

**ASSERTION OF ABORIGINAL AND TREATY RIGHTS  
TO LAND AND RESOURCES:**

**ADDRESSING DEEP-ROOTED FIRST NATIONS – FEDERAL  
CONFLICT THROUGH SUSTAINED DIALOGUE**

by

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## **Glossary**

The following list of terms is provided not so much by way of definition, as to briefly indicate how the author has used them. Please also note the terms “Aboriginal” and “First Nations” are capitalized, consistent with a convention adopted by the Royal Commission on Aboriginal Peoples. Likewise, and for balance, the term “Federal” is also capitalized throughout.

**Aboriginal** – A generic term used in various parts of Canada to include status and non-status Indians, Inuit, Innu and Metis.

**Aboriginal Rights** – Rights to land, water and other natural resources, and their use, held by Aboriginal peoples in Canada, affirmed by the Constitution Act 1982, and recognized in various legal decisions within an Aboriginal group’s traditional territory. Aboriginal rights may also include collective economic, social and spiritual entitlements or considerations.

**Aboriginal Title** – the collective ownership of land, water or other natural resources by a recognized Aboriginal group or groups.

**Indians** – An archaic term still used, as in the Indian Act, to denote those Aboriginal people that the Federal government recognizes as “status Indians”, members of a First Nation and thereby entitled to varying special benefits while residing on and off reserve.

**Indigenous** – A term used to describe the first inhabitants or peoples of North America.

**First Nation** – A group of status Indians recognized by the Federal government as belonging to the same “band”; commonly residing on reserve land, held in trust by the Federal government, part of a larger commonly unrecognized traditional territory.

**Treaty Rights** – Rights which have been recognized as being held by members of a particular First Nation or group of First Nations who are signatories to a treaty with the Federal government and, in some cases, a provincial government, within a defined geographic area.

## INTRODUCTION

Today, we are building on our success and renewing our commitment to fully implement the *Marshall* decision and resolving broader Aboriginal issues through dialogue and negotiation. I strongly believe that it is our responsibility - not the role of the courts - to define the relationship between Aboriginal people, governments and Canadians in general<sup>1</sup>.

(Federal Minister for Indian Affairs, Hon. Bob Nault, February 9, 2001)

It just makes sense. When disputes over basic human needs of overlapping cultures go unsettled for generations, Burton's criteria for deep-rooted conflict have been met (Burton, 1990). When competing worldviews threaten concepts of land and resources, these are ingredients for what Azar referred to as "protracted social conflict" (Azar, 1990, p. 10). When differentials in power persist and historic agreements remain unfulfilled, as Rothman points out, negotiations over tangible resources become intertwined with unrecognized and nonnegotiable beliefs, values and identity (Rothman, 1997). Within all of these conditions, as the parties with a deficit in power mobilize their grievances, the frequency and intensity of confrontations can be expected to increase (Gurr, 1999, p. 123). Models, developed by Gurr, Azar and others, provide reasonable predictions as the conflict progresses through various stages of escalation (as cited in Fisher, 1997, p. 86). It makes sense to apply these general descriptions of conflict to the dynamics of the evolving relationship between First Nations and the Federal government in Canada. This thesis explores how a prenegotiation approach known as *sustained dialogue*, developed by Harold Saunders, can be an effective tool in addressing this deep-rooted conflict and building a new First Nations – Federal relationship (Saunders, 1999).

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<sup>1</sup> A statement by Federal Minister of Indian and Northern Affairs, Hon. Bob Nault, on the launch of a long-term response to the Supreme Court of Canada's decision in *Marshall*, the legal basis of last year's First Nations – Federal confrontation at Burnt Church, N.B.

Over the past thirty years, as First Nations have asserted their Aboriginal and treaty rights to land and resources, on-going disputes have exposed and contributed to the often deteriorating multidimensional relationships between First Nations and the Federal Crown. This thesis examines the origins of these historic relationships, to better understand how they might be renewed or changed over time. It also analyzes the group and conflict dynamics of a pilot First Nations – Federal Interdepartmental Dialogue on the Environment, held in late March 2001. Flowing from this analysis, a number of recommendations are made for the development of an organizational model for First Nations and Federal governance, of which the sustained dialogue is a complementary element. It is hoped this initial experience in convening a dialogue between First Nations and Federal departmental participants will be used as a starting point for the design of a model for subsequent sustained dialogue sessions.

In Chapter One the project's methodology is discussed, giving the reader a more thorough grounding in sustained dialogue principles and process, developed and applied by Saunders et al. By way of comparison, this will include a discussion of other interactive conflict resolution approaches. The action research approach taken will also be explained. Modeling the sustained dialogue process, the chapter also includes a short personal introduction to the author and the thesis topic chosen.

Chapter Two tackles the questions, "what is the nature of the First Nations – Federal relationship?", and "how has conflict become so deeply rooted?" This historical



overview includes a survey of events and legal decisions highlighting First Nations assertion of Aboriginal and treaty rights to land and natural resources and Federal policies towards limited recognition of these rights. The escalation of conflict paralleling the evolution in the First Nations – Federal relationship leads back to the question of whether more effective tools and conflict management strategies are needed to renew this relationship.

After showing some of the dimensions of the First Nations – Federal relationship and the conflict existing, Chapter Three suggests a First Nations strategy and organizational structure aimed at creating a new relationship on the environment, through political action, organizational innovation and collaborative processes, such as sustained dialogue. Chapter Four explains the design of the First Nations – Federal Interdepartmental Dialogue on the Environment, the objectives of this session and the observed outcomes. Utilizing session materials, meeting summaries and reflections, an analysis of this dialogue is undertaken, with an eye to determining the approach's general effectiveness, so that recommendations for improvements can be incorporated into design of subsequent sessions. Chapter Five offers some conclusions and recommendations on the future of First Nations – Federal relations and the potential value of broader application of the sustained dialogue process.

A few notes of caution and explanation. Some effort has been made throughout this thesis to acknowledge and demonstrate the multidimensional nature of the First Nations – Federal relationship. While the thesis makes references to the collective assertion of

Aboriginal and treaty rights that First Nations may share, it would be a mistake to consider First Nations collectively as a homogeneous cultural grouping. They are not. First Nations assert their rights drawing from different cultural foundations.

The experience and relationship of individual First Nations with the Federal government has also not been uniform across Canada. The study therefore is not suggesting the general applicability of individual treaty rights to all First Nations, nor is it appropriate to conclude that a strategy of political action currently exists designed to ensure recognition of these Aboriginal or treaty rights. This thesis makes some observations on the nature of the First Nations – Federal relationship and some recommendations on how this relationship might be renewed, based on examination of historic and current conflict dynamics and the effective application of the conflict management approaches explored. Drawing from observations of an escalation in the frequency and intensity of confrontation and from the preliminary success of the pilot First Nation – Federal Dialogue on the Environment, the thesis suggests the broader application of sustained dialogue methodology should strongly be considered.

## **CHAPTER I PROJECT METHODOLOGY: TOWARDS A NEW FIRST NATIONS – FEDERAL RELATIONSHIP ON THE ENVIRONMENT**

This first chapter is an orientation to the project's methodology. It covers the main theoretical concepts and methods explored in developing a new First Nations – Federal relationship on the environment. It gives some personal background on the project's author and the choice of topic for this thesis and discusses the action research approach utilized.

### **Sustained Dialogue and Other Interactive Conflict Resolution Approaches**

Sustained dialogue is one of several relationship – building / problem – solving approaches that Fisher has referred to generally as *interactive conflict resolution* (ICR).

All of these approaches share a focus on the nature of deep-rooted conflict and are designed to change the dynamics of the relationship between parties, while encouraging a collaborative means to solve seemingly intractable problems and differences (Fisher, 1997).

An impetus for development of these approaches came from a desire to find means other than military or economic confrontation to address conflicts at an international level (Fisher, 1997, p. 21). John Burton was one of the first to develop an interactive conflict approach in the mid-sixties. After trying different experimental interactions with various international groups in conflict, the approach, "controlled communication" (as cited in Fisher, 1997, p. 27) was developed to create a safe environment for participants to

discuss their differences, with a third party facilitator or team assisting participants in exploring the origins of their conflict, and the reasons for escalation, through comparisons to other similar conflicts. Burton later concluded that the nature of deep-rooted conflict was a function of the conflict's origin and the processes used to address resulting issues in dispute. Incorporating sociological thinking into his conflict theories, Burton attributed the sources of most conflict to the unfulfilled needs of individuals and groups, asserting that in protracted conflicts conventional forms of settlement such as mediation and arbitration failed to deal with both the identified positions and interests of the parties and their deeper underlying needs (as cited in Fisher, 1997, p. 31-32).

A central feature of the models developed by Burton and others was that they included discussions between unofficial but normally influential participants. Building on the work of Burton, a colleague, Herbert Kelman, undertook a number of "problem – solving workshops", intended as a form of action research, educating participants in the dynamics of the conflict they were engaged in, while also as a conduit of information back to the official political discussions (as cited in Fisher, 1997, pp. 59-61).

Another colleague of Burton's, Edward Azar, applied his theory of protracted social conflict in "problem-solving forums". Azar made a distinction between *protracted* conflicts that involved national identities and associated rights and those that did not (as cited in Fisher, 1997, p. 82). As Azar put it,

...most contemporary conflicts are about developmental needs expressed in terms of cultural values, human rights and security...It may even be necessary to consider forms of political organization within a reconceptualized nation-state structure so as to foster a sense of genuine

and secure community for those who have been marginalized and made insecure within existing national arrangements (Azar, 1990, pp. 2-3).

Interactive conflict resolution practice has also been informed by the contributions of many others in their examination of identity-based conflict and the development of social identity theory. Northrup explains the operation of identity in the escalation and intractability of conflict through four stages: threat, distortion, rigidification, and collusion and offers a “dynamic system” for the analysis of conflict within these stages (Northrup, 1989, pp. 59-68). Gurr identifies four more, “predisposing traits [shaping] a disadvantaged communal group’s sense of grievance and their potential for acting on it”: the extent of collective disadvantage; the salience of group identity; the extent of group cohesion and mobilization; the repressive control of dominant groups (Gurr, pp. 124-128). Rothman has devised the “ARIA” framework to help work through identity versus resource-based issues in dispute. The ARIA model starts with a reframing of the initial *antagonism* between parties, building towards *resonance*, a sharing of the identity needs of all parties, moving on to *invention*, collaborative efforts to achieve integrative solutions and finally *action*, identifying the responsibilities of each party in implementing a joint plan (Rothman, 1997, p. 19).

Beyond Ronald Fisher’s contributions to the field in documenting the evolution of interactive conflict resolution methods, his own efforts in the development of the concept of third party consultation should be noted. The third party consultation approach has similar objectives to other ICR methods in terms of its recognition of identity factors present in deep-rooted conflict, emphasizing the building of relationships before

engaging in problem-solving. Third party consultation differs, however, in its attempts to objectively quantify the effectiveness of the intervention. Fisher concedes in *Interactive Conflict Resolution* this focus on measurement of results may be a direct result of the difficulties frequently encountered in funding these pre-negotiation processes (Fisher, 1997, p. 148).

The sustained dialogue approach described by Harold Saunders, in his book, *A Public Peace Process: Sustainable Dialogue to Transforming Racial and Ethnic Conflicts* (Saunders, 1999), is one of several variations of ICR that Fisher refers to generically as *intercommunal dialogue* (Fisher 1997). The opening up of unofficial, flexible channels of communication between parties in protracted and often violent conflict has been a guiding incentive for the creation of dialogues of this sort in various parts of the world. Drawing inspiration from sources as diverse as Quaker meetings or the consensus methods of Gandhi, the applications of dialogue and the formality of its methods range widely, as does the expected duration. This said, dialogue commonly differs from other forms of ICR in its emphasis on mutual understanding of the sources of conflict and development of a personal connection between participants, rather than joint problem solving. Recognizing the potential need for intercommunal healing, dialogue may also intentionally provide an opportunity for parties to experience an emotional catharsis (Fisher, 1997).

Saunders refines this approach considerably, yet still defines the sustained dialogue method simply as, “more structured than a good conversation or study group discussion

and less structured than a mediation or negotiation” (Saunders, 1999, p. 81). As the terminology suggests, a central element of the dialogue process described by Saunders is its sustainability. This process is not a quick fix, a team-building exercise, a one-time brainstorming session. To work, sustained dialogue requires a commitment from participants to the process, and a recognition that “results” may not be immediate.

What differentiates sustained dialogue from discussion, debate or the adversarial atmosphere of the courtroom is a conscious effort to suspend judgment, “to absorb new views, enlarge perspectives [and] rethink assumptions (Saunders, 1999, p. 82). Saunders writes,

Assumptions are built from experience; they become part of identity as experiences and assumptions are programmed into memory. Clusters of assumptions nourish cultures and subcultures. In dialogue we suspend our assumptions to listen to others (Saunders, 1999, p. 83).

Suspending assumptions also allows for a balancing of differentials in power, since, as Saunders points out, in the “struggle of assumptions” during confrontation, power determines the outcome (Saunders, 1999, p. 83).

Mediation and negotiation’s goal of agreement is how Saunders explains their difference from dialogue. In sustained dialogue, the aim is a “changed relationship” (Saunders, 1999, p. 85). Saunders, however, does not press this explanation too far, recognizing that as with dialogue, there is a range of possible objectives in mediation and negotiation processes. Nor does he suggest the sustained dialogue is the only effective method in building towards a new relationship between parties in conflict. Saunders cites an

extended training session approach used by the Institute for Multi-track Diplomacy, used to educate participants in the origins and dynamics of their conflict. This in turn leads to an understanding of their relationship. But Saunders does make a distinction between other forms of ICR, such as “collaborative problem-solving”, which engages in a dialogue of values and identity, but with the overt objective of reaching “pragmatic solutions” (Saunders, 1999, p. 87). Sustained dialogue, on the other hand, persists in a pre-negotiation focus of exploring the nature of the relationship, the origins of the conflict and their intractability (Saunders, 1999, p. 87).

The sustained dialogue process is designed to move through five stages: 1) Deciding to Engage; 2) Mapping and Naming Problems and Relationships; 3) Probing Problems and Relationships to Choose a Direction; 4) Scenario-Building - Experiencing a Changing Relationship; 5) Acting Together to Make Change Happen (Saunders, 1999, pp. 89-91). The pace at which participants move through these stages is very much dictated by them. As with other ICR approaches, Saunders acknowledges that cycling or slippage between stages will occur, as the group decides to re-examine an earlier topic or as the composition of the group changes or expands (Saunders, 1999, p. 91).

He also covers issues of timing (Saunders, 1999, p. 44). Saunders argues that the emphasis on determining the moment in which the conflict between parties is at what Zartman (as cited in Saunders, 1999) has called a “hurting statement” (p. 44) and is therefore ready for mediated or negotiated settlement, may overlook the opportunity which unofficial dialogue may present in providing insights into the relationship and



avenues for change which might have avoided the need to search for or manufacture these conflict flashpoints. At the same time, sustained dialogue may be a means through which parties, having gained a deeper understanding and respect, can exchange more meaningful expressions of contrition, forgiveness and reconciliation (Saunders, 1999, pp. 44-46).

As an analytic tool, in preparing for design of a sustained dialogue process, Saunders describes six elements of relationship and changing conflictual relationships:

- i) *The Identity of the Parties* (i.e. a group or groups' physical dimensions as far as size, geographic base, demographic composition, social and political structures, resources, as well as human experience in terms of their identity in relation to other groups, the groups' worldviews or traumatic experiences passed on to succeeding generations);
- ii) *A Co-existence of Interests and Needs that Lead to Interdependence* (i.e. subjective and objective interests, the fulfillment of which are dependent on the other party, eventually becoming a "function of the relationship");
- iii) *A Process and Pattern of Continuing Interaction* (i.e. an evolving series of interactions between groups, becoming more complex over time, governed by a political process with multiple elements dependent on communications of varying quality);
- iv) *The Nature and Working of Effective Power* (effective power meaning the ability to change relationships and bring people together);

- v) *Limits on Behaviour* (i.e. rules of conduct between conflicting parties; limits of authority and respect for cultural sensitivities);
- vi) *Evolving Perceptions* (i.e. a shared recognition of cultural assumptions and stereotypes in order to generate a “sustainable problem-solving relationship” and mutual interest in changing perceptions) (Saunders, 1999, pp. 35-43).

In his theory, Saunders expects that relationships will encompass all six elements in changing combinations. Highlighting individual elements or viewing all of these elements as a whole, it is hoped, will reveal the nature of the relationship and the origins of conflict (Saunders, 1999, p. 43).

Saunders explains the origins and development of the sustained dialogue approach as coming out of his work on the United States National Security Council staff in the seventies, his participation in the talks leading to the Camp David Accords, and his more recent efforts to change conflictual relationships in Tajikistan and the American South through facilitation of sustained dialogues in the nineties (Saunders, 1999).

What this brief overview of the sustained dialogue process and other interactive conflict resolution methods suggests is the potential value of their application to the First Nations – Federal relationship in Canada. The relationship described in succeeding chapters contains the same elements and dimensions that ICR theorists and practitioners have tried to affect in similar protracted international conflicts. Federal mechanisms for addressing First Nations claims or attempts at mediation and negotiation may not have been effective because, as Burton pointed out, the underlying relationship and the deeper human needs

of identity and survival had not been addressed (Burton, 1990). While a mutual incentive might exist for building a new relationship, an appropriate process it appears has not yet been found.

## **A Personal Orientation**

Before turning to the project's action research methodology, a brief personal orientation to the topic of First Nations – Federal conflict might be helpful, both as a way of simulating the development of relationships between parties in a sustained dialogue process, and at the same revealing some of the author's potential biases and assumptions in undertaking a study of this kind<sup>2</sup>. As in a sustained dialogue, this personal history is intended to provide the reader with some context. It orients the dialogue participant to other participants and begins to develop the individual's credibility, comfort and respect for one another's perspectives. It creates an intimacy and understanding that precedes a more meaningful exchange of views. It hopefully sets a different, non-adversarial tone that will be sustained throughout (Saunders, 1999).

I began to understand the relationship and conflict between First Nations and other levels of government and authority ten years ago. After spending several years working for a Member of Parliament in Ottawa, I moved, with my now ex-wife and then two-year-old son, a thousand kilometres north to Moose Factory Island, not far from the James Bay

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<sup>2</sup> The sustained dialogue process described by Saunders involves participants developing a personal understanding and relationship with one another over time, in order to allow for the kind of communication that differentiates this method from other more agreement-oriented approaches to conflict management (Saunders, 1999). This personal history attempts to model the sustained dialogue approach to building or re-building relationships.

coast. At the time, First Nations in the region were actively opposing redevelopment and expansion of the hydroelectric dam system located twenty kilometers to the south, on several of the main rivers flowing north into the Bay. Similar protest had greeted earlier proposed hydro dam reconstruction in the Cree territory of northern Quebec.

Opposition was lead primarily by the Moose River – James Bay Coalition. My involvement in the coalition's efforts to block further development of this renewable resource (until the claims and past grievances of First Nations had been settled and proper a environmental assessment was undertaken) drew me into other work at the tribal council office, also located on the island. During the course of the next four years I worked on several projects. I coordinated regional participation in parallel constitutional consultations sponsored by the Assembly of First Nations (AFN). I helped to draft a constitutional framework for a federally unrecognized group of status Indians resident in Moose Factory. I was contracted to consult with community members in each of the seven western James Bay communities as part of an evaluation of the Mushkegowuk Council - a tribal organizational structure created by devolution of Federal authority in the mid-eighties. I also was asked to facilitate the creation of a self governing Aboriginal health authority, the goal of which was the unification of Federal and provincial health services and the transfer of the Federal hospital to local regional control.

Returning to the south in 1995, I continued to assist the Weeneebayko Health Ahtuskaywin with its further institutional development, before taking on coordination of an independent, but federally funded, national joint initiative between the AFN and the

Certified General Accountants Association of Canada, aimed at improving the financial management and accountability of First Nations and building local capacity in this area. Earlier this year, I was contracted to provide policy analysis and advise to the Assembly of First Nations' Environment Secretariat in preparation of a draft political action plan on the environment, as well as development of a number of potential project proposals. This work was intended to help fund an expanded role for the Secretariat and the AFN's environment portfolio as a whole. So, after having had an opportunity to look, at some depth, into First Nations constitutional, health and financial management issues, I felt as if I had come back to where I had started, to some of the fundamental issues defining the traditional Aboriginal and Euro-american worldviews, namely, the environment, concepts of ownership and the intrinsic value of land and natural resources. My work for the AFN on development of a political strategy forms a core area of study for this major project. It also illustrates the essential action research approach taken.

As part of my contracted services to the AFN, I assisted in the design of a First Nations – Federal Interdepartmental Dialogue on the Environment, convened in Ottawa on March 22, 2001. Together with the AFN Environment Secretariat's Senior Policy Advisor and a facilitator hired for this event, this one-day session was developed around Saunders' sustained dialogue methodology.

Sustained dialogue became an interest of mine in the Fall of 2000, as part of readings in Fisher's *Interactive Conflict Resolution*, and reinforced in lectures by one of Saunders' associates, Randa Slim, during the second MACAM residency (Fisher, 1997). Put

simply, after observing First Nations – Federal conflict for many years and from various perspectives, I began to question whether some of the main impediments to achievement of the constitutionally recognized inherent right to self government were the processes being utilized. Negotiations, interest-based or otherwise, between individual First Nations and the Federal government, appeared to overlook an understanding or acceptance of the deep-rooted nature of the conflict between the parties. Sustained dialogue as it was described by Saunders and applied to other protracted conflicts, in other parts of world, appeared to provide a model through which First Nations and other levels of government could re-examine and restore the various dimensions of their relationships, prior to engaging in discussions intended to settle specific issues in dispute (Saunders, 1999). A First Nation – Federal dialogue on the environment appeared to offer an ideal forum to evaluate the potential of this approach, since conceptualizations of the natural environment and humanity's role within it serve as underpinnings for much if not all cultural organization and social interaction. I wondered whether even a technical exchange of views, dealing with policies and programs, might reveal underlying differences *and* similarities in belief systems, offering clues for how to change existing conflict dynamics.

The choice of exploring First Nations assertion of Aboriginal and treaty rights to land and natural resources was therefore a conscious one. Collectivist versus individualistic concepts of property and resource ownership, value and use, it will be suggested, are at the heart of the conflict between First Nations, the Federal government and other jurisdictions. To enable all parties to address competing aspects of their worldviews, it

makes sense to work first on establishing a means by which functional relationships can operate and take root. Sustained dialogue will be analyzed to determine its potential effectiveness in reaching this objective.

## **Methodology for the Action Research Approach**

With respect to the action research approach taken during this major project, community-based action research is understood by the author to involve, using Stringer's definition,

...a collaborative approach to inquiry or investigation that provides people with the means to take systematic action to resolve specific problems. This approach to research favors consensual and participatory procedures that enable people (a) to investigate systematically their problems and issues, (b) to formulate powerful and sophisticated accounts of their situations, and (c) to devise plans to deal with the problem at hand...(Stringer, 1999, p. 17)

My work in analyzing the AFN Environment Secretariat's operational needs, participating in the design of a sustained dialogue process, developing a political action plan on the environment and preparing proposals for project funding, all have been grounded in a participatory, interactive, open-ended approach, emphasizing the mandate and vision of the organization and its leadership.

Following an action research approach a systematic investigation, a formulation of issues, and a plan of action were devised. A team comprised of myself, the Environment Secretariat's Senior Policy Advisor, the Director of the AFN/INAC Joint Initiative, a consultant hired to facilitate the dialogue session, a law student on work placement at the AFN and support staff, initiated a series of concurrent tasks:

1. Background research on environmental issues impacting First Nations;
2. Development of an understanding of the existing First Nations – Federal relationship on the environment through consultations with First Nations and Federal representatives;
3. Research on Federal environmental objectives, initiatives and sources of project funding;
4. Analysis of AFN environmental action plan objectives and the potential for Federal funding to meet these objectives;
5. Systems analysis of AFN program and secretariat organizational functions;
6. Design and implementation of a First Nations – Federal Interdepartmental Dialogue on the Environment;
7. Design and implementation of an Elders Forum on the Environment;
8. Development of organizational options for an expanded role for the Environment Secretariat;
9. Development of a First Nations political strategy on the environment and implementation action plan;
10. Drafting of AFN environmental project proposals for Federal funding, based on identified First Nations – Federal mutual incentive areas.

Each of these tasks was aimed at achieving the objectives of the AFN Environment Secretariat through a systematic analysis and development of strategic options. This led to a broader exploration of the conflict dynamics of the First Nations – Federal relationship as it was impacted by assertion of Aboriginal and treaty rights to land and natural resources – the subject of this thesis.

From the start, a number of inherent task sequencing problems were evident. A political strategy on the environment could not be developed until at least some of the principles on which it would be based were known and agreed to. Development and implementation of a political action plan was also directly related to organizational decisions regarding the Secretariat's role and the funding available for its activities.



To begin gathering the principles on which an AFN environmental policy would be built, the Environment Secretariat had already determined that an Elders Forum on the Environment should take place. While originally scheduled prior to the Interdepartmental Dialogue, so that the elders' comments could inform and flavour this exchange, logistical considerations placed it immediately after this session. The Secretariat had also previously decided that a meeting of First Nations and Federal departmental representatives should be convened, in order to try and provide better coordination in environmental programming and encourage a two-way flow of information. Sustained dialogue methodology was subsequently applied in preparations for the *Interdepartmental Dialogue* and loosely to the *Elders Forum*.

For identifying AFN environmental objectives, if not underlying principles, several sources of information were available. A Terms of Reference for the Environment Secretariat and Committee was approved by the AFN Confederacy of Chiefs assembly in 1998. An AFN Environment Committee meeting had taken place in February, resulting in consensus on a political theme and a list of environmental priorities and activities, pending available Secretariat funding. In addition, the AFN/INAC Joint Initiative had developed a draft Environment Action Plan, laying out short, medium and long objectives and associated tasks.

With these objectives in hand, strategic options were needed before determining how best to structure and support the activities of the Environment Secretariat. To build a context

for these options, the systems approach adopted began with a general functional review of the Assembly of First Nations, its programs and secretariats.

### **Assembly of First Nations Functional Review**

The review attempted to isolate organizational fundamentals. The Assembly of First Nations, the national political organization representing First Nations people in Canada, is directly accountable to AFN Chiefs, as the political representatives of their First Nations. As a political organization, the functions, tasks, and responsibilities of the AFN (and all of its departments and secretariats) can be broadly defined in terms of political analysis, development and advocacy, on behalf of AFN Chiefs. Separate from the future creation of a professional public service, these three roles form a dynamic system, by which First Nations political objectives, as represented by AFN Chiefs-in-Assembly resolutions, are acted upon through identified tasks ("political" referring generally to activities associated with governance, self governance or the achievement of self government).

*Political analysis* is defined here as research, assessment, review, monitoring and evaluation of, for example, policies, programs, issues, activities, models, legislation, decisions, knowledge, principles or beliefs. Political analysis also includes consultation with First Nations leadership and community members, as well as with representatives of other levels of government, educational institutions, national and international organizations, indigenous groups and individuals, field experts, interested stakeholders and the Canadian public.

*Political development* is related to political analysis and here refers to policy development, assistance in building First Nations capacity or institutions, preparation of educational materials, identification of options, planning and recommendations with respect to programs, projects and initiatives. Political development also includes any necessary follow-up from consultations or coordination activities, intended to further the objectives of AFN Chiefs.

*Political advocacy* speaks to the roles of lobbying, coordination, assertion of rights, participation in public, governmental and community fora and consultations with respect to identified issues of national importance to First Nations. Political advocacy also includes promotion of AFN principles, policies and initiatives, and negotiation of national agreements, by specific mandate. It includes educational activities with First Nations, government and the Canadian public generally. Political advocacy means ensuring that the voice of First Nations leadership is clearly heard nationally and, when necessary, internationally.

Together, political analysis, development and advocacy form the basis of the action plans of all departments and secretariats. Through each identified objective and task assigned to it, there will commonly be elements of each of these roles. The functions create a dynamic *cycle*, what Senge (Senge, 1994) refers to as a feedback loop, often sequentially moving from analysis, to development, to advocacy. However, within this system, various combinations and permutations are possible - and likely. Advocacy, for instance,

may precede analysis, or advocacy may be performed by the AFN and development undertaken by individual First Nations. By way of illustration, the AFN's Environment Secretariat may *advocate* that a study and consultation process be undertaken, in order to collect and preserve traditional ecological knowledge. First Nations then might be invited to locally undertake this study process and *develop* materials to be included in a report detailing traditional ecological principles and practices and their application in legislation. In this process the Environment Secretariat could play a coordination role. Finally, the Environment Secretariat would be responsible for communicating and promoting the findings of the report produced, supporting the AFN's leadership. In this particular example, the Environment Secretariat functions solely in its advocacy role, with First Nations responsible for analysis and project development. In other cases, a given AFN secretariat may perform all of the analysis, development and advocacy functions, in consultation with First Nations Chiefs and their communities. Nevertheless, recognizing the parameters of responsibility and primary focus of a given task is critical to achieving the desired and *inherently political* objectives of the AFN.

### **A Provisional Vision Statement**

The importance of making explicit the various functions of Assembly of First Nations programs generally and the Environment Secretariat specifically, was to reinforce both the role of the AFN as a political organization and the functions that the Secretariat should therefore be playing as part of this organization. Establishing consensus first on the nature of the organization was viewed as essential before proposing organizational options that formed part of a political strategy. Definition of organizational functions

would also create an accountability system, a general basis from which to evaluate whether the AFN was performing its role on behalf of constituent First Nations Chiefs.

With this functional review completed, a next step was an attempt to tie together the mandate, objectives and priorities identified by the Joint Initiative Environment Action Plan, the Environment Committee and in the Secretariat's Terms of Reference. This statement could then be evaluated against the comments made during the Elders Forum and the Interdepartmental Dialogue. Provisionally, this long-term vision was expressed as:

A new relationship between First Nations and other levels of government, recognizing a shared responsibility for the natural environment, based on First Nations principles, traditional ecological knowledge, sound scientific research and practices and consistent legislative and regulatory regimes.

The value and intended purpose of this draft vision statement were many. The statement was a straw dog, a basis for further internal and external dialogue and refinement. It provided a meaningful and appropriate goal for the Environment Secretariat and the Assembly of First Nations and encouraged a systems approach to organizational integration. It articulated a proposed First Nations vision of mutual interests and incentives that a new relationship would encompass, preempting Federal definition. It was a strategic starting point for potential future First Nations – Federal negotiations, mirroring a call by the Royal Commission on Aboriginal Peoples for a new fiscal relationship that resulted in the establishment of an AFN Fiscal Relations Secretariat and the convening of First Nations – Federal Fiscal Relations Table discussions. It provided the potential for core funding of AFN environmental programming, to support future

negotiations, or a strategic focus for funding proposal development. It also offered a baseline from which to evaluate progress. From this provisional statement of shared objectives and after tacit affirmation of its thrust by elders attending the Forum on the Environment, a political strategy calling for a new relationship on the environment was constructed.

With this grounding in various interactive conflict resolution methodologies and the sustained dialogue approach developed by Saunders, this chapter has suggested the link between the action research approach utilized in preparation of a draft political action plan on the environment for the Assembly of First Nations and the broader issues surrounding the First Nations – Federal relationship. Before looking at the strategies and methods, such as sustained dialogue, which may be useful in achieving a new and more functional relationship, Chapter Two examines the origins and nature of First Nations – Federal conflict and how the assertion of Aboriginal and treaty rights to land and natural resources has impacted this relationship and lead to an escalation in the frequency and intensity of confrontation.

## **CHAPTER II A RELATIONSHIP DEEPLY ROOTED IN CONFLICT AND THE ASSERTION OF ABORIGINAL AND TREATY RIGHTS TO LAND AND RESOURCES**

*Finding an effective means of changing the conflictual nature of the First Nations –*

Federal relationship has been elusive goal, if it has been a goal at all. From the point of first contact with Europeans, the relationship appears to have been shaped by conflict, amounting to conquest, in everything but name. As Gurr has observed,

In virtually all postcolonial and postrevolutionary states, state building has meant policies aimed at assimilating communal group members, restraining their collective autonomy and extracting their resources and labour for the use of the state (Gurr, 1999, p. 136).

This assessment certainly holds true in the Canadian context. The story of Aboriginal – non-aboriginal relations in Canada is steeped in epidemic, decimation of indigenous populations, encroachment of traditional territories by settlers, missionary zeal by competing denominations, exploitation of natural resources, official attempts at assimilation and systematic abuse. During the period of imperial warfare, both French and British forces did form alliances with Aboriginal groups, to assist them in their armed conflicts with each other over control of what eventually became Canada. Aboriginal nations also played a significant role in defending Upper Canada from American invasion. But despite these short-lived war-time associations and irrespective of a Royal Proclamation in 1763 stipulating that treaties would be signed prior to settlement, the relationship between “Indians” and the British Crown, before Confederation, and their relationship with the Dominion of Canada, after it, changed little (Bartlett, 1990).

Throughout the post-Confederation period, successive Federal governments continued an expansionist policy aimed at occupying the territory north of the 49<sup>th</sup> parallel and bringing new provinces into Confederation. The Indian Act, passed shortly after Confederation, codified the manner in which the Federal government would discharge many of its fiduciary responsibilities to those Indians granted “status”, supplanting existing indigenous governing structures with a national system by which Indian bands would be governed on designated reserve lands, at the discretion of the federal minister. While some treaties were signed between Indian nations and the British Crown prior to Confederation, the bulk of the so-called “numbered treaties” were signed between Indian bands and the Dominion of Canada in the last decade of the nineteenth century and first two decades of the twentieth. Notably, only one treaty was signed in British Columbia before the conclusion of the Nisga’a Final Agreement in 1998.

## **The Existence of Aboriginal Title**

The concept or existence of Aboriginal title did not appear to be of immediate concern to the Federal government. Division of powers under the British North America Act gave the Parliament of Canada responsibilities for “Indians and Lands reserved for the Indians”<sup>3</sup>, as well as control of all unceded Crown territory. The imperatives, however, of opening up the country for settlement and economic development and securing Canada’s sovereignty and identity against threats by American interests, encouraged assertion of the provinces’ constitutional authority over natural resources, and a gradual transfer of most Federal Crown land within provincial jurisdictions (Bartlett, 1990).

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<sup>3</sup> Section 91(24) of the British North America Act, 1867.



The significance of these transfers for First Nations has been enormous. The provinces, commonly not signatories to the numbered treaties, had no particular interest or incentive in recognizing Aboriginal title. Even on reserves held in trust by the Federal government, Aboriginal title was considered at the time to be a collective right, not extending beyond occupation and use of the land. Natural resources remained within the provincial domain and, when necessary, Federal legislation and regulations were amended to facilitate land expropriation for mining exploration or settlement (Bartlett, 1990, p. 139).

## **Current Impressions and Issues**

Flowing from this historic experience, current Aboriginal impressions of the Federal government's attitude towards Canada's First Peoples occupy a narrow spectrum from paternalistic, to assimilationist, to genocidal<sup>4</sup>. Treaties, which some First Nations continue to assert as guarantees of specific and perpetual Aboriginal rights in their traditional territories and obligations between sovereign nations, are viewed by others as vestiges of a colonial policy intended to make Aboriginal people wards of the state. Coupled with an unresponsive Federal system for addressing specific land claims arising from these treaties, a perpetual source of First Nations – Federal conflict has been created.

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<sup>4</sup> Perceptions of First Nations people have been documented in the Royal Commission on Aboriginal Peoples report and elsewhere. These specific impressions come from conversations with First Nations community members over the past ten years as part of the work mentioned in Chapter 1.

The residential school system, still active throughout much of the eighties, also provides examples of institutional abuse and Federal attempts at assimilation. Established under Federal policy, at least two generations of First Nations children were removed from their families and communities to be educated in residential schools run primarily by the Catholic and Anglican churches in a conscious official attempt to undermine First Nations social structures, languages and cultures. The legacy of this policy is still fresh<sup>5</sup>.

In spite of the Federal government's willingness to extend benefits such as tax-free status *on-reserve*, comprehensive health care services, housing, programs to encourage economic development, where possible, and social assistance, as needed, policies of the Department of Indian Affairs and Northern Development have understandably remained deeply suspect. Devolution of programs and responsibilities from the Federal government to allow for various forms of local self management continue to come at a price: program budgets are capped at the time of transfer to First Nations control and are limited to reserve lands and residents only<sup>6</sup>.

## **Cross-cutting Effects**

Knowing where to draw the line in outlining some general features of the First Nations – Federal relationship is not easy. But even in this brief overview the conflict dynamics

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<sup>5</sup> The legacy of the residential school system continues to be a central area of discussion at First Nations assemblies. Major law suits are still pending. Significant federal funding has been devoted to healing and redress. The conflict generated by this experience of First Nations people is incalculable and unavoidable.

<sup>6</sup> Capping budgets at the time of transfer to local or regional First Nations control is a common feature of most federal transfer agreements. This was the case when the federal hospital in Moose Factory was transferred to the Weeneebayko Health Ahtuskaywin, a regional Aboriginal health authority I helped to establish.

should be plain. The relationship and level of conflict have evolved over time and are multidimensional (Northrup, 1989). Extreme power differentials exist, a dependent relationship having been created over hundreds of years (Azar, 1990). While the Federal government determines which of Burton's basic human needs it will satisfy, the imperatives of security, meaning and control are absent (as cited in Tidwell, 1998, p. 79). Deprivation of basic human needs in turn promotes an officially sanctioned identity for First Nations, excusing the lack of respect and protocol ordinarily accorded a government-to-government relationship (Northrup 1989, p. 70). The threat to identity, posited by Kelly, and an acceptance of a subjugated and dependent role by First Nations may further weaken a collective sense of self worth and sovereignty (as cited in Northrup, 1989, p. 65).

Historically missing in the First Nations – Federal relationship is a full understanding, recognition and acceptance of each party's separate identity and worldview, and the rights and responsibilities this acceptance implies. Without it, negotiations are convened between First Nations and the Federal government to reconcile individual and shared interests, with predictably mixed results and the potential for detrimental long-term effects on the relationship (Burton, 1990).

First Nations have been caught in the, "cross-cutting effects on communal action", which Gurr speaks of, trying to balance respect for an independent, holistic traditional worldview - largely unrecognized by mainstream Canadian society and the Federal government - while pragmatically accepting Federal funding, policies and programs, at

the same time asserting their Aboriginal and treaty rights (Gurr, 1999, p. 136). As the nature of the First Nations – Federal relationship changes, assertion of these rights has resulted in an escalation of conflict.

## Triggering Events

Last year's lobster fishery dispute in Burnt Church, New Brunswick, is just the latest flashpoint in this protracted and escalating social conflict centred around recognition of treaty and Aboriginal rights to land and natural resources. Earlier "triggering events" at Oka, Gustafsen Lake, Ipperwash, as well as numerous other logging road and highway blockades, are symptomatic of a new level and intensity of confrontation (Azar, 1990, p. 12).

The six years spent by the Royal Commission on Aboriginal Peoples or the Federal government's response, *Gathering Strength*, have thus far had limited success in effectively channeling this conflict towards functionality. Instead, these disputes follow an evolution over the past quarter century in the First Nations – Federal conflict relationship and parallel a willingness and an ability by First Nations to assert their rights within the dominant Euro-american paradigm and system of justice. They also point to the "salience" of a communal First Nations identity and a new generation's growing frustration at the pace of change (Gurr, 1999, p. 126).

## **Assertion of Aboriginal Title and Rights**

The status quo in First Nations – Federal relations began to seriously erode in the 1960s, once the rights of status Indians' to vote and retain legal counsel were recognized. After an abortive attempt by the Trudeau government in the early seventies to phase-out the treaty rights of Aboriginal peoples, this right to counsel was used to some effect in the 1973 Supreme Court decision in *Calder v. R.* In a split decision, the Court agreed that the Nisga'a Nation's claim to Aboriginal title over their traditional territories had not been extinguished (Bartlett, 1990, p.77). Nonetheless, a further twenty-five years of negotiation preceded signing of the Nisga'a Treaty.

During this same period, several large hydroelectric generating projects proceeded on northern rivers in the Prairie Provinces, with little or no consultation with or respect for the Aboriginal and treaty rights of resident First Nations (Crampton, 1990, pp. 2-4). Controversial at the time was the decision by the Cree of northern Quebec to negotiate the *James Bay and Northern Quebec Agreement* – paving the way for a massive hydroelectric generating project supported by the provincial government. The first self government agreement in Canada, the Federal enabling legislation divided Cree lands into several zones on which the local First Nations have varying degrees of control. Natural resources and resource management, however, remained firmly in provincial hands, with no Cree veto on resource development, and thousands of square kilometres of traditional territory under water (Bartlett, 1990, p. 157).

In this instance, the eastern James Bay Cree, after protest, made a pragmatic calculation that traded an unrecognized Aboriginal claim to vast tracks of land in northern Quebec in return for limited governance of the territory surrounding First Nation community sites, administration of local and regional services and hundreds of millions of dollars in direct and indirect compensation from the Federal and provincial governments. Effectively, the provincial government, with little Federal interference and considerable financial assistance, succeeded in purchasing agreement to tap the hydroelectric generating potential of northern Quebec, to supply US power needs. But in the process of securing control of this resource, the conflict dynamics between First Nations in Canada and other governments changed. Relative power imbalances continued to be extreme, but now were shown to be susceptible to legal and public relations challenge by a developing First Nations communal identity (Northrup, 1989, p. 61). At this early stage in conflict escalation, a new First Nations – Federal relationship was taking shape, a relationship which now required Federal compensation be given in lieu of recognition of Aboriginal or treaty rights. Eventually, this resulted in Federal commitments to compensate other similarly hydro-development affected First Nations in the West, with varying degrees of implementation<sup>7</sup>.

The Berger Commission's consultations with First Nations and Inuit in the mid seventies regarding a proposed gas pipeline over traditional territories in the Mackenzie Valley of the Northwest Territories, also shifted public expectations of how major resource development projects should proceed. While not wholly successful in achieving

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<sup>7</sup> Compensation for First Nations in northern Manitoba affected by dam reservoir development was initiated in the early eighties. Claims are still outstanding.

acceptance by the Federal government of a ten-year moratorium on all pipeline development, the Norman Wells pipeline below the Mackenzie River, carrying oil through Alberta to American markets, was erected only after extensive consultations with Aboriginal communities, respecting local environmental concerns and employment interests (Crampton, 1990, p. 6). By setting the standard for consultations with and participation by resident communities in the resource development decision-making process, the Berger Commission became a watershed in the incremental acknowledgment of First Nations treaty and Aboriginal rights.

The importance of these cumulative events in altering the relationship of First Nations with other levels of government should not be underestimated. When Hydro Québec in the early eighties prepared to expand its northern generating capacity with further proposed flooding, the “mobilized group cohesion” of the eastern James Bay Cree First Nations led to successful national and international public relations campaigns and related lawsuits, scuttling the redevelopment (Gurr, 1999, p. 127)<sup>8</sup>.

Support for Aboriginal and treaty rights further accelerated after their existence was affirmed in Section 35 of the Constitution Act of 1982<sup>9</sup>. Canadian courts and Supreme Court rulings continued to uphold and expand the definition of these rights - challenging the Federal and provincial governments to keep pace. In their 1984 *Guerin* decision, the Supreme Court ruled that the Federal government had a specific fiduciary obligation to

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<sup>8</sup> This, however, does not suggest that a similar level of cohesion was present in other regional and national groupings of First Nations at the time.

<sup>9</sup> Section 35 is the first section of the Part II of the Constitutional Act of 1982, succeeding the primarily individual rights affirmed in sections 1 through 34 of the Canadian Charter of Rights and Freedoms.

be accountable for its handling of lands set aside, “for the use and benefit” of First Nations (Foster 1989, p. 31). The 1990 *Sparrow* decision spoke to the traditional Aboriginal right to fish and limited the Federal authority to regulate (Foster, 1989, p. 695). In 1996, the *Van der Peet* ruling cemented a broad interpretation of Federal fiduciary duty and the paramountcy of First Nation interpretation in areas of ambiguity (Worme 1999, p. 16). In its landmark 1998 decision in *Delgamuukw v. B.C.*, the Supreme Court accepted Aboriginal oral tradition, defining Aboriginal title as a legally enforceable collective right to land, as well as acknowledging a range of other Aboriginal interests in land and resources, including oil, gas and mining exploration, *on and off* reserve. Just as significantly, *Delgamuukw* also recognized Federal jurisdiction over unsurrendered Aboriginal title lands (Nahwegahbow 1999, p. 4). Finally, in its 1999 *Marshall* rulings, the Court again affirmed a recognized treaty right to fish, as well as articulating a new commercial right to make “a modest living” from this activity (Worme, p. 52, 1999).

One might expect that the sum total of these decisions would a major reorientation of the First Nations – Federal relationship and conflict, around a new understanding of Aboriginal title and rights to natural resources. The change, however, as Northrup and Kriesberg anticipated, has been more case specific and evolutionary (as cited in Northrup, 1989, p. 58). Nevertheless, First Nations generally are in an increasingly strong legal position to assert their rights, with all the accompanying risks and uncertainties for Federal and provincial authority.



## Federal Recognition

Predictably, the Federal government's response to the courts' recognition of Aboriginal and treaty rights has been cautious and measured. From denial of Aboriginal rights to natural resources, the Federal government has moved slowly off of the notion of "occupation and use" as defining Aboriginal title, to the current acceptance of resource rights *on-reserve*. While at the time, the *James Bay and Northern Quebec Agreement* may have been considered generous acknowledgment of First Nations claim; in comparison, the recent Nisga'a Treaty is another quantum leap in compensation, surrender of territory and First Nations' ownership of natural resources. Recognizing the potential threat, Federal strategy might best be characterized as one of risk containment (Azar, p. 13). Given earlier definition of Federal fiduciary responsibility in *Guerin*, (Foster, 1989) the potential loss of authority contemplated by a *Delgamuukw*-style (Nawegahbow, 1999) recognition of Aboriginal title and rights has yet to be fully reconciled in policy or negotiations.

Starting from the recommendations of the Penner Report, a 1983 parliamentary review of Indian self government which called for a third order of government in Canada and coined the term, "First Nation", the Federal response a year later was introduction of Bill C-52, the Indian Self Government Act. Though never enacted, this Federal proposal was the blueprint for the Sechelt Indian Self Government Act of 1986. The Act established a municipal style of government and granted the First Nation nominal management of the reserve's natural resources – still subject to provincial interests and jurisdiction (Bartlett, 1990, p.164).

One of the lingering ironies of the Penner Report was that the adoption of the term, “First Nation” was intended by the report’s author to recognize the Aboriginal sovereignty and identity and encourage a government-to-government relationship. Its effect, however, was to further fragment the identity of larger Aboriginal cultural groupings or Nations (i.e. Cree, Mohawk, Ojibwa), already divided by provincial boundaries, into what were now to be considered smaller quasi-sovereign “First Nations” (Northrup, 1989). The Federal government’s quick adoption of this identifying terminology, while proposing a municipal form of self government, might give some indication of how the state took this opportunity to weaken group cohesion and advance its own interests (Gurr, 1999).

The Federal government has also experimented with the Indian Act’s limited authority to transfer control and management of resources to First Nations. Sections 53 and 60 of the Act allow the Minister of Indian Affairs some discretionary powers to delegate management of resources on-reserve, but efforts to utilize this power of devolution have not appeared to meet First Nations’ expectations. Obstacles of this sort have lead to two program reviews, one, by the Department in the late eighties and largely rejected by First Nations, the other, a more recent and on-going attempt, part of an Assembly of First Nations / Indian and Northern Affairs Canada Joint Initiative focusing on Federal Lands and Trusts Services policy development (Nahwegahbow, 2000).

Other recent Federal programs and initiatives have tried to balance recognition of Aboriginal and treaty rights with provincial reluctance to relinquish management of and

the revenues from natural resource extraction. In 1999, the First Nations Land Management Act created the legislative authority by which fourteen pilot communities can develop the necessary land and environmental codes to take over land management of their reserves and natural resources. A Lands Advisory Board is currently helping to facilitate development of these codes and management models (Nahwegahbow, 2000, p.21). While potentially a major opportunity for some First Nations, the Act is somewhat contentious in that First Nations participation has so far been restricted, funding is uncertain and resource management is strictly limited to the on-reserve land base. Other more widely accessible departmental options include programs aimed at expanding First Nations participation in the on-reserve management in the forestry and exploration sectors. An additional Resource Access Negotiations program assists First Nations involvement in off-reserve resource exploitation projects (Worme, 1999, pp. 35-43).

### **Why Have Disputes Not Been Settled?**

All of these attempts to recognize First Nations' rights to land and resources, however, beg the question of why these Federal policies, programs and initiatives have not been embraced by First Nations. Why have negotiations to settle the specific and comprehensive claims of First Nations not been settled? What is the fundamental obstacle to realization of the inherent right to self government?

The answer to these questions may lie in the nature of the First Nations – Federal relationship, the recognition being offered and the processes being used. In the major agreements signed between the Quebec Cree, the Sechelt First Nation and the Nisga'a,

frameworks for self government were proposed by the Federal government, which it may have hoped would become models for other First Nations to adopt. Yet in each case, this has not occurred. Similarly, more limited recent initiatives to grant authority to manage land and resources on-reserve have met with acceptance by only small proportion of the 633 First Nations in Canada.

### **Federal Land Claims Policy**

A few comments on the First Nations – Federal relationship and conflict created by Federal specific and comprehensive claims policies may help illustrate this point. First, Federal policy governing comprehensive claims (claims where a treaty has not yet been signed) has traditionally been based on the notion of “extinguishment” of rights once a claim is settled. Second, in most specific claims (claims based on treaty rights), financial compensation to a First Nation is commonly offered in lieu of claimed land or as a means of purchasing substitute real estate.

Two of the largest and most notable comprehensive claims are the fairly recent creation of the Nunavut Territory and signing of the Nisga’a Treaty. Nunavut creates a public territorial government, but also sets aside Inuit-controlled lands. A resource royalty sharing system is also in place, as are mechanisms to ensure consultations with resident communities prior to oil, gas or mineral exploration (Nunavut Land Claim Agreement, pp. 203, 211). The Nisga’a Treaty extinguishes any Aboriginal rights and title not set out in the treaty, but provides for Nisga’a ownership of 1,992 square kilometres, with all forest and sub-surface mineral rights. Land title is held by the Nisga’a, not the Federal

government. Other resource management is shared with the Federal and provincial governments, the Nisga'a receiving an annual allocation of wildlife and 26% of the Canadian Nass River total allowable catch of salmon (Nisga'a Final Agreement in Brief, 1998, pp. 1-7).

The Nunavut and Nisga'a agreements in some respects represent innovative accommodations by the Federal government in its treatment of the concept of Aboriginal title and First Nations rights to natural resources. In other ways, they continue a consistent policy intended to contain the associated financial risks and threats to its authority posed by recognition of Aboriginal rights.

## **Agreement and Defiance**

The image taking shape is one in which the Federal government is legally bound to recognize First Nations claims to land and natural resources through negotiated and legislated agreement, but despite a range of mechanisms intended to do so in ways acceptable to the Federal government, it has yet to find the means to accomplish this to the satisfaction of most First Nations. The *Delgamuukw* (Foster, 1989) decision also creates new and potentially enormous challenges and risks as it opens up the possibility of First Nations assertion of Aboriginal title to vast unsundered territory in western Canada, especially in the mostly untreatied province of British Columbia. The Nisga'a Treaty is after all only the first of many future treaty negotiations that may call into question the ownership of land and management of natural resources. For commercial interests involved in resource extraction on licensed Crown lands, the uncertainty and

risk this no doubt generates would be hard to calculate. The associate conflict in First Nations – Federal – provincial relations may be pose similar challenges in the predictable future.

Fundamentally at issue in agreements that have already been signed and negotiations still to come is the extent to which First Nations are willing to compromise their rights, identities and worldview in order to settle disputes that have lasted for generations. The excruciatingly slow rate at which agreements are concluded, the issue of extinguishment and the provision and amount of financial compensation in lieu of rights that have not been respected is set against the sometimes even slower pace of legal decisions which affirm the existence of Aboriginal and treaty rights and their enforceability. This tension appears to have encouraged in Oka, Ipperwash, Burnt Church and elsewhere, a determination by First Nations to assert these rights and an unwillingness to accept compensation and only marginal Federal accommodations to its authority. As Northrup aptly puts it,

...disempowered groups may in fact believe that it is to their advantage to continue, create, or escalate conflict since the promotion of peace would only serve to maintain an unjust status quo (Northrup, 1989, p. 61).

Though the vast majority of First Nations disputes and grievances are never heard by a court or tribunal of any kind, the dispute in Burnt Church followed a Supreme Court ruling and clarification over existing treaty rights. It became a rallying point, spawning protests and blockades across Canada, because the community's defiance resonated with other First Nations experiencing similar challenges to their rights and identity. In Gurr's model for "Communal Mobilization for Political Action", active grievances (in Burnt

Church and elsewhere), a contagion of communal conflict (the Burnt Church dispute), democratization (legal rulings affirming First Nations rights), state power (the Federal response) and an enhanced sense of cohesion of group identity (sympathy rallies, marches and blockades), culminated in communal protest (the confrontation between Burnt Church fishers and Federal Fisheries enforcement officers and RCMP) (Gurr, 1999, p. 125). Burnt Church asserted its own authority to regulate a shared resource and refused to accept financial inducements in lieu of rights, and predictably the Federal government responded with force (Fisher, 1997, p. 86).

Yet to be settled, an attempt at mediation in Burnt Church last fall by former Ontario premier Bob Rae was successful only in avoiding loss of life<sup>10</sup>. Fisher and others, however, would question whether this kind of intervention is even appropriate given the protracted nature of the conflict underlying the presenting dispute (Fisher and Keashley, 1988, p. 382). Another perspective is that Mr. Rae's efforts ultimately served a political purpose in showing Federal disinterest in a negotiated settlement, thereby hardening Canadian public opinion<sup>11</sup>. In any case, it is unclear what impact a subsequent Federal offer to provide up to \$500 million in further inducements and a "process for a long-term response to *Marshall*" will have in the coming fishing season this summer (Government of Canada news release, February 9, 2001, p. 1).

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<sup>10</sup> Comments by Mr. Rae during a presentation at the ADR Institute of Canada's Annual Conference, June, 2, 2001, in Ottawa.

<sup>11</sup> In conversation with former AFN National Chief, Ovide Mercredi, May 22, 2001.

## **A Demographic Dimension**

Assertion of rights and the level of conflict may also have a demographic dimension. As the Canadian population as a whole has grown proportionately older, more than half of the Aboriginal population in Canada is under the age of 25 and growing at twice the rate of other Canadians (Department of Indian and Northern Affairs Facts from Stats Issue 17, December 2000, p.1). While perhaps not significant in and of itself, the non-violent civil disobedience methods of protest practiced by an older generation of First Nations leaders is currently being challenged by a younger generation of First Nations activists, willing to use more confrontational methods. Azar and others have noted similar population dynamics as a contributing factor prior to escalations of violence in the Middle East conflict. With heightened frustrations and a growing militancy comes an opportunity for progressively more repressive examples of state power and the development of a conflict spiral (as cited in Fisher, 1997, pp. 83 and 86).

Taking all of these dimensions into account, historic and current, the escalation in conflict cannot be easily ignored. In the next chapter, a systems approach to addressing recognition of First Nations' rights, identity and worldview within their relationship with the Federal government is discussed.



### **CHAPTER III: A NEW RELATIONSHIP ON THE ENVIRONMENT; A SYSTEMS APPROACH TO FIRST NATIONS – FEDERAL CONFLICT MANAGEMENT**

As First Nations – Federal conflict has continued to escalate, ignoring the clash of competing cultures and worldviews is no longer sustainable. A new relationship is needed. This chapter explores aspects of the *health* and *growth* paradigms, as they relate to First Nations' and Federal conceptualizations of the natural environment and humanity's role in it. From the basis of mutual incentives and accountability, an organizational framework and political strategy are built, intended to address the existing deep-rooted conflict.

One essential source of information for this study was an Elders Forum on the Environment held in Ottawa on March 23-24, 2001, just after the Interdepartmental Dialogue. The Assembly of First Nations' Environment Secretariat convened what it is hoped will become a on-going dialogue of First Nations elders, brought together to begin a process of rediscovering and documenting the shared beliefs, values and traditional environmental principles from which a political action plan on the environment will be founded. Though time was limited and elders from not every Nation could participate at this initial gathering, several themes emerged<sup>12</sup>.

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<sup>12</sup> This was an extraordinary and emotional event. I was honoured to be an observer at the Elders Forum on the Environment, and respect the expressed wishes of Elders not to be quoted directly.

## **The Health Paradigm**

Without exception, elders at this forum recognized first the Creator, Creation, and humanity's shared responsibility for caring for the natural environment. Elders used the words like respect, balance, harmony, and peaceful co-existence, to try and partially capture what is a way of life, a oneness with Mother Earth. Elders also spoke of how their languages were central to understanding their relationship with the land; the use of story telling as the way in which their peoples' values, beliefs and knowledge are passed between generations. They counseled that the health of the natural environment is an inextricable part of the health of all living things and expressed sorrow and anger at the desecration of Mother Earth, the taking away of lands First Nation Peoples are responsible for protecting and preserving, the short-sighted exploitation of the natural environment which has continued since the arrival of Europeans (Elders Forum on the Environment, 2001).

Elders emphasized the need to revive First Nations laws - laws guided by the Great Spirit, to protect and preserve the environment for the seven generations to come; to recognize First Nations rights, responsibilities and relationship to the land; laws that answer the need for healing of Mother Earth, First Nation Peoples and Civilization as a whole. In calling for the revival of traditional laws, elders asked for radical changes, to encourage a collective responsibility for environmental protection, preservation and healing. At the same time, elders also acknowledged the fine balance between the physical needs of younger generations, to provide for themselves, their families and their communities (Elders Forum on the Environment, 2001).

The comments of elders describe the intrinsic, non-monetary value of land, a collectivist notion of “ownership”, a sharing of resources that come with concomitant responsibilities to the environment. They reflect a holistic, inter-connected, spiritually based worldview that requires human behavior and activities respect a harmony and balance between all living things in Creation, to ensure their collective health and well-being.

## **The Growth Paradigm**

In contrast, the non-aboriginal, euro-american worldview, represented by the Federal government system, can be described as a growth paradigm. This mainstream Canadian worldview is grounded in a notion of perpetual economic growth and individualistic in nature. The Canadian Charter of Rights and Freedoms is primarily intended to protect individual rights<sup>13</sup>. Property is valued in economic terms and title is vested in the individual or body corporate and includes the right to free use and disposal, subject only to government regulation.

Highlighting the differences in perspective is the widespread acceptance of risk management principles of governance. Reacting to the potential financial cost of liability related to environmental degradation, natural resource over-consumption or threats to public health and safety, all levels of government have adopted policies and programs that attempt to anticipate potential liability and act to eliminate or minimize any

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<sup>13</sup> Apart from collective English and French language rights, the rights protected in the Charter are those of individuals. The Charter does, however, make specific provision not to abrogate or derogate from rights that pertain specifically to aboriginal peoples (section 25).

associated financial risk. Thus, Federal policies and legislation may, for example, broadly reflect sustainable development principles, by accepting responsibility for protection and preservation for the environment, but do so not from any spiritual commitment.

The growth paradigm and risk management principles, operate from a system of incentives and accountability. Changes in Federal policies recognizing First Nations claims to land and natural resources are consistent with this analysis. The Federal government is motivated to recognize rights and accept responsibilities, in order to avoid or limit the greater financial liability of not doing so. Accountability strengthens incentives and ensures consequences if rights and responsibilities are not recognized.

## **Sustainable Development: A Bridge Between Worldviews**

Sustainable development, is in fact the political compromise between two worldviews seemingly in conflict, designed to address environmental changes and degradation that by the end of the twentieth century could no longer be ignored by national governments or the international community (i.e. climate change, degradation of air and water resources, loss of biodiversity, famine, pandemics, migrations). Through sustainable development, policy-makers and governments have hoped to meld a traditional indigenous belief that health (spiritually, socially, politically and economically) is a function of the harmony that exists in Creation, with a classical belief that perpetual economic development and growth are the most practical means of providing for the general needs (economically, socially, politically) of an increasing human population.

The beauty of the sustainable development concept is that it intentionally allows for multiple interpretation. Within the health paradigm, sustainable development means economic activity that ensures balance, recognizing human responsibility for protection and preservation of the natural environment. Within the growth paradigm, sustainable development implies recognition that it is in humanity's best interest to manage its economic activities in such a manner that environmental degradation or loss of biodiversity does not impede future prospects for growth. But given the shared imperatives of sustainable development, however they may be defined, differences in worldview are not necessarily differences in objectives. What this suggests is that a means of straddling the gap between approaches may be the design a system of mutual incentives and mutual accountability, incorporating differences in worldviews and addressing the shared interests of both First Nations and Federal government.

A message of participants affirmed at the Elders Forum was that a new relationship on the environment is needed, based on a shared understanding and acceptance of First Nations – Federal beliefs and responsibilities. Sustainable development objectives may provide mutual incentive for creating this new relationship. The potential for mutual accountability may also exist for both parties in addressing the escalating conflict between them over recognition of Aboriginal and treaty rights to land and natural resources. But judging from the historic level and protracted nature of the conflict inherent in the First Nations – Federal relationship, it would be overly optimistic to think

that this kind of shared understanding and acceptance of sustainable development objectives will be accomplished in a direct head-on negotiation. To date, major shifts in the relationship have usually occurred through court challenge and confrontation, the gains from which are slow to be realized and often have served to exacerbate the conflict further. Realistically, achievement of this new relationship on the environment requires a pragmatic, incremental and indirect approach, working on several levels and emphasizing mutual incentives and accountability. This approach includes and is complemented by the design and initiation of a sustained dialogue process, to be discussed in subsequent chapters.

### **A First Nations Political Strategy Towards a New Relationship on the Environment**

Certainly, in the creation of a proposed political strategy on the environment for the AFN, a new relationship between First Nations and other levels of government was seen as critical. A new relationship on the environment would engender a new mutual understanding and acceptance of each other's worldview with respect to sustainable development objectives, thereby mitigating some of the factors that have lead to escalating conflict. If sincere, this new respect and relationship would lead to settlement of historic disputes over rights to land and natural resources. But before shared objectives can produce mutual incentives and accountability, from a strategic political perspective, the differences between worldviews need to be clearly articulated. How First Nations peoples' environmental principles and a relationship to Mother Earth fundamentally separate traditional First Nations and non-Aboriginal perspectives is the essence of this new relationship. The existence of the inherent right to self government is

predicated on recognition of this difference. As a First Nations political strategy must assert, the environment is not simply a government department responsibility, it is integral to a way of life.

This said, development of the proposed political strategy was premised on the AFN leadership's ability to politically occupy a principled higher ground than other governments, advocating a higher standard, a deeper spiritual understanding and a greater responsibility. The strategy aimed squarely at the federal, provincial and territorial government's sectoral risk management approach to protection of public health and safety, preservation of the natural environment, protection of water quality and its management, preservation of biodiversity and species at risk. It also promoted an equitable and sustainable sharing of natural resources. Consistent with the guidance of First Nation elders, the strategy intentionally recognized and defined the environment in the broadest and most holistic of terms, encouraging other levels of government to consider the environmental issues faced by First Nations and society as whole in a similar fashion.

The strategy focused on strengthening First Nations' collective political voice at a crucial historical juncture. It differentiated the AFN, bolstering its national and international influence and independent moral authority to represent First Nations. It allowed for a First Nations-driven acceleration of efforts towards achievement of the inherent right. The strategy explicitly included protection, preservation and healing as environmental dimensions to be considered in the revival and development of First Nations

environmental laws, codes and regulations. But in order for this strategy to be credible, AFN external political action on the environment was balanced against development and implementation of an internal strategic environmental plan, integrating First Nations environmental principles horizontally through all AFN departments and functions.

### **Addressing Power Differentials**

Addressing the power differential between First Nations and the Federal government was also viewed as an important consideration in the political strategy's design. To overcome this differential, typically one or more of seven tactics along a spectrum are available: dialogue/cooperation, negotiation/mediation, collaboration, public humiliation, court action, civil disobedience, or violence. For its part, the Federal government maintains its power advantage largely by pursuing a risk management-dominated strategy that segments overall governmental responsibility within more limited and prescribed departmental policies, directives and authority, measuring its reaction to any perceived threat with an appropriately limited response<sup>14</sup>. The strategy proposed took a different approach.

Based on the traditional beliefs and values expressed by First Nation elders, the strategy addressed the existing power differential by changing its frame of reference. As the Federal government has developed department-specific Sustainable Development Strategies, the AFN would place these strategies within the broader context of a First Nations Sustainable Environmental Strategy. As Federal and provincial governments

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<sup>14</sup> This comment is intended as a general rule of thumb and comes from my experience working with several federal departments over many years.



address the quality and management of safe drinking water from a narrow health and public safety perspective, AFN policy would interconnect the safety and management of water for First Nation communities with all related program areas and contributing factors, such as housing, health, governance and economic development. As the Federal government reacts to climate change, the AFN would act to address its impact on First Nations by coordinating Federal department initiative and integrating traditional ecological knowledge. Short of violence, the approach proposed did not preclude the use of any of the other six tactics mentioned above, simultaneously or sequentially, to rebalance power differentials that exist. But, it proposed utilizing these methods strategically, reflecting shared environmental principles, of which risk management calculations would be considered a scientific approximation, a theoretical subset.

### **Control of Money: A Familiar Conflict**

With a political strategy thus proposed, development of an implementing action plan faced a central element fueling on-going conflict in the First Nations – Federal relationship – control of funding. A key facet of the proposed political strategy, organization-wide integration of traditional First Nations environmental principles into the activities and decision-making of all AFN programs and secretariats, hinged on both internal consensus and resources being available to undertake this kind of re-structuring. External political action would encounter the same financial realities.

Restraining the Environment Secretariat's ability to adequately perform the mandate given to it, let alone implement a political action plan, was the simple reality that

resources for this political responsibility area were not included in the funding calculation or formula for Indian Affairs block funding to the AFN. Attempts to address the issue of core funding through a funding proposal to Environment Canada had been unsuccessful. Environment Canada favoured project-specific funding proposals related to Federal environmental initiatives<sup>15</sup>.

Currently supporting the activities of a separate AFN Environment portfolio there exists an inactive Chiefs Committee on the Environment, co-chaired by the National Chief, an unfunded technician-level Environment Committee made up of regional AFN representatives, and an Environment Secretariat, staffed by a Senior Policy Advisor on the Environment, funded through the AFN/INAC Joint Initiative. There is a Vice Chief responsible for the Environment portfolio, a political advisor to the National Chief on the Environment, as well as a national contaminants coordinator in the AFN's Health Unit.

The lack of funding and the dilemma this created for the Environment Secretariat was in many ways the same "cross-cutting" conflict mentioned earlier that First Nations continue to struggle with (Gurr, 1999, p. 136). To be in a position to implement a political strategy on the environment and build towards a new relationship, the Secretariat it appeared would be required to submit a series of project-specific funding proposals through various Federal national or regional funding programs and envelopes. But given its inherently political nature, the AFN Environment Secretariat could expect to have the greatest likelihood of receiving Federal funding in politically less sensitive areas of

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<sup>15</sup> As detailed in an unpublished analysis of AFN Environment Action Plan funding opportunities which I prepared as part of my work for the AFN Environment Secretariat.

analysis and development. More limited funding might also be available in the Secretariat's public education, consultation, and coordination roles. As a consequence, the Environment Secretariat, through activities supported by Federal project-specific funding, could not adequately hope to fulfill its political advocacy role or implement its environmental strategy.

This frustration in the development and implementation of a political strategy on the environment is indicative of the nature of the First Nations – Federal relationship and the deep-rooted conflict within it. First Nations' dependence on the Federal government for funding and the differential in power this implies, means reaching a new relationship is that much more difficult. Unresolved conflict over recognition of Aboriginal and treaty rights to land and natural resources is superseded by dispute over adequate program funding. Even where sustainable development provides shared objectives, creating a system of truly mutual incentives and accountability moves farther out of reach.

### **Organizational Options**

To pursue some of its identified political objectives and tasks, by necessity, the Environment Secretariat and AFN would be required to evaluate whether there existed sufficient mutual incentives to warrant contributing to, for example, the department of Indian Affairs' stated interests through its Sustainable Development Strategy.

Pragmatically, the Environment Secretariat therefore had two organizational options: 1) a line program function, or 2) an integrated program function.

#### **1) Line Program Function**

Assuming the status quo, the Secretariat would continue to:

- i) Operate in a limited capacity to support a separate Environment portfolio;
- ii) Pursuing its Terms of Reference and Environment Action Plan objectives, narrowly defined, on an ad hoc basis, depending on funding from related project initiatives, with;
- iii) Limited activities by the Environment Committee and Chiefs Committee and;
- iv) Holding ad hoc-related meetings of, for example, the Elders Forum on the Environment or a First Nations – Federal Interdepartmental Dialogue on Environment.

If successful in securing project-specific funding from departments other than Indian and Northern Affairs, the Secretariat could advance its Terms of Reference and Action Plan objectives by participating, where identified mutual incentives exist, in environmental analysis, development and advocacy activities through federally defined environmental initiatives. In addition to engaging the Environment and Chiefs committees, on a periodic basis, the Secretariat could also enhance its currently limited capacity to address unfunded political advocacy responsibilities.

## **2) Integrated Program Function**

Assuming the status quo, an integrated program function for the Environment Secretariat was not a realistic option. Through adequate AFN/Federal core funding, however, supplemented by project-specific funding from Federal environmental programs, the creation of a separate Environment portfolio could initiate an organization-wide approach, integrating environmental principles into all program areas and decision-making functions. The Environment Secretariat would support development of this approach through:

- i) A sustained Elders Forum on the Environment;
- ii) Regular, at least quarterly, meetings of the AFN Environment Committee;
- iii) Semi-annual meetings of the Chiefs Committee on the Environment;
- iv) Regular meetings of a First Nations – Federal Interdepartmental Dialogue on the Environment;
- v) Development of an AFN Sustainable Environment Strategy;

- vi) Assistance to and coordination with other AFN program areas to integrate environmental principles into the decision-making process and identify environmental issues to be addressed through political action;
- vii) Expanded capacity to provide for AFN and First Nations political activities aimed at recognition of broad-based environmental issues and the responsibilities of First Nations and other levels of government.

Developing realistic organizational options was an important process in fully appreciating the impact which control of funding issues could have on efforts designed to build a new First Nations – Federal relationship on the environment, despite shared interests and objectives. Incentives pointing to collaborative action do not make a relationship.

Through further analysis of AFN and Federal environmental objectives, several mutual incentive areas were identified: 1) Incorporation of traditional ecological knowledge into policy development and decision-making; 2) Water quality and management; 3) Legislative, regulatory and policy review, and consultation; 4) Climate Change; 5) Capacity-building; 6) Organizational system, model and framework design; 7) Strengthening the Relationship and First Nations Governance. Part of this review was a side-by-side analysis that involved matching of Federal objectives, departmental programs/initiatives and funding envelopes, with AFN objectives and proposed projects. This process yielded five potentially viable project proposals, for approval and further development by the AFN, in collaboration with the Federal departments involved<sup>16</sup>.

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<sup>16</sup> Federal interest in funding these mutual incentive projects remains totally a question of departmental discretion.

## **Whose mutual incentives?**

Easily lost in this discussion of organizational and funding options, is the inherent political identity of the Assembly of First Nations and the impact this identity has on its relationship with the Federal government. As mentioned, the necessity of fulfilling Federal program requirements for funding perpetuates a dependent relationship, restricting political activities and mutual accountability. While it could be argued that collaboration between the AFN and Federal departments in mutual incentive areas begins a renewal of the relationship, it does so on Federal terms. Once again, the same patterns and conflicts reveal themselves. Collaboration on mutual incentive projects are those within federally defined programs and initiatives. Funding is contingent not on achievement of mutual objectives, Federal objectives are paramount. This might be a constructive incremental step towards shared environmental principles, but perhaps only by luck. Telling is the theme proposed by the AFN's Environment Committee for a First Nations political action plan, *recognition*:

- Recognition of First Nations participation in environmental decision-making, on a government-to-government basis;
- Recognition of traditional ecological knowledge and principles;
- Recognition of First Nation treaty rights and Aboriginal title, and;
- Recognition of a shared responsibility for protection, preservation and healing of the natural environment.

Evident in this proposed theme is an acknowledged lack of understanding and acceptance of First Nations' worldviews and identity - which currently funded efforts cannot address

politically or otherwise. Shared sustainable development objectives may be key to bridging the gap, but the process or processes by which to collaboratively build mutual incentives and accountability in this area need further development. Yet if means by which to change or rebuild the First Nations – Federal relationship cannot be found, the escalating conflict over recognition of Aboriginal and treaty rights is likely to continue.

The next chapter turns to the design and analysis of the first pilot First Nations – Federal Interdepartmental Dialogue on the Environment, convened in Ottawa in late March. By exploring the conflict and group dynamics of this first pilot sustained dialogue session, some conclusions will be drawn on the potential effectiveness of this approach in helping to build a new First Nations – Federal relationship on the environment.

## **CHAPTER IV FIRST NATIONS – FEDERAL INTERDEPARTMENTAL DIALOGUE ON THE ENVIRONMENT: AN ANALYSIS**

The First Nations – Federal relationship and the conflict resident within it has been sustained for generations, escalating and intensifying as First Nations have successfully asserted their Aboriginal and treaty rights. Developing systems of mutual incentive and mutual accountability have been suggested as one means of addressing this pattern of escalation. The convergence of First Nations and Federal objectives around concepts of sustainable development may be a valuable opportunity to start the process of building a new understanding and relationship. In this chapter, the application of a sustained dialogue process to a pilot interaction between First Nations and Federal departmental participants is examined, with an eye to exploring the usefulness and improving the effectiveness of this prenegotiation approach.

### **Model for Analysis**

Given that this was only an initial attempt at what is hoped will become a sustained dialogue, an analysis of the five stages identified by Saunders (Saunders, 1999) in his methodology (Stage One, Deciding to Engage; Stage Two, Mapping and Naming Problems and Relationships; Stage Three, Probing Problems and Relationships to Choose a Direction; Stage Four, Scenario-Building - Experiencing a Changing Relationship; Stage Five, Acting Together to Make Change Happen) was not possible or realistic. The analysis was therefore limited to the group and conflict dynamics present as participants moved through the first and into the second stage of the dialogue process. As an



additional analytic tool, reference will also be made to Saunders' six elements for analyzing relationship and changing conflictual relationships discussed in Chapter 1 (see pages 11-12):

1. The Identity of the Parties;
2. A Co-existence of Interests and Needs that Lead to Interdependence;
3. A Process and Pattern of Continuing Interaction;
4. The Nature and Working of Effective Power;
5. Limits on Behaviour;
6. Evolving Perceptions (Saunders, 1999, pp. 35-43).

In providing a description of the design and interactions during the First Nations – Federal Interdepartmental Dialogue on the Environment, the analysis also integrates the relevant models and insights of several social identity and interactive conflict resolution theorists mentioned in earlier chapters.

### **Pilot Objectives**

A sustained dialogue process aimed at addressing shared First Nations and Federal objectives and priorities. The AFN/INAC Joint Initiative had identified creation of a First Nations – Federal interdepartmental committee on the environment, at the Assistant Deputy Minister level, as an objective in its draft Environment Action Plan<sup>17</sup>. The Department of Indian Affairs' Sustainable Development Strategy 2000-2003 also made formation of a similar sustainable development interdepartmental committee of senior managers, the AFN and other Aboriginal organizations a priority (Department of Indian Affairs and Northern Development 2000, p. 27). The AFN Environment Secretariat then

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<sup>17</sup> Draft AFN Environment Action Plan, 2001.

took the initiative of exploring these mutual objectives. In working towards opening up lines of communication, coordination of policies and programs, and relationship building, the suggestion was made to design a pilot interdepartmental session around the sustained dialogue methodology.

The reason sustained dialogue was chosen over other possible ICR approaches, such as Kelman's problem-solving workshops, was both a function of context and objective. A dialogue sustained over several months or years appeared better suited to the goal of relationship building and a longer-term focus. Experience suggested dialogue might culturally better approximate discourse in First Nations communities<sup>18</sup>. It might overtime provide a secure space in which emotions could be shared and the healing elders spoke of (later) could take place.

Dialogue, it was thought, might also be less threatening to Federal authority, given its avoidance of direct negotiation and dispute settlement. It was hoped, as in Kelman's approach, that the dialogue might become a future conduit to political discussions, but until more experience could be gathered from a series of dialogue sessions and the composition of the group, it was unclear what this role might be. Initiating, if not necessarily, sustaining a dialogue process therefore appeared to be an achievable first step.

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<sup>18</sup> My experience over the last ten years attending and participating in numerous First Nations community meetings and assemblies at which a consensus model of agreement was strived for, lead me to the conclusion that dialogue was a form of communication that might be effectively applied to a First Nations – Federal relationship-building meeting of this kind.

## **Pilot Dialogue Analysis**

### **Organization**

To begin to set the stage for this analysis, a few organizational and logistical details may be helpful. The dialogue was held on neutral territory in a local hotel conference room. A cluster of four round tables holding six people each were set up facing a series of flipcharts. The day of the scheduled dialogue session was organized into morning and afternoon agendas. First Nations participants were invited to a morning preparatory session. A catered lunch with all participants was next, followed by a three-hour dialogue session. Eighteen to twenty participants were expected for the afternoon dialogue, supported by AFN staff, the facilitator and myself.

In making the logistical arrangements and design decisions, having morning and afternoon agendas appeared to make sense. This would allow the design team to familiarize First Nations participants with the dialogue process and to review the hoped for objectives in the afternoon session. Given that meetings between First Nations and Federal representatives commonly take the more adversarial form of negotiation, the design team felt it was important to discourage this mindset, hopefully reorienting the afternoon's exchange towards broader issues around the current First Nations – Federal environmental relationship and what changes might be helpful in achieving First Nations and/or mutual objectives. In retrospect, however, the importance of providing training to all participants in the dialogue approach became abundantly clear. Repeated questions arose in both the morning and afternoon regarding what the purpose of this dialogue session really was. A joint training period might have helped to reorient interaction away

from the more familiar negotiation / problem-solving mode and towards dialogue's relationship-building focus.

The number of participants and the arrangement of the room also suggested potential future improvements for dialogue design. Since it is virtually impossible to place twenty people in close enough proximity to encourage a sense of intimacy or connection between participants, the choice of smaller round tables was the best alternative. A better solution in the future might be to limit the size of the dialogue to the ten or twelve participants suggested by Saunders (Saunders, 1999). Holding the dialogue, for instance, around an oval shaped table would ensure that eye contact could be made, potentially reinforcing the sense of a "coexistence of interests" (Saunders, 1999, p. 36). A smaller group around a single table would also direct primary attention onto the interaction taking place and away from the facilitator / moderator.

### **Stage One: Deciding to Engage**

As in the convening stage of mediation, the decision by parties to engage in a sustained dialogue is a critical first step. In the Interdepartmental Dialogue experience, this stage extended from the point of first contact to well into the first dialogue session, exposing a fundamental design flaw. It also underscored the need for careful selection of participants and adequate control over the many dialogue design elements. Together with the training of participants in the "language of dialogue" already mentioned, the instrumental role the facilitator plays in the dialogue process was also evident.

Working with the AFN Environment Secretariat's Senior Policy Advisor, a letter of invitation was drafted to Assistant Deputy Ministers of Federal departments and agencies with environment programs impacting First Nations (the departments of Indian Affairs, Environment, Fisheries, Agriculture, Human Resources, Natural Resources, Parks Canada and Canadian Environmental Assessment Agency). Other departments might also have been invited (i.e. Foreign Affairs, the Canadian International Development Agency), as well as central agencies (Privy Council Office, Treasury Board, Finance). At this initial stage, the decision was made to limit participation to directly related line departments, so as not to derail the process by introducing the influence of broader Federal management imperatives, potentially creativity.

In consultation with AFN leadership, senior management and First Nations elders, participants from various First Nations communities and organizations were also selected. In no way scientific, invited First Nations participants included AFN political leadership, a political advisor, senior management and elder, two Chiefs, an accompanying Director of the Environment from one of these communities, as well as participants from the Centre for Indigenous Environmental Resources and the National Aboriginal Forestry Association. Both sets of participants received virtually identical letters of invitation to the dialogue.

### **Participant Selection and Dialogue Composition**

Some attention has been given to describing the invitation process because how participants were chosen and to whom the invitation was given had considerable impact

on eventual group composition, group dynamics and the overall effectiveness of this initial dialogue process. The eventual composition of the dialogue group also illustrated several fundamental design control issues.

From a strategic political perspective, the AFN Environment Secretariat chose to invite Federal participants at the Assistant Deputy Minister (ADM) level, not realistically expecting ADMs would attend. As anticipated, Federal participants ended up being divided between Directors and Senior Policy Advisors of environmental programs and Directors of departmental Aboriginal Affairs secretariats (one Director General, a position immediately below the ADM level, participated)<sup>19</sup>. The impact this choice of participants had on the dialogue was significant in several ways. Federal participants came to the session without a clear understanding of what a sustained dialogue entailed and as undefined representatives of their departments, without specific authority. The distribution of participants with departmental responsibilities covering environmental program or Aboriginal affairs also created a somewhat strange dynamic and an unanticipated process dilemma.

From an AFN perspective, Federal participation produced a mixture of gratitude and skepticism: gratitude that Federal departments showed enough interest to send participants at all and skepticism regarding Federal commitment to the process. First Nations participants also lacked a natural group affinity. While sharing an interest and/or a responsibility for environmental issues, participants came from political (decision-

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<sup>19</sup> The names of participants in the First Nations – Federal Interdepartmental Dialogue have been purposely omitted to maintain the integrity of what it is hoped will become a continuing process.

making), management (program development and implementation), research and advocacy spheres. Some management participants also had line responsibilities to political leaders, potentially limiting their ability to express themselves freely. As a consequence, participants may have had a general shared sense of Saunders' (Saunders, 1999) "co-existence of interests" and "patterns of interaction", but likely did not consciously come to the dialogue with the goal of building a "sustainable problem-solving relationship" (pp. 36-41).

The design team's lack of control over the dialogue's composition generated a number of valuable design questions from participants, to be answered in prior to subsequent sessions. Was it intended to be a program-level working group, interested in discussing environmental issues impacting First Nations? Was it a joint decision-making forum on shared First Nations – Federal environmental issues? Should federal departments send participants from their Aboriginal Affairs secretariats or their environmental programs branches? Were two separate dialogues needed? Sequentially, these questions pointed to a need to first refine the objectives of the dialogue process, which in turn would lead to a more precise understanding of the appropriate composition of participants<sup>20</sup>. Finally, once participants were identified and invited, joint training in the dialogue method to all participants was needed, to differentiate it from other forms of conflict management and allow participants to buy-into the objectives they had had an opportunity to define, establishing their own agenda.

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<sup>20</sup> To this extent, composition of the group is a conscious attempt to accentuate the salience of sub-group identity and cohesion (Gurr, 1999). Once the objective of the dialogue was more clearly defined, participants could then be invited to attend as interested role-specific individuals and given a more detailed explanation of the sustained dialogue process.

Also clearly evident were underlying doubts and suspicions about initiating a process of this kind. First Nations participants in the morning reported past experiences with similar processes<sup>21</sup>, which were terminated once federal participants (or their superiors) perceived that the process no longer served their own interests. Rather than displaying what Saunders refers to as, “limits on behavior” (Saunders, 1999, p. 40), the development of rules of conduct and cultural sensitivities, in previous experiences Federal participation was seen as very much contingent on control of the process and the pursuit of a Federal agenda. Jumping over similar pitfalls by avoiding a results-based, problem-solving approach seemed to confirm the choice of a sustained dialogue as the optimal process.

## **Facilitation**

Of all the design elements analyzed, facilitation stands out as the most important. The choice and requisite attributes of the dialogue facilitator are discussed below. Because of the overarching role played by the facilitator in guiding the pace and direction of the dialogue once engaged, the subsequent analysis of the group and conflict dynamics is also structured within the facilitator’s interventions and participants’ reaction to them. This lead to a number of observations and recommendations.

Deciding on an appropriate facilitator, or moderator in Saunders’ terminology (1999), for a sustained dialogue session posed several challenges. Saunders recommends a long list of attributes for a prospective moderator (Saunders, 1999). To summarize the knowledge

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<sup>21</sup> A similar experience at joint First Nations – Federal problem-solving, the Buffalo Point Process, was described as a “disaster” by one of the participants.



and skills-base of a potential dialogue facilitator these attributes have been categorized into the following areas:

- i) **Organizational** – able to design agendas and keep objectives in sight;
- ii) **Situational** – able to encourage the sustained dialogue process without taking sides;
- iii) **Topical** – able to contribute to content-specific exchanges with interest and credibility;
- iv) **Relational** – able to relate to the perspectives and worldviews being expressed in a culturally relevant manner;
- v) **Temporal** – able to devote the time needed to sustain the dialogue process.

The Environment Secretariat chose to retain an Aboriginal facilitator for the dialogue session, which the AFN had had good previous experience with. The facilitator was then actively brought into the organization of the dialogue session.

Choosing an Aboriginal facilitator had many advantages. The facilitator belonged to the broad communal grouping of First Nations people in Canada, and therefore was considered to be more easily accepted and credible. Active participation by the First Nations participants was considered essential to initiating and sustaining the process and it was perceived that an Aboriginal facilitator could better encourage this participation. The choice of facilitator also clearly signaled the leadership taken in engaging this process. The decision to employ an Aboriginal facilitator was therefore strategic. It was a direct attempt at balancing the relative power differential between First Nations and federal participants. It set the tone for the dialogue, one in which federal participants would be expected to show a willingness to engage in a process not controlled by them, with a format and objectives that did not map neatly to departmental problem-solving or

policy development. In this sense, the choice of facilitator was intended to be overtly, if only mildly, threatening to the federal participants' security, authority and identity (Gurr, 1999).

Complicating an assessment of the facilitator / moderator's role in this initial sustained dialogue process is the number of factors which need to be considered. An array of design decisions and facilitator attributes are relevant (group composition, room organization, the facilitator's ethnicity and gender, process and topic knowledge, facilitation skills and commitment). Recognizing that a power differential existed in the First Nations – Federal relationship it also appeared worthwhile to try and balance this dynamic. In retrospect, however, various options may have been available which would not have placed as great a burden on the facilitator / moderator or compromised her perceived impartiality.

To stimulate the dialogue process, all of the questions asked by the facilitator went to the mutual incentives for First Nations and the federal government to build a collaborative relationship. Later questions tried to determine how this relationship would fit into existing patterns of interaction between First Nations, Federal departments and other stakeholders. These dialogue questions were useful in engaging the parties (Stage One), building in the group a sense of shared purpose, "a co-existence of interests and needs that lead to interdependence" (Saunders, 1999, p. 36). But perhaps missing from this initial exchange was a thorough understanding of the "identity of the parties" (Saunders, 1999, p. 35). Whereas Saunders suggests that both of these elements, as well as the

others four listed at the beginning of this chapter, will form part of all relationships, in varying combinations, recognition of the identity of the parties, especially an acceptance of First Nations identity, appears to be key point of focus not adequately explored in this or other First Nations – Federal forums (Saunders, 1999).

There is a dilemma. The decision by the design team and facilitator to guide participants into consideration of mutual incentives for coordinated action might understandably have been driven by a need to justify the purpose of the session in order to gain sufficient buy-in by Federal participants to fund future dialogues. But in doing so, this initial dialogue may have skipped an essential first step: building a relationship among participants, before moving on to the First Nations – Federal relationship in general (Saunders, 1999). Despite the facilitator's organizational, situational, topical, relational and temporal abilities, dialogue design was again caught in a chronic conflict of interests, strongly influenced by the control of funding.

### **Group and Conflict Dynamics**

Just how important the issue of identity is becomes apparent in an analysis of the dialogue's group and conflict dynamics. Using the ice-breaking device of having First Nations and Federal participants introduce each other to the group, the facilitator started the process of building personal, albeit at this stage superficial, connections. On the facilitator's advice the group also agreed collectively to speak as individuals, recognizing their responsibilities to their respective organizations and departments, but not as organizational or departmental representatives. This was considered vital to allow

individual and group creativity and avoid self-censorship (i.e. comments based only on a department's ability to deliver program funding). The group chose to place reasonable limits on the scope of the dialogue, agreeing to not to explore legal and constitutional issues or responsibilities outside of the departments present. This setting of ground rules appeared to increase the participants', especially the Federal participants, comfort with the dialogue process. In theory, responsibility to group identities were replaced by responsibility to an individual identity (Saunders, 1999).

Yet one of the difficulties facing the facilitator was encouraging a consistent suspension of expectations and assumptions by participants and a commitment to interaction on an individual basis. Rothman's "antagonism" phase was evident early on, one participant making reference to the lip service given to First Nations participation in the decision-making process without commensurate departmental action (Rothman, 1997, p. 19). The dialogue process was then offered as a mechanism, Rothman's "invention" phase, to support future action and discussions at the political level (Rothman, 1997, p. 19). At least in this initial attempt at dialogue participants naturally chose to align themselves with their group identities and the conflicts reinforcing present in the inter-group relationship. In Rothman's analysis, this might have been due to the group having not yet reached the "resonance" phase of the ARIA process, an identification and sharing of the identity needs of the parties (Rothman, 1997, p. 19).

Supporting this analysis was reaction to a question by the facilitator as to whether First Nations should be considered apart from or part of mainstream environmental efforts

being pursued by the Federal government. The answers given and the questions asked underlined the ambiguity of objectives participants sensed, pointing to the potential need for two types of dialogue process, one policy-based, and the other political. The group's unwillingness to answer the question directly also may have exposed the unease of First Nations participants to define themselves and their environmental principles and activities in terms of a Federal agenda. In answering the refocused question of what the dialogue was all about, one of the First Nations participants offered that it was part of a remediation process, a restoration and healing that included both the land and the First Nations people. But highlighting the different orientations of the two identity groups, was a comment made by one of the Federal participants. He observed that, "money chases good ideas, bad ideas chase money"<sup>22</sup>. From his perspective, therefore, the dialogue process should be a step in building an agenda of good ideas, which could be supported by funding, to encourage inclusiveness, develop "socio-environmental" thinking and build on existing relationships. As with earlier descriptions of the differences in interpretations of the concept of sustainable development between First Nations and the Federal government, this comment exemplified the divide in group identity needs: an unconscious reinforcement of Federal control over financial resources, but a commonality of interest in renewing or enhancing the First Nations – Federal relationship.

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<sup>22</sup> Quoted directly from one of the Federal participants, contained in notes taken during the First Nations – Federal Dialogue on the Environment, March 22, 2001.

## **Stage Two: Mapping and Naming Problems and Relationships**

With this exchange, the participants had moved from Stage One (Deciding to Engage) and were now bouncing between Stage Two - Mapping and Naming Problems and Relationships and Stage Three - Probing Problems and Relationships to Choose a Direction) (Saunders, 1999). Initial suspicions and questions about objectives, gradually were being replaced by expressions of common purpose and an identification of problems. When the group reconvened after smaller breakout interactions, the dialogue answered one of the facilitator's earlier questions by confirming better coordination between the parties was needed. Some of the Federal participants lamented the environmental "silos" which had been created through the Federal fiscal envelope system. There was an expressed need to hook these silos back together again. A First Nations participant built on this point, commenting that jurisdictional conflicts limit open dialogue of how improved coordination could be achieved. He advocated a triangular environmental conceptualization that required spiritual, personal/social and economic dimensions be considered in policy and decision-making.

The clear implication of this comment was that coordination meant not only First Nations participation in the Federal policy development process, but also the incorporation of First Nations thinking and identity into this relationship. The reaction of some of the Federal participants to these statements, however, may have indicated the limits of coordination and relationship possible in this first dialogue session. The exchange moved quickly to the safer and more familiar ground of developing a terms of reference for the dialogue process, one participant suggesting that this dialogue could assist in the

development of a process of consultation that the Federal government could use in engaging First Nations more effectively<sup>23</sup>.

This specific reference to appropriate “consultation” with versus full “participation” by First Nations in the policy and decision-making process is important beyond design of subsequent dialogues because it goes directly to potential interest in changing or expanding the relationship between First Nations and the Federal government. One view expressed was that First Nations are but one stakeholder among many. The other end of the spectrum was that First Nations must be participants at the earliest stages in the development of Federal policies and programs affecting their communities. A participant described current methods of consultations as one in which First Nations would be lucky to be asked to comment on final drafts of Federal environmental policy or legislation, with no assurance that their comments would result in changes recommended. Thus, the dialogue process was effective in surfacing the resentment, misunderstanding and conflict inherent in the First Nations – Federal relationship, with participants actively engaged in mapping the dimensions of their problems and relationship (Saunders, 1999). It also demonstrated the limits of progress that could be made in a single session.

### **Problem-solving, Not Dialogue**

This is not to say that this pilot First Nations – Federal Interdepartmental Dialogue did not generate a full range of ideas and options. As mentioned, much of the three hours

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<sup>23</sup> During the dialogue, this shift away from describing a more participatory, inclusive relationship between First Nations and Federal officials in the policy and decision-making process was hardly apparent. Maintenance of the existing power relationship has appeared clearer in review of field notes taken during this session and therefore may be a question of my own interpretation of events and group dynamics.

was spent in a collaborative problem-solving mode. Development of a compendium of First Nations – Federal environmental programs and initiatives was discussed. Methods to improve information sharing were exchanged. Capacity-building, public education, conflict management tools and concepts were explored. All of this interaction, as Kelman predicted, contributed to some degree in building a collaborative relationship between the participants and a deeper understanding of perspectives (as cited in Fisher, 1997). But the question remains in designing future dialogues whether this relationship would be better built on an understanding of fundamental elements of group identity. Granted, the holistic First Nations worldview of the environment was mentioned often as an appropriate basis for policy-making. The benefit of pooling resources was also a common theme. Nevertheless it would be difficult to interpret these comments as moving towards shared recognition of cultural assumptions and stereotypes and the eventual goal of a “sustainable problem-solving relationship” (Saunders, 1999, p. 42). More focused communications are needed, reflecting the incremental, relationship-centred nature of a continuing dialogue.

### **Dialogue Funding**

Not unanticipated, the conclusion of the dialogue session faltered on the issue of funding. Dialogue participants having been encouraged to contribute their perspectives, ideas and time freely as individuals, were now asked to commit themselves not only to a process, but also to seeking funding needed to sustain it. Whatever success the facilitator had had in balancing power differentials in the group, these differentials reappeared immediately. With every good intention, Federal participants almost unconsciously expressed a



mainstream worldview valuing the importance of justifying expenditures with results. To continue, the dialogue process would need an agreed upon terms of reference. A short and well-defined list of two or three priorities was recommended. Tangible deliverables needed to be identified. And, in a matter of minutes, Federal participants reclaimed their dominant power in the First Nations – Federal relationship, pragmatically reorienting the process to fit Federal identity needs.

For their own part, First Nations participants also hoped for some concrete actions to be taken. But after closing remarks and a prayer, the dialogue adjourned with only tentative assurances. Participants left acknowledging the session's value in terms of relationship building and coordination, but the decision to continue to engage in the process became another question of money.

### **Concluding Observations**

As hoped, this first attempt at initiating a sustained dialogue between First Nations and Federal participants was successful in showing how a facilitated exchange of this kind could contribute overtime to building a new First Nations – Federal relationship. The decision by participants to engage in the dialogue process was made and the mapping of problems and relationships begun. Over the course of the three hour dialogue, several of the elements of relationships described by Saunders were observable, as well as a number of phases identified by other theorists.

It also, however, pointed out some critical design issues that need to be considered before subsequent dialogue sessions are undertaken. Objectives needed to be more clearly defined. The size and composition of the dialogue group requires careful examination. The pivotal role of the facilitator / moderator in influencing and guiding the dialogue suggests the choice and attributes of the facilitator must take into account the full range of design considerations. Lastly, funding for the dialogue needs to be secured prior to initiation and ideally be separated from the process itself.

Despite the many improvements that can be made, this pilot Interdepartmental Dialogue provided some valuable insights into a different approach to conflict management. In the context of the ongoing assertion of Aboriginal and treaty rights to land and resources, the last chapter offers some concluding remarks on the future of First Nations – Federal relations and some further elaboration on recommendations as to how sustained dialogue may be an effective tool in improving this relationship.

## CHAPTER V RECOMMENDATIONS AND CONCLUSIONS

...I don't want another Oka. I don't want another Ipperwash. I don't want another Burnt Church. But if you have nothing to lose, you'll do anything...

(Canadian Broadcasting Corporation, 2001, AFN National Chief Matthew Coone Come, speaking from Pikangikum, Ontario, June 7, 2001 and aired on CBC radio news June 8)<sup>24</sup>.

During the course of researching and writing this thesis, fresh new examples of conflict and accommodation in the First Nations – Federal relationship continued to surface. A referendum in British Columbia threatens the treaty-making process. The Assembly of First Nations rejects Federal self governance consultations and responds with its own ultimatum. Lawsuits over treaty claims in the west and logging rights in the east have potential consequences for Aboriginal and non-Aboriginal governments across the country. Pipeline projects and planned expansion of northern hydro generating capacity has reopened discussion of Aboriginal and treaty rights to land and resources started thirty years ago. None of this has thus far provided the triggering event that will spark the next round of communal protest, adding the name of the place in which it occurs to the growing list of confrontations that have come before it (Gurr, 1999; Azar, 1999). But the level of tension and frustration is palpable.

The analysis of the First Nations – Federal Interdepartmental Dialogue on the Environment offers some preliminary indications that there is interest and potential to

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<sup>24</sup> National Chief Coone Come was visiting the First Nation reserve in Pikangikum, site of an epidemic of suicides, and was responding to the decision by the Minister of Indian Affairs to appoint an Indian Agent to assume management of the First Nation.

change the First Nations – Federal relationship in a functionally positive manner. There is willingness to engage. As Saunders describes the elements of changing conflictual relationships, there are the requisite coexistence of interests and “interdependence. There is a process and pattern of continued interaction. Perceptions continue to evolve. Missing perhaps is a deep understanding of the identity of the parties, the development and exercise of effective power, or the acknowledgment of the limits on behavior (Saunders, 1999). The pilot First Nations – Federal Interdepartmental Dialogue showed, despite its many limitations and imperfections, that a process of this kind could make a significant difference. Based on the analysis of this session, below are some recommendations for the design of subsequent First Nations – Federal sustained dialogues.

## **Recommendations for Design of Subsequent Dialogues**

If a sustained dialogue process is going to have any impact on the First Nations – Federal relationship or in curbing an escalation of conflict, its objective must be clearly understood and differentiated from other methods of conflict management. Dialogue’s primary focus on relationship building not problem-solving must be accepted. The value of this long-term approach must be recognized.

An over-arching message from the pilot First Nations – Federal Interdepartmental Dialogue is that process design is critical. Dialogue objectives must be transparent. Participants must be selected carefully and acquire an understanding or be given thorough training in the mode of communication used in dialogue. Facilitation of the process is key, the facilitator/moderator being responsible for managing the movement of the group

through the stages of the sustained dialogue process. Development of relationships among participants must be encouraged, to allow perceptions to evolve (Saunders, 1999). Above all, assumptions and expectations must be put aside, in order to achieve the desired result of a “sustainable problem-solving relationship” (Saunders 1999, p. 42).

### **Recommendation 1      Objectives and Dialogues**

**It is recommended that the objective of the sustained dialogue be clearly defined in topic and process – specific terms.** From the experience gained in the Interdepartmental Dialogue, the objective of a subsequent *organizational / departmental* dialogue should be First Nations – Federal relationship building, within the context of environmental policy and program development. As identified by participants in the Interdepartmental Dialogue and feeding into another process, the objective of a subsequent *political* dialogue should be First Nations – Federal relationship building within the context of environmental decision-making. This may require some refinement of draft AFN Environment Action Plan, as well as Federal Sustainable Development Strategy objectives. But rather than strictly pointing to the need to disentangle technical management and political decision-making, it may suggest a re-exploration or synthesis of fundamental beliefs and values on which governance structures are based.

### **Recommendation 2      Dialogue Composition**

**It is recommended that dialogue participants be personally invited to attend, drawing from appropriate sub-groups, organizational/departmental or political.** The Interdepartmental Dialogue experience suggests that a personal commitment to

engage in a sustained dialogue is of greater importance than organizational commitment. Dialogue composition cannot be left to chance and should be carefully considered by the design team. Group dynamics it has been observed are not served by mixing individual participants with management versus political responsibilities. Gurr's notions of the salience of group identity and group cohesion, in precipitating an escalation of conflict, apply equally well to its management (Gurr, 1999). Responding to a concern over potential "ghettoization" of First Nations environmental issues within Federal Aboriginal secretariats, building the First Nations – Federal relationship appears better accomplished by participants with policy-specific knowledge.

### **Recommendation 3      Logistics and Agenda Setting**

**It is recommended that sustained dialogues be held on neutral territory. It is also recommended that agendas for these sessions should be set collectively, participation in the dialogue being limited to a maximum of 10-12 people. Balancing the inherent differential in power between First Nations and Federal participants is made that much more difficult if dialogues take place within a Federal departmental boardroom. The meeting room of a public policy development organization, a hotel conference room or an executive retreat would be preferable. Ideally, the location of dialogue should allow all participants to sit around one table, on one level; First Nations and Federal participants intermixed. The dynamics of the Interdepartmental Dialogue pilot suffered from having too many participants, too many tables, and an orientation towards a standing facilitator and a bank of flipcharts. To encourage dialogue and relationship building, all participants must be able to make eye contact with each other as**

a single identity group. With respect to agenda setting, in subsequent dialogues, it is critical that all participants play a part in determining the direction the dialogue will take. Through this participation, the facilitator gains authority to manage the process towards the group's expressed goal.

#### **Recommendation 4      Dialogue Facilitation**

**It is recommended that the Facilitator / Moderator of subsequent First Nations – Federal sustained dialogues embody the organizational, situational, topical, relational and temporal attributes described earlier. It is also recommended that participants in the dialogue expressly support the choice of Facilitator / Moderator.** The central role played by the facilitator in designing, guiding and managing the dialogue process is obvious from the analysis above. What should also be obvious are the dangers of using the choice of facilitator as a balancing agent in the dialogue on behalf of one of the participating sub-groups. This does not imply the undesirability of facilitators with an ethnic background from one of the sub-group's or the other. Ethnicity may play a vital role in identifying with the relationship of the parties and the issues in conflict. However, it would be valuable for participants to be given the opportunity to express their support for the choice of facilitator. By doing so, the facilitator's role and personal legitimacy in the process are strengthened.

#### **Recommendation 5      Process and Group Dynamics**

**It is recommended that special efforts be made in the design and facilitation of subsequent sustained dialogues to ensure the process retains a long-term**

**relationship building focus, not one geared towards short-term results and deliverables.** What differentiates sustained dialogue from other conflict management approaches is its singular attention to the relationship building process. As was seen, in the Interdepartmental Dialogue pilot, participants, both First Nations and Federal, were more accustomed to a negotiation-style problem-solving format of interaction. Yet as is evidenced by First Nations – Federal negotiations over recognition of rights to land and natural resources, as well as the Buffalo Point Process experience, a focus on issue-specific results and dispute settlement has been hampered by the lack of consideration of the principles and worldviews that underlie the relationship. If a sustained dialogue process is circumscribed by Federal funding criteria into producing deliverables in the short-term, the opportunity to pursue mutual First Nations – Federal objectives on the environment has been lost. Training in the sustained dialogue methodology for both First Nations and Federal participants, at management and political levels, may help to explain the long-term benefits of this approach.

### **Recommendation 6      Funding a Sustained Dialogue Process**

**It is recommended that the Federal government allocate adequate annual funding to support First Nations – Federal Interdepartmental Dialogue processes.** Worth recalling is that the Interdepartmental Dialogue pilot was premised on identified mutual objectives of the Assembly of First Nations and the Department of Indian Affairs, each supporting the creation of an interdepartmental committee with First Nations participation. The AFN took the initiative to implement this mutual objective through a sustained dialogue process, to which eight Federal departments responded by sending



participants. Given the specific and general mutual incentives for sustaining this dialogue process (i.e. better coordination of programming and policy development / better communications, relationship building and decision-making), it only makes sense to allocate the necessary financial resources. As has been suggested, learning from the experience of the first Interdepartmental Dialogue, it may be advisable for the AFN and Department of Indian Affairs to refine their objectives to allow for dialogue processes operating at both the organizational/departmental and the political level. Recognizing as Fisher has that funding interactive conflict resolution approaches of this kind in Canada has been extremely challenging, a risk management assessment of not renewing the First Nations – Federal relationship may provide sufficient short-term deliverables (Fisher, 1997).

A comment by one of the First Nations' participants summed it up well: a benefit of sustained dialogue is it would begin the process of building a First Nations – Federal interdepartmental memory, a mutual sense of accountability. The question was asked, "are actions based on incentives usually short-term and based on potential liability instead of long-term benefits"? The answer might be, not if the incentives are mutual.

## **Conclusions**

This thesis began with a quote from the Minister of Indian Affairs stating the Federal government's commitment to resolve broader Aboriginal issues through dialogue and negotiation. It has explained the methodology used in this major project and detailed the role that interactive conflict resolution methods such as sustained dialogue could play in

the renewal of the First Nations – Federal relationship. Through an examination of the deep-rooted conflict in this relationship, historically and in the present context, it has developed a proposed a First Nations political strategy on the environment, designed to renew this relationship, based on mutual incentives and accountability. The concept of sustainable development has been offered as a means of bridging the gap between holistic First Nations and mainstream worldviews. Analysis of a pilot sustained dialogue process has been undertaken to confirm this as a viable approach and methodology to rebuilding the First Nations – Federal relationship. The differences between dialogue and negotiation have been noted. If there is one lesson to be taken from this project it is that conflicts over identity cannot be resolved by mediation or negotiation alone.

Burton's impressions that mediation, negotiation or arbitration do not adequately address the underlying identity-based needs of the parties appears to hold true in the First Nations – Federal relationship (Burton, 1990). As was shown, Gurr's model of "Communal Mobilization for Political Action" applies well to patterns of group identity, cohesion and communal protest which occurred in the Burnt Church confrontation (Gurr, 1999). Azar's "triggering events" in protracted social conflict are equally observable in Oka, Ipperwash and Gustafsen Lake. Northrup's four stages of threat, distortion, rigidification, and collusion continue to play themselves out in repeated First Nations – Federal disputes (Northrup, 1989). The deep-rooted, protracted nature of the resident conflict in this relationship hopefully is not in question. The conflict remains seemingly intractable because the identity-based needs of the parties have not been met (Rothman, 1997).

Saunders's sustained dialogue methodology has been explored because it hopes to provide a long-term approach focused specifically on addressing the identity-based needs of First Nations and the Federal government through examination of the fundamental principles on which their relationship is based. A pilot First Nations – Federal Interdepartmental Dialogue on the Environment was chosen for analysis because conceptualizations of land and resources are at the core of this collision of worldviews. A new First Nations – Federal relationship on the environment, it is hoped, will impact the broader escalation of conflict over assertion and recognition of Aboriginal and treaty rights.

As mentioned, funding remains one of the main stumbling blocks towards initiating processes such as sustained dialogue that could contribute to realization of this new relationship and a de-escalation of conflict. Control of funding also perpetuates differentials in power that make a new more functional relationship impossible to achieve. Despite mutual First Nations and Federal incentives for collaboration, and an expressed interest in the creation of systems of mutual accountability, this goal remains elusive. But as First Nations and the Federal government continue to independently work towards their own conceptions of sustainability, through sustained dialogue it may be discovered that their conceptions are not mutually exclusive after all. It just makes sense.

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