions and the agenda to guide discussions at the session;
- development of background papers to provide participants with an overview of key issues (available on-line);
- selection of participants and observers (officials); and
- review of the facilitators' report on the session.

The five NAOs were given the opportunity to select 10 participants (e.g. five core and five sectoral experts) from their organizations and/or communities at all levels. There were approximately 120 participants at the Negotiations Sectoral Follow-up Session. Both Aboriginal and government members of the planning subcommittee were designated as observing officials, who attended to provide support to their selected participants and report back on the discussions. Each NAO had three



officials, the federal government had up to 15 officials and the provincial and territorial governments divided a total of 15 seats.

The Negotiations Sectoral Follow-up Session was designed to bring experts and practitioners together to address the specific session objectives established by the planning sub-committee, which were to share views and discuss options for establishing more effective policies and processes for addressing Aboriginal and treaty right by discussing:

- the legal objectives and principles, and lessons learned, for addressing Aboriginal and treaty right consistent with the recognition and affirmation of those right in section 35 of the *Constitution Act, 1982*;
- the relationship objectives and principles, and lessons learned, for addressing Aboriginal land right, the inherent right of self-government, and treaty right;
- options for the renewal of policies to more effectively address section 35 Aboriginal and treaty right, including facilitating the achievement and implementation of land claims agreements and the implementation of the inherent right of self-government; and
- options for improving processes and mechanisms for addressing section 35 Aboriginal and treaty right, including good faith negotiations, the implementation of land claims agreements and the implementation of the inherent right of self-government.

The results from the sectoral session are contained in this Facilitators' Report. The report is based on flip chart notes prepared by the participants and facilitators during the session and on a template/report outline approved by the overall Planning Committee. All flip charts were transcribed verbatim and are contained in Annex C of this report.

As a practical matter, it is not possible to reflect every idea placed on the flip chart notes during the breakout group in the narrative of this report. The facilitation team has attempted to draft the report in a manner that highlights the content of the flip chart notes as succinctly and objectively as possible. As a result, this report should be read in tandem with the detailed ideas contained in the flip chart notes.

As well, discussion at the session built on the content of background papers prepared in advance of the Negotiations Sectoral Follow-up Session. In specific cases this meant that recommendations that were included in the discussion papers were not always expanded on or discussed in the breakout groups. It is therefore essential that this report be read in conjunction with the background papers, which can be found on the Internet at <http://www.aboriginalroundtable.ca>.

The discussions themselves, this facilitators' report, the facilitators' reports from the other scheduled sectoral follow-up sessions, and the facilitators' final roll-up report on all sectoral sessions are intended to support and inform ongoing discussions leading to:



- a spring 2005 policy retreat between the Cabinet Committee on Aboriginal Affairs (CCAA), national Aboriginal leaders and provincial/territorial representatives<sup>1</sup>; and
- a fall 2005 First Ministers' Meeting (FMM) on Aboriginal Issues.

It is also anticipated that the participating governments and organizations may develop their own reports and analyses of the sectoral sessions. It is also understood that the brainstorming at the sectoral session in no way commits any particular government or organization to a discussion on any particular idea at the upcoming political forums.

It should also be noted that the session opened and closed by four Elders representing First Nations, Inuit and Métis. Their opening and closing remarks and invocations were often instrumental in setting the tone for the workshop and participants.

### **Workshop Methodology**

Each sectoral session provided that the majority of time be allocated to breakout groups where the participants were organized into the three distinct Aboriginal groupings: First Nations, Inuit, and Métis. There were approximately 64 participants in the First Nations breakout group; 29

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<sup>1</sup> Discussions are ongoing with provinces and territories regarding their participation in the planned spring policy retreat and this matter will be clarified as work proceeds toward this proposed initiative.

participants in the Inuit breakout group; and 27 participants in the Métis breakout group.

Each of the three distinct breakout groups addressed the discussion topics identified by the planning sub-committee and listed on the agenda. Discussion questions for each topic were also included on the distributed agenda and posted in the breakout groups. These questions were a guiding tool to help focus discussion on issues that support achievement of the session objectives. Facilitators used the discussion questions in tandem with other process questions to support the development of recommended actions. Where time provided, participants were asked to apply short-, medium- and long-term time frames to their recommended actions.

Each breakout group was facilitated by two co-facilitators selected from a list recommended by the National Aboriginal Organizations during the planning process. For each discussion, facilitators used a variety of techniques and exercises to maximize input and output from participants. The exercises included facilitated discussion methods that were adapted to fit the circumstances, such as time allotment, number of participants, size of the breakout room and theme subject. In most cases, the exercises asked participants to work in smaller groupings to gain greater participation from all.

All participants were clearly notified in workshops that all issues, options and/or recommendations must be recorded on the flip charts to be included in the final report of the session.



## 2) OVERALL SESSION SUMMARY

A clear message from all groups is that negotiations will be furthered if the federal government could move forward on implementing the legal and political commitments they have made with Aboriginal peoples, especially implementing in good faith, signed agreements, and working as advised based on recent Supreme Court decisions. All groups also agreed that there is a need:

- to focus on developing policy approaches that facilitate the recognition and implementation of Aboriginal and treaty right consistent with evolving jurisprudence; and
- for more effective processes for the implementation of modern and historic treaties and self-government.

In a slight departure from the approach in previous sectoral sessions, the Negotiations Sectoral Follow-up Session began with two panel presentations on day one.

### *Panel One - Constitutional and Legal Developments*

Three highly recognized constitutional and legal experts, Brian Slattery, Brian Crane and Sákéj Youngblood Henderson, provided an overview of developments in constitutional law since 1982 as a backdrop for discussion in the breakout groups. The panellists discussed how recent Supreme Court of Canada decisions have provided the basis for resolving critical questions relating to

Aboriginal and treaty right. They provided participants with information on key decisions and principles articulated by the courts which would provide guidance for renewing policies and processes for addressing Aboriginal and treaty right in a manner consistent with section 35 and the constitutional objective of reconciliation.

In fact, the thrust of all the presentations made it clear that Aboriginal right in case and constitutional law are no longer surrounded by question marks or uncertainty. Indeed in recent years, Aboriginal right have been further entrenched in constitutional law.

Brian Slattery set out a theory of generic Aboriginal right common to all Aboriginal peoples, including the right: to conclude treaties, to customary law, to the fiduciary protection of the Crown, to an ancestral territory (Aboriginal title), of cultural integrity, and to a livelihood and of self-government.

Brian Crane spoke to the fact that section 35 right are not absolute, but exist within the Constitution, requiring reconciliation with other constitutional right through negotiations, and noted that the Crown has a positive duty to pursue reconciliation.

Sákéj Youngblood Henderson provided a presentation on constitutional convergence and the need to reconcile Aboriginal rights and inclusion of Aboriginal within a common Canadian constitutional framework.



## ***Panel Two - Relationship Principles and Objectives***

The second panel, consisting of Jean Teillet, lawyer and member of the Métis Nation, Edmond Wright, Nisga'a First Nation, Tom Molloy, federal negotiator, John Merritt, lawyer for the Inuit, and Patricia Monture, a lawyer speaking on behalf of the NWAC, addressed the relationship with the Crown and discussed lessons learned. The panellists discussed their experiences participating in existing processes for addressing Aboriginal and treaty right. They also talked about their vision of the relationship they are trying to build.

There was strong emphasis on the need to ensure that Aboriginal policy is inclusive of First Nations, Inuit and Métis. Good faith negotiations mean having a mandate to negotiate, and having an ongoing process. There is an urgent need for action through the honour of the Crown. Land claims are not the end. They mark a new beginning, and form the foundation of a new relationship that is dynamic and continues to evolve.

There is also a pressing need to ensure the involvement of women in the negotiations and policy development through such prerequisite measures as a gender-based analysis.

### **Breakout Group Discussion Topics**

There were three discussion topics that guided the agenda within the breakout groups. The following reflects an effort to identify themes and recommendations that

cut across all three of the breakout groups. The reader is reminded that these are to be read in the context of the individual breakout group summaries, and the complete flip chart notes of each breakout group (i.e. First Nations, Inuit and Métis).

#### **1) Objectives and principles for addressing Aboriginal and treaty right**

It was evident in the discussions that the desire for reconciliation as the organizing theme for addressing Aboriginal and Treaty Right was extremely important. Honourable, good faith negotiations as a basis for reconciliation and renewed relationships, as well as fairness and balance in the negotiation process were strongly expressed. A strategy is required that addresses the need for common constitutionally based principles, but not a one-size-fits-all approach.

A key objective in all the sessions is the recognition and respect for distinctive political and cultural right and the ways of life of Aboriginal peoples in Canada, as well as the need for self-sufficiency, economic development, social equality and cultural well-being. Any strategy must also address in concrete ways the coexistence and balancing of right and interests of Aboriginal and non-Aboriginal Canadians, fairness of process, the honour of the Crown, and good faith on all sides.

Each breakout group called for changes to the machinery of government and called for the creation of a variety of ministerial level mechanisms. Examples include the request





in the Métis breakout group for a minister who would be responsible for Métis relations. The Inuit breakout group discussed a specific ministry/department of Inuit affairs with the sole responsibility for establishing a new relationship with Inuit. The First Nations breakout group discussed a section 35 minister, reporting to the Prime Minister, with a separate budget and department and the ability to provide independent funding for negotiations.

## **2) Policy renewal for addressing Aboriginal and treaty right**

A common theme that emerged in the breakout groups was the type of negotiated outcomes being sought, and the type of policy changes required to achieve these outcomes. The breakout groups deemed it extremely important that policies be consistent with section 35 and developments in constitutional law, as well as the equality guarantee contained within section 35(4) of the *Constitution Act, 1982*. The Government of Canada (GOC) must recognize the evolving nature of right and relationships in policy renewal. Coexistence and balancing of right are a critical foundation for renewal. It must be based on new fiscal models to support intergovernmental relationships, as well as land resource right and access for self-sufficiency. Consistent with this is the need to establish a renewed policy on self-government.

Throughout the discussions, the participants expressed the need for clear commitments to implement policies and approaches, an ongoing relationship, addressing both obligations and objectives and resolving the

power imbalance and inequity in bargaining positions.

## **3) Improvements to processes and mechanisms**

The desire for predictability and clarity for the exercise of right, application of laws, clear implementation processes to address mutual obligations and shared objectives was evident in the discussions.

A key process issue was related to the need for adequate consultation that is timely and efficient, and to ensure inclusiveness and clear distinctions on federal/provincial/territorial roles. It was also noted that there is a need to ensure public understanding of Aboriginal peoples, as well as private sector involvement.

More effective policies and processes for addressing Aboriginal and treaty right are a key element for achieving transformative change in relationships and for reducing socio-economic gaps and disparities.

## **Crosscutting Lenses**

As noted in the session objectives, each breakout group was also tasked with applying the crosscutting lenses, which were designed to ensure that the needs and concerns of Aboriginal women, Aboriginal people living with disabilities and those living in urban, northern/remote situations were addressed in the brainstorming discussion of issues and development of recommended actions.

In all the breakout groups it was made clear that policies and programs need to be flexible to address diverse needs and to



ensure inclusiveness, in particular for youth, women, urban and non-status Indians, and people with disabilities.

Some of the same critical issues were identified by all three breakout groups on the need to take a proactive approach to women's participation that ensures women are consulted and involved at all levels (e.g. gender-based analysis, capacity building strategy, visible participation) and that there is a response to the needs of Aboriginal people in urban, rural, remote/northern circumstances.

The crosscutting lenses can also be applied by ensuring that section 35(4) relating to the equality of right between women and men is noted in agreements, and that funding is provided to focus discussion on these issues during the development of community level components.

Another approach to ensuring that the crosscutting lenses are applied involves examination of the reconstitution of the original Aboriginal nations, and the re-establishment of traditional teachings and concepts that call for women to be honoured and the needs of all Aboriginal peoples to be respected (e.g. regardless of residence, status or gender).

### **3) SUMMARY OF DISCUSSIONS**

#### **i) FIRST NATIONS BREAKOUT GROUP**

The First Nations breakout group followed a facilitation process where the participants

provided input in the following areas:

- participant key messages;
- identification of critical issues;
- essential elements/vision statements;
- principles and objectives for moving forward; and
- ways of knowing we are making progress.

#### **Participant Key Messages**

Through over 60 key messages the participants suggested that improvements in the negotiations environment could be made through a number of shifts in attitude, policy and process. Some key messages include:

Policy and legislative adjustments to shift to negotiations based on the mutual recognition of First Nation inherent Aboriginal and treaty right, particularly as recognized in section 35 and through decisions of the Supreme Court of Canada. For example:

- Government of Canada to recognize the sovereignty and self determination of First Nations and implement international treaty relationships based on respect and co-existence
- base negotiations/implementation on the mutual objective of recognition/continuation of Aboriginal nations, as well as the recognition of Aboriginal right, Aboriginal title and treaty right
- recognition, negotiation, implementation of access to traditional territories and resources



- honour/implement rather than appeal section 35 court decisions (e.g. recognition of generic section 35 right, and negotiation of specific right)
- get rid of the *Indian Act*
- recognize First Nations as true governments and provide a voice in Parliament
- recognition legislation

Acknowledge that agreements and their implementation form the starting point of an ongoing, evolving relationship. For example,

- Canada recognizes the inherent right to self-government and starts now to build a new relationship
- get rid of extinguishment, establish living relationships
- ongoing process to be built more on two-way recognition/relationship building, less on transactions
- Canada must implement treaties according to the spirit and intent of the treaty relationship
- treaties need to evolve over time
- implement recommendations from the Royal Commission on Aboriginal Peoples (RCAP)

Make adjustments to negotiation processes to reflect the above re-orientation and improve outcomes. For example:

- the process of negotiation can and should be transformative, changing the way governments and individuals look at each other (this is good in itself) as well as leading to real change in relationships and between governments

- negotiations must be between politicians (e.g. Prime Minister and higher Cabinet)
- get negotiations out of the INAC and into PCO or other departments
- a treaty implementation policy to be overseen by a federal government central agency (not INAC)
- negotiations more transparent, less complicated, less adversarial
- more inclusive participation
- be equals at the table, level playing field
- Canada to send empowered negotiators to negotiation tables (e.g. limited power to say yes)
- establish pre-negotiations and negotiations rules that identify problems and model solutions
- need for effective and efficient alternative dispute resolution mechanisms, and find creative ways to resolve impasses at negotiating table
- negotiations information sharing for First Nations/Aboriginal table negotiators
- arm's-length, independent funding agency for negotiations
- involve UN in nation-to-nations discussion

Respond to the needs of First Nations women, non-status Indians and Aboriginal people in urban, rural, remote/northern circumstances. For example:

- gender-based analysis/inclusion of First Nations women through capacity building strategy
- clear policy with reasonable membership codes that identify dual citizenship for women and children that would ensure right preserved and recognized



- more women visible at all levels
- inclusion of Aboriginal people (urban, rural, off reserve, women, Metis, etc.)
- address citizenship issue (registration, beneficiaries)

- new funding approaches for self-government/treaty implementation based on the real costs of running a First Nations government.

### **Critical Issues**

Working with the facilitators, the issues identified by the participants were grouped into eight critical issues. The participants discussed both policy changes and adjustments to processes and mechanisms that would be required to address the critical issues. Discussions also included specific consideration of the needs of women, non-status Indians, and First Nations people in urban, rural and remote/northern locations.

#### **1) Recognition of right (including extinguishment, certainty and implementation)**

To support negotiations based on the recognition of right, the participants identified process and mechanism changes such as:

- developing a generic list of right/powers with exclusions identified up front, certain exclusions would have to involve the provinces/territories being at the table on those issues (at a later date);
- developing a negotiation and implementation body separate from INAC that has a right recognition and implementation mindset, and a mandate to deal with other government department issues, benefit sharing, interim protection measures and consultations; and

The new or changed policies required to allow for these changes involve:

- a policy shift that recognizes that negotiations are based on the fact that the Aboriginal party comes to the table with specific right at the onset;
- a self-government focus built on the recognition and reconciliation of a list of standard powers that First Nations are assumed to have in self-government agreements;
- policy statements and recognition act/legislation must focus on self-government/federal powers, and recognize principles of nationhood and no extinguishment;
- support for capacity building from a First Nations perspective to ensure that ongoing training in government administration is available prior to the effective date of agreements; and
- this will require significant funding, further research/needs assessments and consideration of a national training facility.

The crosscutting lenses could be applied by ensuring that section 35(4) relating to the equality of right between women and men is noted in all agreements.



## 2) Clarification/definitions of Aboriginal right (identified as an implementation issue)

To support the definition of Aboriginal right the participants identified process and mechanism changes to support participation by all parties (e.g. Aboriginal, Crown/federal/provincial/territorial). This would be accomplished through out-of-the-box thinking and short-and long-term strategies for:

- recognizing Aboriginal sovereignty
- a process to educate each other as to how we are going to coexist
- a unique non-judicial process within a specific time frame

The new or changed policies required to allow for these changes involve:

- joint Aboriginal/government design of a recognition instrument involving new and existing policies and processes, and including periodic joint review
- mobilizing the political will for the recognition and implementation of historic treaties
- this would be facilitated by flexible policy that could accommodate diverse needs and interests among Aboriginal peoples across Canada, establishing an arms-length body to address unresolved issues, and exploring the role of provincial governments in the process

- establishing a facilitated mechanism within the Government of Canada where a joint understanding/agreement can be developed on how to move from recognition of generic right to specific right, on who the right holders are, on how to secure federal and provincial political commitment, and determine which issues (e.g. natural resource transfer agreements) to include

The crosscutting lenses could be applied by examining the reconstitution of the original Aboriginal nations, particularly through the re-establishment of traditional teachings and concepts where all Aboriginal peoples are respected (e.g. regardless of residence, status or gender).

## 3) Implementation (including right, lack of mandate, agreements, court decisions and types of treaties)

To support improvements to the implementation phase of negotiations the participants identified process and mechanism changes relating to:

- consistency in approach, particularly with historic Treaty First Nations, to ensure common understandings and review of provisions;
- enacting a legislative framework for implementing principles and obligations;
- establishing an independent body to track process and resolve disputes (e.g. binding arbitration, international dispute resolution/special rapporteur);
- securing a mandate for substantive right-based discussions; and



- joint First Nations and federal government assumption of responsibility for accommodating needs of First Nations off-reserve (e.g. access to education in their language).

These process and mechanism changes could be supported by jointly developed legislative or policy changes (e.g. comprehensive claims policy) that provide for:

- an ongoing relationship instead of certainty/finality;
- a policy to address numbered treaties, and implementing treaties through self-government;
- incorporation of court decisions and Auditor General's reports;
- PCO oversight role for how Aboriginal rights are respected by federal departments;
- consideration of expansion of current role for overseeing Charter compliance; and
- a federal mechanism (other than INAC) to oversee Government of Canada implementation responsibilities.

#### 4) Overlap

To address issues created by overlapping claims, the participants identified changes that could be pursued in three areas.

- i) Create processes where First Nations can work out geographic overlaps among themselves through

- a First Nations dispute resolution process where no internal agreement can be reached
- securing agreements that provide resources sufficient to build internal capacity
- a starting point when the nation must determine its citizenship

- ii) Find ways to involve the government in the resolution of the issues

- recognize historic First Nations sharing of territory and resources rather than require exclusivity
- modify population-based funding approaches that encourage competition
- utilize the honour of the Crown as a guide to preventing governments from using overlaps to create delays
- create consultation/accommodation policies acceptable to all parties
- draft provincial/territorial and First Nations memoranda of understanding on how to address/harmonize trans-boundary First Nations' claims

- iii) Implement joint processes to communicate and engage third party interests through

- jointly developed communication strategies to combat fear mongering and emphasize the government-to-government character of negotiation processes



- supporting third party involvement while not being driven by pressures for third party development

##### **5) Relationships (consideration of Crown/not just INAC, jurisdiction, balance of power, third party and political will)**

The participants indicated that the fragmented approach of the Crown and conflict of interest situations this creates for the ministers, needs to be addressed. This situation could be changed through

- letting section 35 drive policy and legislation (e.g. duty of the Crown) and creating a separate section 35 minister, reporting to the Prime Minister, with a separate budget and department, with responsibilities for relations with the provinces, territories and third parties, and the ability to provide independent funding for negotiations
- joint analysis/review/redesign of policy regarding ministry negotiations and agreements (e.g. inherent right policy, litigate or negotiate)
- joint and independent report card to Parliament regarding progress in this area
- challenging third parties, as treaty beneficiaries, on how they can help make progress
- culturally appropriate gender-based analysis mandates within policy and legislation

The unique needs of First Nations women, non-status Indians, and First Nations people living in urban, rural and remote

circumstances would be addressed, including culturally appropriate gender-based analysis mandates, within policy and legislation.

##### **6) Inclusiveness (including issues of equal access, all groups and balance)**

The participants particularly noted that communities are often still in crisis as indicated by conflict between traditional and imposed modern electoral systems; the often undefined role of Chief and Councils; and the impact of social ills such as poverty, violence/abuse and addictions on attitudes about inclusiveness. Process and mechanism changes required to deal with these issues include finding ways to:

- involve the whole community, whether they are at home or away from home
- recognize, respect, formalize and empower the role of Elders in sharing teachings, guiding the community and meeting with youth
- define roles of community
- implement First Nations' policies on how the equality of right between women and men (our own section 35.4) will be applied
- provide/secure proper levels of funding to support urban centres, the establishment of Elders' councils at all levels, women's organizations, partnering with other Aboriginal organizations, and the participation of youth in developing First Nations policies



- use National Gatherings of all nations to re-establish nation-to-nation protocols (e.g. urban embassies, people moving into the territories of other First Nations)
- separate funding for urban and mechanisms to support mobility (e.g. move to different town and go to the bottom of the housing list)

The participants also indicated that the unique needs of First Nations women and Aboriginal peoples living in urban, rural, and remote/northern circumstances (e.g. marriage, alliances, adoptions, kinship ties, roots and relationships) could be addressed by:

- respecting, including and listening for understanding within, women's voices in all processes
- establishing and involving current First Nations urban centres/offices and inter-First Nations' protocols for services, etc.
- having other governments recognize First Nations systems of identifying, defining and recognizing their own citizens

**7) Financing (including issues relating to social\economic\health, length of time to negotiate, capacity building and loan policy)**

The participants identified a number of financing process and mechanism changes. The participants also discussed funding in terms of fiscal relations. Examples provided include:

- still have to address equity of funding (power imbalance) on each side, need an independent body
- eliminate loan funding for treaty negotiations
- loan forgiveness/grants as part of an agreement on mutual goals to reach agreements/settlements
- compensation for infringement/land and resources redress
- apply principles from Williams and Okanagan cases to support funding for negotiations, and need own benchmarks to measure transformative change based on First Nations values not federal government policy

In terms of fiscal relations, which go beyond the receipt of project and program funding, the participants noted that:

- federal ministers need to be prepared to talk to First Nations leaders as they do provincial premiers on revenue/resource sharing, equalization, etc. to address imbalance in access to, and benefit from First Nations lands, territories and resources
- need to shift entrenched thinking within bureaucracy that is driven by business model (get the cheapest deal at the cheapest cost) toward a focused requirement for transformative change

These changes can be accommodated through approaches such as:





- involving public sector unions, private sector and church groups to assist in bringing about change in thinking by officials
- changing how Treasury Board and other central agencies measure success (e.g. performance indicators for officials based on socio-economic conditions)
- incorporating gender-based analysis
- utilizing mechanisms like Nisga'a government to ensure inclusion/voice of citizens living away (off reserve)
- funding and funding mechanism that includes off-reserve members
- inclusion, changing mindset to assert responsibility for off-reserve members and women and adapting program and service delivery based on First Nations definition of selves
- moving legislative tools to First Nations away from Canada, must examine role of section 88 of the *Indian Act*, provincial law (e.g. child welfare)
- examining the contingent right nature of the current inherent right policy
- policy recognition that self-government is primarily a bilateral First Nations-Canada issue
- removing standard of needing provincial concurrence with a settlement within the self-government policy
- changing federal policy that sees section 91(24) of the *Constitutional Act, 1867* jurisdiction limited to First Nations on reserves
- funding for land claims negotiations process (e.g. funding to support consultation and new interim measures arising from *Taku* and *Haida* cases)

## 8) Legislation (including a recognition act, new royal proclamation, declaration, and enabling legislation)

Legislative approaches touched upon the principles, application and criteria that should guide their development. Specific examples included:

- self-government (Aboriginal) recognition act
- act to cover existing treaties and areas of no treaties in a way to recognize right
- consistency/fit with the UN Draft International Declaration on the Right of Indigenous Peoples

These can be accommodated through jointly developed mechanisms that affirm nation-to-nation approaches and do not derogate from existing treaties. Other examples of how to achieve change in these areas include:

- commitment of the Crown through Order in Council
- declaration based on principles consistent with the integrity of Royal Proclamation (without revisiting the Royal Proclamation)
- declaration that sets the parameters for the establishment of new policies that must reflect past work on principles and process (e.g. Royal Commission on Aboriginal Peoples, Penner Report, B.C. Treaty Commission Task Force, etc.)
- shift from status quo to recognition that First Nations also have authority
- reaffirmation at historic treaty signing locations (e.g. Niagara, Batoche, Sault St. Marie, etc.)



The unique needs of First Nations women, non-status Indians and Aboriginal peoples living in urban, rural, remote/northern circumstances can be met through:

- funding/resources to reach out to all constituents
- communication plans and strategies to include all people and third parties
- understanding and recognizing the portability of right (responsibilities do not stop at reserve borders)
- nation-by-nation policies on how all members are looked after (outside the *Indian Act*)

### **Essential Elements/Vision Statements**

The vision statements developed by the eight table groups stressed compatible and consistent messages that suggest that improving the negotiations environment in a way that addresses the key messages and resolves the identified critical issues would result in:

- changed attitudes among a better informed and supportive public
- comprehensive, fair and flexible processes and agreements that build on successes in other negotiations and provide mutual benefits
- recognition of all section 35 right (of all Aboriginal peoples)
- First Nations jurisdiction and control over land and resources adequate to their needs
- First Nations assumption of their rightful place in Canada

Additional suggestions for a future vision included references to a House of First Peoples (Parliament) so that Aboriginal peoples have access to power, and reconstruction of the true historical and Aboriginal nations.

### **Principles and Objectives for Moving Forward**

Approximately 30 statements on principles were generated with significant emphasis on several key areas such as:

- mutual recognition
- mutual benefit
- recognition of sovereignty
- peaceful coexistence
- reconciliation
- government-to-government/nation-to-nation negotiations
- inclusion of traditional values (e.g. belonging, sharing, roles and responsibilities, respect, responsibility to the land, etc.)
- development at the community level
- federal government must not offload its responsibilities to Aboriginal peoples/First Nations/provincial/territorial governments

The principles were supported by approximately 40 objective statements that provide insight into how the principles could be applied and what will result from their application, including:



- positions based on outdated concepts (e.g. denial of right, doctrine of discovery) are replaced
- Supreme Court of Canada decisions become real and transformative change happens
- section 35 is the foundation of government activity
- creation of stable governments able to withstand the challenge from within and without
- treaties/agreements must be living documents to reflect that relationship
- irrevocable parliamentary, declaration recognizing First Nations' sovereignty and inherent right
- language in treaties/self-government agreements reflect the government-to-government relationship
- inclusiveness achieved through providing access to negotiations for all Aboriginal peoples of Canada
- resulting agreements are inclusive
- the public becomes better informed (e.g. public awareness campaigns)
- a central senior agency is created (e.g. section 35 relations) to ensure the letter, spirit and intent of agreements are implemented
- there is inclusion (process available for all Aboriginal people)
- legislation is jointly developed
- the February 2005 and future budgets reflect all proposals produced in roundtable sessions
- Prime Minister makes statement with detailed strategy for implementation of roundtable recommendations in concert with First Nation leadership
- there is independent funding for negotiations
- Aboriginal women have reclaimed their rightful role and status in the community
- a report on results is presented to Parliament

### **How Will We Know Progress is Being Made?**

The breakout group participants identified indicators of progress reflecting the scope of attitudinal, policy and process reform; the degree of achievement on such matters as compensation, self sufficiency and political representation; and the quality of the follow-up to this roundtable. Examples provided include when:

- comprehensive claims policy is updated to match the rule of law and constitutionalism (inherent right policy)
- there is consensus on guiding principles for relationships/honour of the Crown

### **ii) INUIT BREAKOUT GROUP**

There were approximately 29 participants in the Inuit breakout group. Note that this report is an overview summary of the meeting and cannot adequately capture the breadth and depth of the discussions. Please review the Inuit flip charts for the details of the discussions.

#### **Introduction and Key Messages**

The following key messages were identified at the opening of the session by the participants.

- Inuit women need to be involved in all aspects of negotiations.



- The extinguishment clause needs to be dissolved and completely removed in existing treaties. The relationship needs to be based on the respect and continuation of Inuit right. The honour of the Crown is implicated in this issue.
- The Government of Canada still has unfulfilled obligations to the Nunavut Land Claims Agreement.
- For the land claims to be successful, the federal government has an obligation to implement the agreements.
- For Inuit to believe in the land claims, they need to see progress on implementation. Since implementation is not proceeding well, organizations are hearing the concerns directly rather than the Government of Canada.
- Inuit want their traditional ways to continue and not be compromised.
- Inuit would like to include industry in negotiations/discussions.
- Inuit are often marginalized in urban settings and don't receive the constitutionally recognized protection to which they are entitled.
- The settlement of land claims in all the regions has been carried out for the betterment of all of Canada.
- The federal government has to develop Inuit-specific policies and programs.

### **Critical Issues**

Working in full plenary, the group developed critical negotiation issues to effectively address Inuit Aboriginal and treaty right. The facilitators worked with the participants to organize the initial 36 issues into eight distinct critical issue categories.

The participants identified recommended actions and key messages on how these issues could be addressed.

#### **1) Inuit and pan-Arctic definition and policies**

There is a need for Inuit-specific policies that are not based on a First Nations approach, all-inclusive Aboriginal policy or Inuit add-ons to existing policies. An example of an Inuit-specific policy would be a broad Canadian Arctic Policy (not one limited to north<sup>2</sup> and south of 60 or limited to Nunavut). Land claims are not just about money but have broader benefits to Canada and Canadians.

#### ***Recommended actions***

The Government of Canada and Inuit develop a comprehensive Inuit policy in Canada. This policy must include a modern definition of Inuit that includes urban Inuit as well as all four Arctic regions. A new relationship is required between the Crown and Inuit to facilitate the following:

- the GOC and Inuit, through the ITK, to negotiate and conclude the partnership accord and establish the Inuit Secretariat;

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<sup>2</sup> Any reference to "northern" or "Arctic" encompasses all Inuit land claim areas, including Nunavik and Nunatsiavut (Labrador).



- establishment in partnership with Inuit land claims organizations of a new land claims implementation policy. The Privy Council Office and Cabinet Committee on Aboriginal Affairs should oversee a cooperative policy with the members of the Land Claims Agreements Coalition to draft a new lands claims implementation policy based on the Coalition's tabled discussion paper and the four principles stated in that paper;
- the Canadian government to develop an education strategy with ITK to educate federal employees and all Canadians about the Arctic;
- the Government of Canada to ensure that Nunavik (northern Quebec) and Nunatsiavut (Labrador) are officially included in its Northern Strategy; and
- the Government of Canada to support the inclusion of an Arctic/Inuit dimension in institutions of the Canadian federation, such as the Council of the Federation, the Social Union, and federal/provincial processes in general.

## 2) Jurisdiction

There are a number of recurring critical issues with respect to jurisdiction. For example, jurisdiction needs to be clarified so that Inuit do not get caught in the middle between governments; provincial/territorial governments cannot be the primary negotiators, and sometimes federal/provincial/territorial governments pass on jurisdictional problems to Inuit organizations.

### *Recommended actions*

- Revisit the entire jurisdiction issue with Inuit, as the Inuit were never involved during the first round of certain discussions (Council of Federation, Social Union Framework Agreement) and Inuit consent/participation/presence is required for anything that affects the Inuit.
- Recognize the Arctic region in those jurisdictional issues.
- To ensure issues are addressed, establish an autonomous Inuit secretariat (distinct from the current proposal) that would support the day-to-day implementation of the partnership accord and be a one-window shop for Inuit for all government departments.

### 3) Federal government capacity and requirements

The government at both the political and administrative level is not always aware of land claims, obligations and mandate. Federal initiatives not negotiated with the Inuit in advance are not always useful. The Inuit secretariat must not be bureaucratic and should expedite the land claims agreements. The Crown's fiduciary responsibility is not limited to INAC and that needs to be reflected in the federal government machinery and how ministerial commitments are translated/done by staff.

### *Recommended actions*

Dealing with INAC is not working and as such, institutional structures within the federal government must be established.



- A specific department (Ministry of Inuit Affairs) that has sole responsibility for Inuit is required that establishes a new relationship with the Inuit.
- Mechanisms are needed to ensure ongoing understanding of responsibilities and obligations.
- Mechanisms are needed to feed the government/bureaucracy factual information and concerns.
- Periodic meetings are needed to establish and agree on priorities and processes that can address Inuit concerns in a timely manner.
- Inuit need to be involved in all relevant policy development tables, with appropriate funding attached.
- The federal Inuit secretariat must have a mandate to make decisions and should be a unique model of how the Crown and Inuit can work together. It needs to have an expansive mandate that is interdepartmental and can troubleshoot, expedite decisions and be action oriented.
- The mandate of the Inuit secretariat should be determined through discussion and agreement with Inuit organizations. It should act as a catalyst/advocate/focal point in the federal system, and link Inuit with the various federal agencies.
- All public servants working on Inuit issues need mandatory education and refreshers. Basic knowledge of Inuit must to be a job requirement and there must be a commitment to the establishment of corporate memory at all levels of the bureaucracy. Government treaty and land claims obligations should be part of the mandatory training for all

government managers, not only those public servants who deal directly with Inuit.

#### **4) Negotiation process**

Timelines for negotiations are too long and result in a loss of capacity and work, sometimes through delays and federal government stalling. When the government comes to the table with internal mandates and interpretations, it limits the latitude for negotiations. Throughout the different negotiation processes, complex issues are arising that the current mechanisms are not able to adequately deal with, such as:

- addressing self-government through public government approaches;
- mechanisms to address overlapping claims that allow for progress to happen with some groups, while others can continue negotiating;
- addressing self-government situations where negotiations occur with both Inuit and First Nations representation (e.g. for the Inuvialuit, health care is a shared responsibility); and
- proactive approaches to women's participation that ensures women are consulted and involved at the regional level.

#### ***Recommended actions***

- a new negotiations policy with an implementation policy built in



- independent appointed negotiators must have a real mandate with authorization to negotiate and with proper expertise and authority to be at the table;
- an implementation framework to be built into the implementation plan
- a tribunal or some mechanism must be established to deal with implementation complaints
- negotiations should have a process, in which a clear direction or vision (e.g. better quality of life for Inuit) is the focus, and with a time frame and finances that are based on obligations, issues and needs
- negotiations should not be driven by unilateral predetermined financial limits that cannot address inflationary factors, emerging issues and the real length and costs of implementation processes
- all parties must be accountable for moving the process forward and operate from the basic principle of good faith
- the lack of a definition of good faith undermines negotiations. The paper that Nunavut Tunngavik Incorporated (NTI) informally submitted to the roundtable suggests that we should be looking to the field of labour law/collective bargaining for help in defining the term

## 5) Urban Inuit in the South

The growth of Inuit communities in the south continues to create policy implications and pressures relating to the government's responsibilities for ensuring that urban Inuit have access to services.

### *Recommended actions*

- the establishment of a national Inuit-specific urban policy developed with the Inuit
- an urban Inuk is defined as anyone living outside of their land claim region
- the current funding needs to have an Inuit-specific share
- in some cases, services parallel to those available to First Nations and northern services in the Arctic need to be provided to Inuit in the south
- there has to be a range of services including immediate and long-term programs (e.g. Inuit women fleeing violence, and medical care)

## 6) Implementation

The federal government is viewed as being good at meeting minimum requirements but not at meeting the larger objectives or spirit of the negotiated settlement agreements. At this point, the Government of Canada is functioning within the sins of omission. It has not been responding to, and there have been continuous delays in, the negotiation of the Inuit Partnership Agreement and implementation of Article 23 of the Nunavut Land Claims Agreement (NLCA) (e.g. Inuit are losing out on millions of dollars as departments are waiting for direction and little progress is being made). There is a need for a new implementation policy and a way to address implementation disputes.

### *Recommended actions*

- There must be a long-term commitment by all parties to implementation.



- In the immediate term, the federal government has to respond to legitimate issues that have been raised by Inuit organizations. (e.g. there has been no response on the Inuit Partnership Accord in four years).
- The relationship established between the Inuit and GOC has to be based on respect and not checks and balances.
- Implementation plans must include objectives, quantifiable measures, defined monitoring objectives, long-term strategies, and clear commitments for renewed long-term funding, and be flexible to allow for changing circumstances in the Arctic. The Inuit must be equally involved in the planning of the implementation process. There needs to be a dispute resolution process when disagreements occur around implementation.
- The federal government must have a streamlined process that is responsive and accountable to Inuit/Arctic issues. The Inuit secretariat can be developed to be that mechanism.

The federal government should enter into good faith negotiations, which include:

- appointing a federal negotiator
- addressing the substantive proposals on the table in sufficient detail
- proceeding on the basis of whether implementation is meeting the objectives of the agreement
- disclosing all relevant information on federal implementation funding for the first ten years

- acknowledging that the NLCA is a two-party agreement between Inuit of Nunavut and the GOC

## 7) Capacity building

Individuals, communities, Inuit organizations and governments all require capacity building investments. The lack of sustainable funding for Inuit organizations seriously compromises their desire to move forward. The reliance on a few in communities leads to burnout. There must be processes to inform all community members of their right as Inuit and the implications of the land claims agreements.

### *Recommended actions*

- A partnership approach to all capacity building is required.
- Develop a national curriculum, including the content and processes of the land claims agreements, Aboriginal right and Inuit-specific issues. There has to be a broader education/initiative to target all Canadians on the benefits to Canada and Canadians (e.g. curriculum in schools). The government must institute initiatives to educate itself about the Inuit.
- For the government, it would be useful to have the same staff on a file for a longer period of time, provide people with the education and knowledge to work with the Inuit and have non-Inuit working on behalf of the Inuit play a larger role in building a sustainable workforce.





- The federal government should promptly respond to the draft Partnership Agreement and set up, through ITK, a process for further discussion and conclusion of the Partnership Agreement and Action Plan. This process must include officials with a mandate to conclude an agreement.
- Bureaucrats need to have ongoing education.
- There must be an investment of funds to recognize the key role of Inuit organizations.
- Establish multi-year, core funding for Inuit national groups.
- Establish respectful relationships between parties with mutual evaluations.
- Training to reduce illiteracy and to ensure Inuit are graduating from high school and making the teaching of Inuit languages mandatory in schools are required.

## 8) International

The Government of Canada is negotiating international agreements that are critical to the quality of life for Inuit (e.g. environmental, fishing, Intellectual property). However, federal departments doing the negotiations are often not educated enough about Inuit. The Inuit have no role, and communication mechanisms that would ensure Inuit and the departments can work together are missing. In some cases, negotiations by the federal government that do not involve consultation with the Inuit are in violation of land claims agreements.

## *Recommended actions*

- Inuit must be involved in the negotiations of international agreements and the development of federal policy (e.g. Northern Dimension of Canada's Foreign Policy) if they will impact or affect the Inuit.
- Inuit need to have a role on international delegations and be involved in discussions or consultations.
- Expand the reporting relationship of the Circumpolar Ambassador to include the Environment Minister.
- An investment in the Inuit Circumpolar Conference (ICC) and Inuit Tapiriit Kanatami is required so that Inuit can participate.

## Principles and Objectives

In the full plenary, the group was asked to identify principles and objectives that would support the achievement of the recommended actions.

## *Principles*

- There has to be good faith in all areas, a common understanding so we know what is expected of all parties.
- All policies need to be Inuit-specific.
- Land claims are not the end. They mark a new beginning and form the foundation of a new relationship that is dynamic and continues to change.



## **Objectives**

- Inuit have the right to have the same social and economic conditions as other Canadians.
- Revisit agreements that have extinguishment clauses.
- The federal government needs to state a clear commitment and obligation to comprehensive Inuit-specific policies.
- The agreements are intended to enable the Inuit to stand on their own.
- The federal/provincial governments must help Inuit achieve their goals.
- Redefine and start a new relationship with a new policy.
- A partnership agreement between the Crown and ITK must be established.

## **How Will We Know Progress is Being Made?**

The participants provided input on measurements of progress in six areas.

### **1) New relationship with the federal government**

- Inuit and government both feel they are engaged in an equal partnership
- the GOC rescinds, revokes and renders ineffective its extinguishment and surrender clauses and policies in all agreements
- Inuit join with governments in promoting the value of land claims agreements
- this gathering is the beginning of a long process. We have great ideas; the government should listen to them

- an Inuit secretariat is in place and is functioning as it should
- when the Inuit language is being used by the government with the Inuit

### **2) Implementation of agreements**

- signing ceremony of the Partnership Agreement
- every land claims agreement is being implemented
- implementation committees celebrate accomplishments and no longer have to resolve disputes
- conclusion of a comprehensive implementation plan addressing all Crown obligations under the Nunavut Land Claims Agreement
- an evaluation framework which will measure impact of claims
- 85% Inuit employment in all levels of Nunavut government

### **3) Inuit-specific policy**

- an Inuit-specific policy that ensures policies and programs reflect the needs of Inuit
- Inuit participation in solutions for programs and policies

### **4) Financial resources**

- Inuit organizations have sufficient, multi-year funds to address their priorities and needs without having to compete with other Aboriginal organizations for them



- when Inuit receive the same level of funding for programs and services as the Assembly of First Nations

#### 5) **Quality of life for Inuit**

- there is a clear and measurable improvement in the standard of living and health of Inuit in Canada

#### 6) **New relationship with Canadians**

- the *National Post* and mainstream Canadians understand the plight and aspirations of the Inuit
- when we complete the Circle of Confederation

#### **Crosscutting Lenses**

The Inuit breakout group was also tasked with applying the crosscutting lenses to ensure that the needs and concerns of Inuit women, Inuit people living with disabilities and Inuit people living in urban areas were addressed in the discussion of issues and the development of recommended actions.

- The participants agreed that there needs to be proactive approaches to women's participation that ensures women are consulted and involved at the regional level.
- The current funding that is available to Inuit living in urban areas needs to have an Inuit-specific component or share and in some cases, parallel to First Nations programs.

- Specific circumstances of all Inuit, whether living with disabilities or living in remote or urban areas, must be factored in when developing policies or programs.

#### iii) **MÉTIS BREAKOUT GROUP**

There were approximately 27 participants in the Métis breakout group. Please note that this report is an overview summary of the meeting and the reader is encouraged to read this in tandem with the Métis flipcharts for additional context and details of the discussions.

#### **Issues and Identified Solutions**

Participants were asked to brainstorm on issues related to negotiations and Métis peoples. Once identified, the issues were placed into common or similar categories that could then be discussed in smaller breakout groups. The issue grouping and brainstorming solutions resulting from the session are outlined below.

#### **Issues - first grouping**

- negotiate, what, how, when and who are the parties
- negotiations versus claims
- who are the right holders?
- what are the aspirations of people?
- federal government's accountability for results
- Métis identification registries, enumerate, identity and control; registry is not an *Indian Act* list
- research and funding of research



- need for institutional/human/financial capacity for consultation with Métis.
- Métis-specific, not pan-Aboriginal

### *Identified Solutions*

- different communities at different stages of development, any process must respond to different developmental needs
- processes must reflect that Métis communities have the generic right to self-government under section 35
- the implementation of the inherent right to self-government must respect the right to equality under section 15 of the *Charter of Right and Freedoms* and section 35(4) for those most vulnerable in Métis communities (women, people with disabilities and two-spirited people) must be addressed and protected in section 35 developments
- central overarching principle for Métis peoples is implementation of inherent right to self-government for all Métis communities
- implementation requires respect, parity, equality, inclusion and pragmatism
- Métis peoples are entitled to design, deliver and evaluate programs and services that reflect the unique circumstances of their communities; government must devolve an equitable allocation of tax revenues to do so
- a new policy framework backed by Cabinet must be jointly developed with Métis communities

- Federal program activity architecture needs to be changed to enable Métis self-governing institutions, people and social/economic developments by the following:
  - devolution of existing programs/services to MNC, CAP, NWAC, Alberta Métis Settlement, etc.;
  - reconfiguring Cabinet responsibilities to make this happen;
  - engagement strategy to address program and services gaps for Métis;
  - funding to support Métis self-governing institutions (MNC, CAP, NWAC, Alberta Métis Settlements, etc.);
  - changes to the fiscal relationship; and
  - long-term strategy to build Métis self-governing institutions across Canada.
- restructure INAC to include Métis
- mandate the inherent right policy to apply to the Métis
- federal government to negotiate Aboriginal and treaty right including land, resources, etc. with Métis people
- support Métis identification registry process for Métis organizations
- accept jurisdiction for Métis within section 91(24) or refer to Supreme Court to clarify



### **Issues - second grouping**

- recognition that there is a Métis Nation made up of national, provincial and community-based governments with full nation-to-nation capacity
- recognize that there are other Métis (e.g. the Labrador Métis)
- recognition of Métis right, other groups, a process to balance right, there are issues that overlap
- interim measures to be undertaken as other processes are being designed.
- Treaty Land Entitlement, federal institutions that harms Métis
- Métis land claims
- Powley Right (harvesting)
- establish a relationship with federal government through a mandated joint task force as a means of establishing new processes for self-government
- lack of understanding of Métis Nation institutions (roles, programs, how governing institutions are established and governed) which leads to duplicate investments and lack of respect for institutions
- build capacity around existing Métis institutions
- legal instruments to guarantee follow through (framework agreement, Canada/Métis Nation recognition act)
- identify areas of government where actions or inactions cause harm to Métis people (e.g. Department of Fisheries and Oceans); their role is often actively causing harm
- resource processes to engage Métis
- need a minister responsible for Métis relations

- all the involved departments need to work together to make processes more streamlined and effective
- federal unilateralism, lack of respect for those at the table
- stronger bilateral agreement with government to address all the issues (e.g. Métis Nation framework agreement)
- danger government will use legislation/policies to the detriment of the Métis

### ***Identified Solutions***

- presumptive framework should be that Métis are right bearing peoples and must be recognized and respected as such and dealt with on a nation-to-nation, government-to-government basis for all purposes, including self-government, land claims and programs and services
- the Métis right bearing peoples are: the Métis Nation and the Labrador Métis Nation
- establish a joint task force to set out the negotiation process and what is to be negotiated (should not be unilateral by federal government)
- federal government must enter the task force with a commitment (mandate) to negotiate
- Métis Nation has proposed a framework agreement to which the government should commit
- Labrador Métis Nation has a land claim that government should accept and negotiate



### ***Consultation and Accommodation***

The federal government must consult with Métis governing institutions when considering taking actions that may affect Métis right bearing peoples.

#### *Require policy change (e.g. consultation)*

- use existing tripartite processes to effect policy change
- require Cabinet approval to accomplish

#### *Long-term strategy*

- task force
- regular negotiation table (.ie. Nova Scotia)
- fold interlocutor into Department of Aboriginal Affairs
- enable Aboriginal organizations to enhance their communication capabilities
- support historical research

### **Issues - third grouping**

- the 91(24) question
- Métis claim recognition
- what is the promise of section 35?
- the fiscal relationship
- Natural Resources Transfer Agreement outstanding questions
- Treaty 3 and the half breed adhesion
- role of provinces/municipalities
- strategic investments in Métis institutions, value for money

### ***Identified Solutions***

#### *Recognition of right*

- section 35 (Aboriginal and treaty)

- international and other
- section 35(4), gender equality
- relationship of Métis section 35 right to other right (e.g. overlaps, historic right, charter right, etc.)
- self-government powers and jurisdiction

#### *Relationship*

- with whom (Métis with Crown, federal 91(24)/provincial, Crown with Métis/Métis Nation/other Métis Nation)
- Métis identification (e.g. registration systems) is a crosscutting issue that must be factored into recognition of right and relationship
- accord(s) with Métis people

#### *Other*

- Métis-specific policy to deal with unique and distinctive Métis peoples (e.g. Métis Nation, other Métis people)
- mechanisms for the resolution of Métis Aboriginal and treaty right claims
- existing processes (Comprehensive Land Claims, Specific Claims Policy, Inherent Right Policy), and new processes (e.g. Métis claims commission)
- legislation, recognition, implementation, ratification, giving effect, (e.g. Métis relations act)
- gender/urban considerations need to be factored into decision making, negotiations and design
- could set context for negotiations but the issue of avoiding litigation in favour of negotiation
- federal government needs to secure a mandate to negotiate with Métis



- need federal leadership in establishing a mandated bilateral relationship with the Métis Nation and other Métis people
- federal government needs to establish a legislated mandate, the specifics of which are negotiated with the Métis

### ***Issues - fourth grouping***

- need a process to deal with right and socio-economic issues
- need for a communication strategy, discourse between government/Métis and public to get broad support and inform public opinion
- a consultation policy based on legal duty and good business practice
- create the negotiation model (e.g. joint task force to create the model and the institutions)
- Métis nation and other Métis community consultation and accommodation policy based on section 35 and other right
- requirement to consult with Métis on new initiatives

### ***Identified Solutions***

- Cabinet mandate obtained
- framework agreement to enable negotiations
- establishing a Métis court challenges program (e.g. litigation support) or phrased as Métis nation right, a defense fund/test case for south of 60)
- interim measures agreement (involvement in planning, regulation development, consultation process, land freezes, capacity)
- establish partnerships

- bilateral framework between Canada and the Métis nation on defined subject matter
- beginning a new relationship (framework agreement):
  - harvesting
  - fiscal relationship (transfer payments)
  - governance capacity (supporting development of Métis governance at provincial/community levels)
  - social issues
  - inclusion issues (women, youth, elders, etc.), gender analysis, section 35(4)
  - research by Métis
- moving to comprehensive claims process
- let them see value in dealing with Métis through engagement
- joint special legislative committee with provincial legislators as participants
- recognition of history, culture and language
- arrive at an interest-based process to resolve Métis claims
- clarification of urban Métis issues, address these issues through existing Métis governance structures
- consultation (e.g. Department of Fisheries and Oceans consultations as a part of environmental assessments) to be initiated with existing Métis governance structures

### ***Consultation and Accommodation***

- capacity for Métis nation and other Métis government or institutions to be consulted and the accommodation of Métis right



- a policy for consultation and accommodation with the provincial and federal Crowns
- a federal system-wide policy that applies to all departments

### ***Communications***

- Métis nation research strategy
- dissemination of research funding, Indian and Inuit, NWAC
- education and history (K-12), Métis-specific culture and history, historic Métis Nation, past and present
- support for publishing
- communications capacity
- heritage minutes on TV
- Métis Nation and its role in confederation, etc.

### **Plenary Discussions**

Following the group discussions, the participants identified key areas of concern and developed solutions in a plenary discussions.

### ***Section 91(24)***

- want federal government to acknowledge that it has jurisdiction for Métis. If not, federal government should say why and refer it to the Supreme Court

- RCAP has process for resolution

### ***Nation-to-Nation***

- Aboriginal right and Treaty Tribunal that has legislative authority
- full and equal participation of Métis women
- recognition of and respect for existing Métis organizations and/or governments
- RCAP has a suggested process
- equitable process and the application of a gender-based analysis

### ***Negotiations Process***

- constitutional obligation to negotiate
- bilateral (e.g. framework agreement, claims, legislative piece for Métis/Canada, may include other Métis group processes)
- moving toward multilateral participation in possible comprehensive claims process with provinces
- process to move forward identified through a task force (what, why, how)

### ***Registries***

- registry is important for good governance structures
- support for Métis-controlled registries





*Canada Aboriginal Roundtable  
Negotiations Sectoral Session  
January 12 - 13, 2005  
Hyatt Regency Hotel, Calgary Alberta  
Agenda*

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Introduction:

The objective for the negotiations sectoral session is to share views and discuss options for establishing more effective policies and processes for addressing Aboriginal and treaty right by;

- discussing the legal objectives and principles, and lessons learned, for addressing Aboriginal and treaty right consistent with the recognition and affirmation of those right in section 35 of the Constitution Act, 1982;
- discussing the relationship objectives and principles, and lessons learned, for addressing Aboriginal land right, the inherent right of self-government, and treaty right;
- discussing options for the renewal of policies to more effectively address section 35 Aboriginal and treaty right, including facilitating the achievement and implementation of land claims agreements and the implementation of the inherent right of self-government; and
- discussing options for improving processes and mechanisms for addressing section 35 Aboriginal and treaty right, including good faith negotiations, the implementation of land claims agreements and the implementation of the inherent right of self-government.

Agenda Activities

**Day One - Wednesday January 12, 2005**

- 7:30 am** Registration  
Buffet Breakfast
- 8:30 am** OPENING INVOCATION
- 8:45 am** Welcoming Remarks  
*The Honourable Andy Scott, Minister of Indian Affairs and Northern  
Development and Federal Interlocutor for Métis and Non-Status Indians*
- 9:05 am** Introduction to the Session Agenda  
*Harold Tarbell, Lead Facilitator*



- 9:20 am** Review of the Background papers  
*Facilitation team*
- 9:30 am** Panel - Constitutional and Legal developments, principles and objectives
- 10:45 am** Health break
- 11:00 am** Panel - Relationship principles/objectives and lessons learned
- 12:15 pm** LUNCH BREAK
- 1:15 pm** Group discussions (breakout sessions)
- Discussion Topic 1: Objectives and principles for addressing Aboriginal and treaty right
- Discussion Question: What are the objectives and guiding principles, and lessons learned, for addressing section 35 right and renewing the policies and processes that address these right?
- 2:30 pm** Health Break
- 2: 45 pm** Discussion Topic 1: continued
- 4:30 pm** Reception (Main plenary followed by hors d'oeuvres at the Glenbow Museum)

### **Day Two - January 13, 2005**

- 8:00 am** Buffet Breakfast
- 8:30 am** Facilitators Summary of day one, Introduction to Day two
- 9:00 am** Group discussions
- Discussion Topic 2: Policy Renewal for addressing section 35 right
- Discussion Question 2: What do the objectives and guiding principles, and lessons learned, suggest for renewal of policies to effectively address section 35 right, and to facilitate the achievement and implementation of land claims agreements and the implementation of the inherent right of self-government?
- Sub - themes:
- What type of outcomes are we seeking to achieve?



- What type of policy changes are required to achieve these outcomes?
- What are the unique challenges relating to urban Aboriginal peoples, non-status Indians, Aboriginal women and Aboriginal peoples living in rural and remote communities?

**10:30 am** Health break

**10:45 am** Discussion Topic 2: continued

**12:00 pm** LUNCH

**1:00 pm** Group Discussions

Discussion Topic 3: Improvements to processes and mechanisms

Discussion Question 3: What do the objectives and guiding principles, and lessons learned, suggest for improvements to processes and mechanisms to effectively address section 35 right, and to facilitate the achievement and implementation of land claims agreements and the implementation of the inherent right of self-government?

Sub - themes:

- What processes and mechanisms are required to achieve success?
- What are the characteristics of good faith negotiations?
- What are the unique process challenges relating to urban Aboriginal peoples, non-status Indians, Aboriginal women and Aboriginal peoples living in rural and remote communities?

**2:30 pm** Health break

**2:45 pm** Discussion Topic 3: continued

**3:45 pm** Breakout Session Reports/Overall Summary  
and Session Wrap-up - *Facilitation Team*

**4:30 pm** Closing Ceremony

Note: The views expressed by participants are not necessarily those of their respective organizations.



## Participants and Officials List

### Elders

<b>Elder Louie Raine</b> <b>Elder/Helper Ivy Raine</b>	Confederacy Treaty 6, Louis Bull Cree Nation, AB
<b>Elder Elmer Courchene</b> Jean Courchene - Helper	Sagkeeng First Nation, Elder and Advisor to National Chief
<b>Elder Elijah Allen</b> Kevin Allen - Helper	Inuvialuit Elder, Inuvik, NWT
<b>Elder Norman Fleury</b>	Manitoba Métis Federation

### Panelists

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Mr. John Merritt	Constitutional/Legislative Advisor, NTI
Mr. Sákéj Youngblood Henderson	Research Director, Native Law Centre of Canada, University of Saskatchewan
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### First Nations Breakout Group

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Chief Betty Ann Lavallee	New Brunswick Aboriginal Peoples Council
Chief Felix Thomas	Kinistin First Nation



Chief Grace Conrad	Chief & President, Native Council of Nova Scotia
Chief Jean Guy Whiteduck	Kitgan Zibi Anishnabeg
Chief Mike Smith	Kwanlin Dun
Chief Robert Louie	Westbank First Nation
Chief Shawn Atleo	AFN Regional Chief, BC, Assembly of First Nations
Dave Porter	First Nations Summit of BC
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Grand Chief Michael Delisle Jr.	Mohawk Council of Kahanawake
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### **Inuit Breakout Group**

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### Observers

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Background Information and Flip Chart Notes are available on the Internet at:  
[www.aboriginalroundtable.ca](http://www.aboriginalroundtable.ca)

The following is a list of documents available through the website:

- Flip Chart Notes
  - First Nations Breakout Room
  - Inuit Breakout Room
  - Métis Breakout Room
- Government of Canada Background Paper
- Assembly of First Nations Background Paper
- Inuit Tapiriit Kanatami Background Paper
- Métis National Council Background Paper
- Congress of Aboriginal Peoples Background Paper
- Native Women's Association of Canada Background Paper
- Provincial/Territorial Background Papers
- Statistics Canada Overview