

**Report Submitted by the NGO  
Aboriginal Legal Services of Toronto  
to the  
United Nations Committee on the  
Elimination of Racial Discrimination  
(CERD)**

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## ***Executive Summary***

Canada and its provinces have failed to comply with the Convention as it applies to Aboriginal Peoples in Canada. This failure was not acknowledged in the thirteenth and fourteenth reports submitted by Canada under the terms of the International Convention on the Elimination of All Forms of Racial Discrimination.

Aboriginal Legal Services of Toronto (ALST) is a unique organization that serves the legal needs of Urban Aboriginal Peoples in the City of Toronto, and advances the interests of Urban Aboriginal Peoples across Canada. ALST makes the following submissions in response to Canada's reports, offering an Indigenous perspective on where Canada continues to fail under the terms of the Convention.

In spite of its responsibilities and obligations as a signatory nation state under the Convention, Canada continues to fall far short in addressing racial discrimination against Aboriginal Peoples in Canada. The Royal Commission on Aboriginal Peoples in Canada published its 4,000-page report in 1996, after five years of intensive study of the economic, social and cultural status of Aboriginal Peoples in Canada, and the relationship between Aboriginal Peoples and other Canadians. The Report issued some 400 recommendations offering practical solutions to addressing the well-documented realities of racism still faced by Canada's First Peoples. Today, over five years since the first publication of the Report, Canada has failed to implement the vast majority of the recommendations and continues with its legislative and policy agendas that deny the inherent rights of Aboriginal Peoples.

The Parliament of Canada has not only maintained the very problematic *Indian Act* which controls Aboriginal Peoples in Canada, but has proposed a new *First Nations Governance Act* which increases governmental control over, and further undermines the rights of, Aboriginal Peoples. The Government of Canada continues to assert its authority to define who are "Indians", maintain the reserve system (relegating Aboriginal Peoples to reserve lands across Canada), impose foreign systems of government on reserves, control ownership of property on reserve, provide substandard health care and housing, and limit economic and social development within First Nations communities.

The assimilation agenda which drove Canadian policy with regard to Aboriginal Peoples for the last two centuries continues to be felt this day, whether through the *Indian Act* and proposed *First Nations Governance Act* which seek to legislatively eliminate "Indians" and therefore eliminate the "Indian problem", or through the ongoing legacy of the atrocities that were visited upon Aboriginal Peoples for generations through residential schooling and forced adoption of Aboriginal Peoples out of their homes, their communities, their culture and traditions. Aboriginal Peoples in Canada are over-incarcerated in the criminal justice system, are over-policed and suffer from anti-Aboriginal police-violence, suffer disproportionately high infant mortality rates, youth suicide rates, and homelessness.

It is clear that the agenda of Canada with respect to Aboriginal Peoples is not working, nor will it until Canada begins to act with integrity and respect for Aboriginal Peoples, respect the spirit and content of the International Convention on the Elimination of All Forms of Racial Discrimination, and implement the hundreds of recommendations that its own Royal Commission on Aboriginal Peoples have identified as solutions to healing the relationship between Aboriginal Peoples and the rest of Canada.

## ***Issues and Questions***

### **Questions for Canada:**

Issue 1: The Royal Commission on Aboriginal Peoples issued its five volume report to the Federal government in 1996, after a five year intensive study, meeting 100 times, having 178 days of hearings, recording 76,000 pages of transcripts, generating 356 research studies. The Report contains over 400 recommendations

Question: Which, if any, of the Recommendations has the Federal government implemented? What is the Federal government's current plan and future plan for implementing the Royal Commission Report?

Issue 2: The Royal Commission on Aboriginal Peoples held that the "historical assimilation goals will have been reached" and that there will no longer be any "Indians" as a result of the Indian Act's second-generation cut-off rule.

Question: Given the numerous court challenges to the *Indian Act* and the second generation cut off rule since the inception of Bill C-31 in 1985, what action does the Federal government of Canada propose to take to ensure that Aboriginal people and their culture are not erased from the face of the Canadian tapestry?

Issue 3: The Royal Commission on Aboriginal Peoples found that the urban Aboriginal population increased by 55% between 1981 and 1991 and it was estimated to grow by 43% by the year 2016.

Question: What steps, if any, has the Federal government taken to ensure that its present and future fiduciary responsibilities are met to this ever-growing Urban Aboriginal population?

Issue 4: The Federal Government acknowledges on page 8 of its Report to CERD that Aboriginal Peoples are over-represented in the Canadian criminal justice system yet the Government has refused to acknowledge the reality of over-incarceration.

Question: How will the Government of Canada act in good faith to reduce and eliminate the powerful contributing factors to the over-incarceration of Aboriginal Peoples – factors such as unemployment, poor health, physical and mental health issues, alcohol, and drug and solvent abuse?

Issue 5: The effects of the Government of Canada's long standing assimilation policy continue to today with thousands upon thousands of Aboriginal Peoples across Canada suffering the legacy of residential schooling and forced adoption – both of which removed Aboriginal children from their communities, culture and tradition in attempts to assimilate. The numerous and varied abuses and losses suffered by Aboriginal children in the name of assimilation are well documented. Many are attempting to find redress through the courts – be that through lawsuits against the Federal Government and the churches for abuse in

residential schools, or through suits against the government seeking disclosure of adoption records to enable claimants to find their families and home communities. Government consistently opposes these efforts for redress, and we understand that the litigation strategy implemented by the Government is to delay in the hopes that the claims will disappear.

Question: What steps is the Government of Canada taking to ensure that Aboriginal Peoples bringing forward claims against the government are treated with fairness and respect? When will the Government apologize for the atrocities visited upon Aboriginal children? And when will it move together with Aboriginal Peoples to heal the legacy of these atrocities?

Issue 6: Since the 1970's, the Government of Canada has consistently attempted to off-load its responsibilities relating to Aboriginal Peoples, particularly in the areas of education, health, housing, land and natural resources.

Question: How does the Government of Canada justify off-loading its fiduciary responsibilities to Aboriginal Peoples to the provinces and municipalities? What measures is the Government taking to ensure the provinces and municipalities are properly attending to the fiduciary relationship to Aboriginal Peoples? How and what financial resources is the government providing to provincial and municipal governments to attend adequately and properly to serve Aboriginal Peoples needs?

#### **Questions for Canada and Ontario:**

Issue 7: Both the governments of Canada and of Ontario refer to funding test case litigation – Ontario referring to the funding of the African Canadian Legal Clinic and Canada referring to the Court Challenges Program.

Question: Why is there no funding from the Canadian government, and inadequate funding from the Ontario government to support Aboriginal Rights litigation? What do both levels of government intend to do to ensure that funding is accessible to Aboriginal Peoples bringing forward test case litigation in support of Aboriginal rights?

Issue 8: Both the federal and provincial human rights legislation and commissions remain largely inaccessible to Aboriginal Peoples in Ontario.

Question: What steps are being taken by the governments of Canada and Ontario to ensure that human rights legislation and the mechanisms in place to enforce are more accessible to Aboriginal Peoples and effective to the concerns of Aboriginal Peoples?

Issue 9: Reports of police violence against Aboriginal Peoples and deaths of Aboriginal people in the custody of police are far too frequent in both federal and provincial jurisdictions. The Government of Ontario continues to oppose an inquiry in to the police killing of Aboriginal rights protestor, Dudley George, who was found to have been killed by an Ontario Provincial Police officer while peacefully protecting Aboriginal lands at "Camp Ipperwash." More recently,

witnesses report seeing an Aboriginal man viciously beaten by Toronto City Police Officers – ironically this report of anti-Aboriginal police violence took place on June 21<sup>st</sup> which was declared by the Government of Canada in 1996 as National Aboriginal Day.

Question: What steps is the Government of Ontario taking to address the completely ineffective police complaint process in Ontario? What are both the governments of Canada and Ontario doing to address the issue of Aboriginal deaths in custody?

Issue 10: Report after report has identified a serious crisis of homelessness within urban centres, with a disproportionate representation of Aboriginal Peoples remaining under-housed or homeless.

Question: what are the governments of Canada and Ontario doing to address the crisis that exists for Aboriginal Peoples across this country due to the lack of adequate and affordable housing, and the growing epidemic of homelessness?

## **THANKSGIVING ADDRESS**

We give thanks to the Creator who guides us in our work and give us clear minds and strong hearts to face the challenges of being Aboriginal in a world that is very hurtful and unsafe to live in. We give thanks to all the animals, plants, and all the elements of the universe and beyond for all they give to us to live. We give thanks to our traditional teachers and spiritual leaders and to our brothers and sisters who teach us through their pain in prisons, to the children in welfare custody and to our houseless family on the streets. We acknowledge the spirit and support of our clans in our deliberations while writing this report. We give thanks for the dedication and commitment for the workers at Aboriginal Legal Services of Toronto, who work with our people on the streets, in prisons, courts, and in the community in general. We give thanks to you the Commissioners of the United Nations for the opportunity of delivering this Shadow Report. Chi-Meegwetch – A very big thanksgiving.

## **PART I - INTRODUCTION**

This report is in response to the combined thirteenth and fourteenth reports submitted by Canada under the terms of the International Convention on the Elimination of All Forms of Racial Discrimination. This report speaks about the painful experiences of urban Aboriginal Peoples in Canada and it speaks about the hopes and aspirations of urban Aboriginal Peoples in Canada for the future. According to William Commandant, Elder from the Algonquian Nation and keeper of the sacred wampum belts, “we need this old knowledge in our teachings to get through this new age”. This report will provide a general introduction of past and present issues that affect urban Aboriginal Peoples in Toronto. A full review of these issues would include a detailed account of the activities currently underway in Aboriginal communities toward self-government. As well, a full review of other issues outside of the purview of this report would include and require the same process.

This report uses the words "Indigenous" and "Aboriginal" interchangeably. "Aboriginal" is used in Canada to include Indians, Métis and Inuit as defined by the *Constitution Act*, 1982. "Indigenous" is used in international treaties and is used in this paper in reference to indigenous First Peoples communities, worldwide. The Canadian Federal *Indian Act* unilaterally defines an “Indian” as a person who, pursuant to the *Indian Act*, is registered as an Indian, or is entitled to be registered as an Indian, and once registered is referred to as a status Indian.

The perspectives presented in this report are based on countless reports, publications, and our experience as service providers, as well as our Elders’ teachings. The opinions expressed in this report are those of Aboriginal Legal Services of Toronto (ALST). With a view to keeping this report focused on the Articles to the Convention, each Article will be highlighted and followed with ALST’s commentary to Canada’s report submitted in accordance with the Convention. While ALST could comment on virtually all aspects of the Canadian reports under the terms of the Convention, these submissions are limited to several key areas that are directly within ALST’s mandate.

## **Aboriginal Legal Services of Toronto**

Aboriginal Legal Services of Toronto is a unique organization, which serves the legal needs of Urban Aboriginal Peoples in the City of Toronto and advances the interests of Urban Aboriginal Peoples across Canada. The Aboriginal Community in Toronto is estimated to number between 60,000 and 100,000 people - the largest Urban Aboriginal population in Canada. The community includes status and non-status Indians, Métis and Inuit. ALST's vision is to support and advocate for the Aboriginal community to gain control over the legal and justice issues that affect them. The challenges and issues that urban Aboriginal people face are different than those faced by Aboriginal people on reserve and in rural communities.

Many Aboriginal people in Toronto have come to Toronto from other parts of Canada for various reasons, including family commitments, employment opportunities, health services, and education. Aboriginal Legal Services of Toronto frequently deals with the First Nations communities from which Toronto Aboriginal community members have migrated, as well as other First Nations, thereby making the work of Aboriginal Legal Services "international" in scope.

The Royal Commission on Aboriginal Peoples (RCAP) (Government of Canada, 1996) identified racism as one of the "most difficult aspects of urban life for Aboriginal People". Racism contributes to, or is at the root of the legal needs of urban Aboriginal Peoples and accordingly, Aboriginal Legal Services of Toronto works to combat all forms of racism faced by urban Aboriginal peoples. This guiding principle of anti-racism ensures that the work of ALST relates directly to the International Convention on the Elimination of All Forms of Racial Discrimination.

Aboriginal Legal Services of Toronto is a multi-service legal agency, which delivers three key programs: the Community Legal Clinic, the Community Council, and the Aboriginal Court Workers program. All three programs increase the level of awareness about the scourges of racism and racial discrimination against Aboriginal Peoples, generally, and urban Aboriginal Peoples, specifically.

The programs are outlined below with commentary as to how they relate to the International Convention on the Elimination of All Forms of Racial Discrimination. Virtually all of the work that Aboriginal Legal Services of Toronto does relates directly to the Convention.

### **The Community Legal Clinic**

The Community Legal Clinic at Aboriginal Legal Services of Toronto, made up of only three lawyers, provides free legal assistance to low-income Aboriginal people living in the City of Toronto. The clinic provides legal representation and summary information in a variety of areas of law including: housing problems and tenants rights; social assistance; *Indian Act* matters; Canada pension matters; employment insurance; criminal injuries compensation; and police complaints. In addition, the clinic practices in the area of Human Rights, assisting clients with human rights complaints both provincially and federally. A number of the human rights matters that the clinic has carriage of deal with complaints of individuals with their First Nations. These complaints that often have their roots in the legislated system imposed by the federal government on Aboriginal Peoples which is designed to create adversarial relations between and among Aboriginal individuals and communities.

The work of the Legal Clinic illuminates the legal needs of the Toronto Aboriginal community - much of which arise as a result of racism and discrimination in the areas of

housing, employment, *Indian Act* legislation and regulations, victims of crime and over policing - and representing those community members in various arenas, directly relates to International Convention on the Elimination of All Forms of Racial Discrimination.

In addition, the clinic is also involved in test case litigation concerning matters of particular importance to Aboriginal communities on a national basis with an emphasis on Urban Aboriginal Peoples.

An example of a test case challenge occurred where the clinic intervened challenging the Canadian Government's position that an individual's Aboriginal rights were tied to residency on reserve, denying the mobility of the rights of Aboriginal Peoples. This intervention at the Supreme Court of Canada in the case of *HMQ et al v Corbiere et al*, dealt with the right of off-reserve Indians to vote in their Band Council elections. The court found that the *Indian Act* breached the *Canadian Charter of Rights and Freedoms* protection against discrimination of off-reserve Indians by not allowing them to vote in their Band Council elections and the impugned section was declared unconstitutional.

The Clinic was also involved in the Supreme Court of Canada cases of *R. v Williams*, a case which dealt with an accused Aboriginal's right to challenge potential jurors on the basis of racial bias; *R v. Gladue* and *R v. Wells*, cases dealing with the sentencing of Aboriginal accused and *R. v. Golden*, a case dealing with the police power to strip search. In all of these cases, the clinic increased the court's awareness of the systemic racism in the criminal justice system that exists against Aboriginal accused and proposed meaningful ways to combat racism.

The clinic is also currently involved in initiating a number of challenges to government legislation and practice under the *Canadian Charter of Rights and Freedoms*. The Clinic has carriage of three cases challenging section 6 of the Indian Act, the registration provisions. In addition to challenges against the *Indian Act*, ALST continues to challenge systemic racial discrimination issues within federal and provincial, as well as private institutions.

All of the above noted legal activities relate directly to the International Convention on the Elimination of All Forms of Racial Discrimination, because they increase the level of awareness in Toronto, Ontario and across Canada of the racial discrimination that has existed, and continues to exist, against Aboriginal Peoples.

## **The Community Council**

In 1992, the Community Council became the first urban Aboriginal alternative criminal justice program in Canada. To date the Council has heard almost 1,000 cases and is one of the longest-running programs of its kind. The Community Council functions as a criminal diversion program. Cases are diverted from the criminal justice system to be resolved by volunteers within the Aboriginal community. The rationale behind the Community Council project is that the Aboriginal community best knows how to effectively address the issues and needs of Aboriginal offenders.

Council members are all volunteers from the Toronto Aboriginal community. The Council utilizes the traditional Aboriginal consensus based decision-making process. Individuals appearing before the council are required to speak for themselves. The objective is for all to hear and understand the root or core issues that led to the offence. Everyone, including the accused, works together to identify and determine the necessary healing path for the offender as well as contributing to

reconciliation with the victim. Victims are invited and encouraged to participate in the hearing.

The Council has many options available to help the healing process of the people who come before it, and to help reintegrate these people into the community. Some of the options include counseling, restitution, community service, and treatment suggestions. Since this is the first program of its kind in Canada, the Community Council has served as a model for similar programs across Canada and internationally.

### **Aboriginal Criminal, Family and Youth Court Workers**

ALST also delivers criminal, family and youth court worker programs in Toronto. Aboriginal court workers work in the courts and explain legal rights and obligations to their clients. They assist Aboriginal people before the courts by securing legal counsel, finding interpreters as needed, assist with pre-sentence reports, bail hearings, and referrals. The Aboriginal criminal court workers in Toronto are an integral part of the Community Council program, since they often have first contact with Aboriginal accused eventually diverted to the Council. This critical contact contributes to the possible and eventual diversion to the Community Council.

In summary, the work of Aboriginal Legal Services of Toronto through the various programs as outlined above clearly attends to addressing racism and discrimination against Urban Aboriginal People and which directly relates to the International Convention on the Elimination of All Forms of Racial Discrimination.

## ***PART II – SUBMISSIONS***

### **ARTICLE I**

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.
3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.
4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial

groups and that they shall not be continued after the objectives for which they were taken have been achieved.

## **ARTICLE 2**

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything that tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

### **Indian Act**

The Federal government of Canada implemented the first *Indian Act* in 1876 pursuant to its authority over Indians and lands reserved for Indians set out in section 91(24) of the *Constitution Act, 1867*. The main purpose of the *Act* was to civilize, assimilate eventually eliminate Aboriginal Peoples. One hundred and twenty six years later, the *Indian Act* and the policy to assimilate and eliminate Aboriginal Peoples remains. The difference today is that that government of Canada has disguised its assimilation policies, often under the auspices of “self-government.” The government still maintains its objective of eliminating Indians through Bill C-31, which imposes a “second generation cut-off” rule to effect the elimination.

The main assimilation policy that still exists in the *Indian Act* is with respect to defining who is an Indian. The *Indian Act* has always, and continues to, define who is an

“Indian”. The Government of Canada uses its definition of who is an Indian to limit who is eligible to claim Aboriginal rights and entitlements.

The *Indian Act* of 1876 defined an Indian to be first, any male person of Indian blood reputed to belong to a particular band, second, any child of such person, and thirdly, any woman who is or was lawfully married to such person. In addition to allotting Indian-ness by way of this patriarchal system, the first *Indian Act* also stripped Indian women of their identity when they married non-Indians. Every *Indian Act* that followed contained similar provisions.

In 1985 the federal government passed Bill C-31. The impetus of the Bill was the United Nations Human Rights Committee decision of *Sandra Lovelace v. Canada* [1981]. Ms. Lovelace lost her Indian status and Band membership as a result of her marriage to a non-Indian. She brought her concerns before the United Nations Human Rights Committee that had been established pursuant to the *International Covenant on Civil and Political Rights*. The Committee, in 1981, held that section 12(1)(b) of the *Indian Act*, 1971 breached section 27 of the Covenant by not permitting Ms. Lovelace to enjoy her culture and language in her community. This international embarrassment and the 1982 Constitutional amendment, which incorporated the *Canadian Charter of Rights and Freedoms*, motivated the Canadian government to take steps to amend the *Indian Act*.

The purpose of Bill C-31 was to eliminate what was identified as two historic wrongs in Canada’s legislation regarding Indian Peoples: the discriminatory treatment based on gender, and the control by Government of membership in Indian communities. Bill C-31 however, has failed to address these wrongs, and has, as the Royal Commission of Aboriginal Peoples noted, created new forms of discrimination. One such “new form of discrimination” is the creation of two types of Indian status; section 6(1) of the *Act* that permits the passing of Indian status to one’s offspring, and section 6(2) that does not.

Section 6(2), commonly referred to as the “second-generation cut-off rule”, states that, “a person is entitled to be registered if that person is a person one of whose parents is, or if no longer living, was at the time of death entitled to be registered under **subsection (1)**” (emphasis added). If an applicant has one parent who is registered under section 6(2) of the *Act*, they are not entitled to registration. There is no provision in the *Act* for the registration of a person who has one non-Indian parent and one Indian parent registered pursuant to section 6(2).

The Federal Government’s Report of the Royal Commission on Aboriginal Peoples (RCAP Report), discussed in greater detail below, indicates that the demographic trends in Canada show that under the existing legislative scheme the number of status Indians will decline drastically and that Indians will “effectively have been assimilated for legal purposes into provincial populations.” Historical assimilation goals will have been reached, and the federal government will be relieved of its constitutional obligation of protection, as there will no longer be any legally defined “Indians” left to protect.

Many applicants for Indian registration have challenged the second generation cut-off rule found in the *Indian Act*. Several cases are presently before the courts that directly challenge section 6(2) of the *Indian Act* on the basis that it infringes section 15 of the *Charter*, (the right to be free from discrimination) and international covenants. The litigation has been slow to proceed and has faced numerous barriers erected by the Federal Department of Justice.

One such barrier to the litigation is the cost. The Department of Justice’s strategy in relation to Bill C-31 litigation is to make the cases last as long as possible and cause as

much expense to Aboriginal litigants as possible, effectively exhausting litigants' financial and emotional resources. Although the Government of Canada, as noted in its report to this Committee has established the Court Challenges Programme to fund cases, the funding is limited and does not cover the entire cost of litigation.

The federal government has also established the Indian Test Case fund to which individual litigants can apply for funding to support their litigation in relation to Aboriginal issues. Once again, access to the fund is limited to funding cases on appeal only, and the fund specifically excludes funding for any cases that challenge Bill C-31.

### **First Nation Membership**

As noted above, one of the stated purposes of Bill C-31 was to allow communities to take control of their own membership. One of the major changes to the *Indian Act* that Bill C-31 implemented was the bifurcation of one's legal recognition as an "Indian" and one's membership with an Indian Band. Prior to 1985, all registered Indians were band members. Section 10(1) of the *Indian Act*, 1985, in an attempt to foster self-government, now allows for a Band to assume control over determining its membership. If a Band has obtained control over its membership, a person who has obtained registration pursuant to section 6 of the *Indian Act*, will not necessarily also be granted Band membership. Conversely, persons with Band membership may not be recognized as an Indian by the Department of Indian and Northern Affairs. First Nations only receive federal funding for those individuals that have recognition under the Indian Act as "Indian", and as such, the government effectively continues to maintain control over First Nations' right to self-determine.

### **New Proposed Legislative Initiatives**

Much attention has been given to the most recent Government of Canada's initiatives at legislative reform in relation to Aboriginal Peoples – the *First Nations Governance Act* or Bill C-61, which was tabled in Parliament in June 2002. Further details regarding this initiative are provided later in these submissions. It is worth noting that rather than advocating for reducing the amount of control over Aboriginal Peoples lives, this new proposed legislation actually increases government control and further undermines the rights of the Aboriginal Peoples in Canada.

The *Specific Claims Resolution Act*, Bill C-60, was also introduced for its first reading to Parliament in June 2002. The *Act* reformulates how Aboriginal land claims are to be handled by the Government of Canada. The *Act* proposes the creation of a new tribunal, the Canadian Centre for the Independent Resolution of First Nations Specific Claims. Part of this new Centre will be the Commission Division that will administer funds for research, preparation and conduct of specific claims brought by First Nations; assist in the dispute resolution process regarding specific claims; and refer to the Tribunal issues of validity of compensation. This new Centre would replace the Indian Claims Commission, which currently performs some of these functions, and is an arm's length institution of the government.

The formation of this new Centre acts to centralize and bureaucratize the specific claims process in the hands of the Federal Government. The appointment of Officers and Commissioners of the Centre, and their continued employment, at the discretion of the Minister threatens to compromise the independence of the specific claims process that is currently enjoyed under the direction of the Indian Claims Commission. The reliance of the continued employment of the Officers and Commissioners, and the existence of the

Commission at all on the Federal Government is also a threat to the kinds of decisions such individuals, and indeed, the Commission as a whole may make. In turn, the level of independence and control of the Officers and Commissioners would have adverse effects on Aboriginal Peoples making claims through this process.

The existing and proposed new legislation as noted above with respect to Aboriginal Peoples in Canada continue to undermine the interests of Aboriginal Peoples, ensuring that Aboriginal Peoples economic and social interests continue to be stunted through these various legislative initiatives. The rhetoric of Government that accompanies these bills is fraught with racist stereotypes and works in direct opposition to promoting a greater understanding of Aboriginal Peoples within Canada and a healthier and respectful relationship among Aboriginal Peoples and non-Aboriginal citizens of Canada.

### **Royal Commission on Aboriginal Peoples (RCAP)**

On April 29, 1991, the Federal Parliament announced a Royal Commission on Aboriginal Peoples. The Royal Commission was established by Order-in-Council under a broad mandate. The Report of the Royal Commission was the most massive investigation ever undertaken in Canada of the Aboriginal Peoples. The Report attempts to explain how Aboriginal Peoples came to occupy such an oppressed and marginalized position in Canada and to explore the requirements of a new constitutional destiny of section 35 of the *Constitution Act, 1982*.

The Commission examined the economic, social and cultural situation of Aboriginal Peoples in Canada and considered solutions conducive to a better relationship between Aboriginal Peoples and the Canadian government, and Canadian society as a whole. The Royal Commission on Aboriginal Peoples examined the 500 years of relations between Indigenous Peoples and the newcomers in Canada. The Commission focused on four areas of federal policy and action:

- The *Indian Act*, which was and remains the legislative centerpiece of federal policy;
- *Residential schools*, through which Aboriginal children were uprooted from families and traditions, with the objective of assimilation into non-Aboriginal society;
- The *relocation* of entire Aboriginal communities in the name of development or administrative efficiency; and
- The treatment of *Aboriginal veterans* who served Canada in wartime but were the victims of governmental neglect in the peace that followed.

The aforementioned areas were selected for scrutiny by the Commission because Aboriginal Peoples have said that they were among the most unjust policies imposed on them and that those injustices, while rooted in history, have affects that continue to this day. As a result of varying degrees of internalized colonialism, Aboriginal traditional systems and roles were destroyed and displaced with systems and institutions of the dominant society. With the loss of traditional practices came a loss of identity, a sense of powerlessness and despair and vulnerability to non-Aboriginal influences.

Over five years of intensive study, the Commission had met 100 times, had 178 days of hearings, recorded 76,000 pages of transcripts, generated 356 research studies, and published four special reports on justice, land claims and extinguishment, suicide, and relocation of Inuit to the High Arctic, as well as two commentaries on self-

government. In November of 1996, the Royal Commission on Aboriginal Peoples issued its five volume Report to the federal government. The Report took about 4000 pages of text to explain the requirements of restoring justice to the relationship between Aboriginal Peoples and Canadians. To propose practical solutions to stubborn problems took over 400 recommendations. For unexplained reasons, the government has not continued publication of the Commission's Report. Ironically, after the RCAP Report identified the impact of poverty on Aboriginal Peoples across Canada, the Government has chosen to ensure the Report is only available to its citizens over the Internet.

Some commentators have been preoccupied with the allegedly prohibitive cost of implementing the recommendations of the Royal Commission on Aboriginal Peoples. The Commission, however, amply illustrates the enormous cost, fiscal and otherwise, of not acting on the recommendations immediately. In other words, failure to spend today will result in enormous loss in the future.

## **Justice**

The Royal Commission on Aboriginal Peoples in its report on justice – “Bridging the Cultural Divide” - arrived at 15 major findings and conclusions, and made 18 recommendations.

The first finding of the report was:

The Canadian criminal justice system has failed the Aboriginal Peoples of Canada - First Nations, Inuit and Métis people, on reserve and off reserve, urban and rural - in all territorial and governmental jurisdictions. The principle reason for this crushing failure is the fundamentally different world-views of Aboriginal and non-Aboriginal people with respect to such elemental issues as the substantive content of justice and the process of achieving justice.

This conclusion was endorsed by the Supreme Court of Canada in the 1999 case of *R v. Gladue*. The federal government, while acknowledging the reality of over-incarceration of Aboriginal people, has not formally accepted this finding.

In terms of the recommendations of the Report, the federal government has not adopted any of the key recommendations with regard to recognizing the right of Aboriginal Nations to establish and administer their own systems of justice pursuant to their inherent right to self-government. Most of the Commissions' recommendations fall out of that recommendation and meaningful steps forward cannot be taken without this recommendation being accepted.

The extent to which the federal government rejects this recommendation can be found in paragraph 23 of its report to this Committee, where it indicates that the goal of the government's Aboriginal justice initiative is to increase “participation by Aboriginal communities in the local administration of justice, and of reducing the representation of Aboriginal peoples in the justice system over the long term.” While participation in the local administration of justice is important, it will not, on its own, reduce the over-representation of Aboriginal people in the criminal justice system.

Other than facilitating some conferences and meetings, the federal government has not met any of the other recommendations in the report on justice.

Ontario has the third-highest rate of Aboriginal over-incarceration in provincial jails in the country (over-incarceration being measured by comparing the percentage of Aboriginal people in jail with the percentage of Aboriginal people in the province as a

whole). Ontario has never formally recognized the significant reality of Aboriginal over-incarceration in the province.

While the province does fund some Aboriginal alternative justice programs, they fund far fewer than other provinces where over-incarceration rates are similar or even lower. Ontario also does not provide any funds directly towards ALST's vital role in the *Gladue* (Aboriginal Persons) Court.

### **ARTICLE 3**

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

### **ARTICLE 4**

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

### **Federal Residential School Policy**

As stated previously, throughout the 19th century the Canadian government's policy in regard to Indians was assimilation. As one example of assimilation policy, the government created two types of residential schools for Aboriginal Peoples: boarding schools for younger children, and industrial schools for their older siblings.

Native children were forcibly removed from their parents, their homes and their communities, and forced to attend residential schools. Thousands of the Aboriginal children removed from their homes and communities were placed in the care of strangers, whose appointed duty was to separate them from their traditional cultures and to 'civilize' them in the ways of the dominant European, Christian society.

While attending these schools, many Aboriginal children were victims of extreme abuse, which is now the subject of ongoing litigation across the country. Many children were severely punished for practicing traditions or speaking traditional languages. Many children were victims of severe physical, sexual, emotional and spiritual abuse. As a result of these experiences, many of these children who are now adults have been robbed of their culture, traditions and spirituality. The impact and effect of these experiences, the affect of these experiences pervade all aspects of life and affect whole families and entire communities, from one generation to another.

Many of the current problems Aboriginal parents experience with their children stem from the experiences of Aboriginal Peoples in the Residential School system. As a consequence of these experiences, traditional positive Aboriginal parenting was lost and many Aboriginal Peoples today still feel the affects of these experiences.

It is estimated that some 10,000 Aboriginal survivors of residential schooling are engaged in litigation against the federal government and the churches that administered the schools. While the federal government has undertaken some pilot projects aimed at resolving these claims outside of the courts, the federal policy in both the informal and formal court processes has been to refuse to acknowledge the intergenerational effects of residential schooling as well as the loss of culture and language. We suspect from the information we receive regarding the lawsuits in place, that the federal government is also implementing very problematic litigation strategy across the country of delaying cases to the extreme in the hopes that litigants will abandon their claims, or die in the process of litigation. These actions by the federal government contravene the word and indeed the spirit of the Convention.

Residential School issues will be addressed further in these submissions under Article 5 of the Convention.

### **Community Relocation**

As if removing children from their homes was not extreme enough, the government unilaterally decided to relocate entire communities, often to very remote parts of the country. Government rationale varied from the need to disperse Aboriginal Peoples back to the land or to alleviate population or economic scarcity problems; the desire to centralize or to facilitate less expensive program delivery; and the intention to proceed with natural resource and other forms of economic development. While the rationales varied, all were influenced by a view that Aboriginal Peoples were unsophisticated and incapable of making their own choices. The manner of relocating Aboriginal Peoples, without any meaningful consultation or involvement or their free and informed consent, suggests that normal democratic rights and processes did not apply.

The Royal Commission on Aboriginal Peoples found that the affects of relocations are felt today in significant ways. Many thousands of Peoples were moved and their economic self-sufficiency was weakened or destroyed and their adverse health conditions were made worse. As a result of colonialism, Aboriginal Peoples were displaced physically. They were denied access to their traditional territories and in many cases forced to move to new locations selected for them by colonial authorities. They were also displaced socially and culturally. They were and still are subject to intensive missionary activity. The establishment of schools with compulsory education undermined their ability to pass on traditional values to their children, imposed male-oriented Victorian values, and attacked traditional activities such as significant dances and ceremonies. They were displaced economically and politically. They were forced by

colonial laws to abandon traditional governing structures, and processes in favour of colonial style municipal institutions.

### **Assimilation Policy**

The experience of colonialism by Aboriginal Peoples in Canada is not simply a historical fact; it is a contemporary reality.

The reserve system created under the *Indian Act* was established not to respond to the needs of Aboriginal Peoples, but to implement the federal government's policy to isolate Aboriginal Peoples from the general population. Various federal policies, including those of enfranchisement, encouraged or forced Aboriginal Peoples who left reserves to assimilate and leave behind their cultural identities and practices. Another reality of colonialism is the large-scale adoption of Aboriginal children in Canada that began in the 1960's and, as with residential school, continues to have an impact both on those who were adopted and the families that the children were taken from. Findings from the Royal Commission on Aboriginal Peoples dramatically illustrate the affects of cultural, social and economic dislocation on Aboriginal offenders. In a submission to the Royal Commission on Aboriginal Peoples from the Native Brotherhood at the Prince Albert penitentiary, it was revealed that 95% of all Aboriginal inmates had been adopted or placed in foster care at some point in their lives.

Assimilation policy is an expression of racism and genocide. It is racist to view Aboriginal Peoples as inferior and it is genocide to forcibly remove Aboriginal Peoples from their land and create obstacles to their communal development, thus destroying a Peoples. While the ultimate remedy for colonialism may be self-government, the existing system must make distinct changes if it is not to perpetuate the legacy of colonialism, including social and economic dislocation.

### **Justice**

The government of Canada is to be commended for its amendments to the *Criminal Code* with regard to sentencing, particularly the addition of section 718.2(e) of the *Criminal Code*. The strength of this section was reinforced with the decision of the Supreme Court of Canada in 1999 in *R v. Gladue* where the court directed that it be interpreted in a purposive manner.

Despite the amendments however, statistics on Aboriginal over-incarceration in 1999 showed an increase over figures in 1995. This increase occurred both in federal and provincial jails. The fact that the *Gladue* decision was not released until 1999 might mean that some reduction in over-incarceration rates might be seen in the future - however it is clear that the amendments on their own were not sufficient to halt the increasing tide of over-representation.

The amendments to the *Code* also included the creation of a new type of sentence - the conditional sentence. With a conditional sentence, an offender is given an incarceral sentence but allowed to serve that sentence in the community. If the person violates one or more of the conditions however, he or she can be returned to jail for the remaining length of the conditional sentence. Statistics to date indicate that while courts have embraced the use of conditional sentences, the incarceration rate in Canada as a whole has not decreased. This suggests that conditional sentences are not being properly used and that people who should not receive incarceral sentences at all are now receiving conditional sentences. Statistics also reveal that Aboriginal people are over-represented among those charged with violating the provisions of their conditional

sentence. It is therefore very possible that the sentencing initiatives contemplated by the amendments to the *Criminal Code*, while appearing to be significant on paper, actually will contribute to the increasing over-incarceration of Aboriginal people.

In the *Gladue* decision, the Supreme Court spoke of the need for additional information being made available to a sentencing judge to meaningfully address the provisions of s. 718.2(e). That information would include details of the life circumstances of the offender as well as sentencing alternatives and options that might be available in the community other than reliance simply on incarceration. The Court was silent however, on how that information would come before a sentencing judge - this issue is very important in terms of making the promise of the section a reality. ALST's experience in Toronto is that subsequent to the *Gladue* decision, little changed in the sentencing of Aboriginal offenders - judges were simply not getting the information they needed to take into account the provisions of s. 718.2(e), if they even know of the existence of the section.

Partly in response to this problem, ALST, in conjunction with four judges from the Old City Hall Court and others, developed the *Gladue* (Aboriginal Persons) Court. The Court - which currently sits two half-days a week, handles bail hearings and sentencing of Aboriginal people charged with a wide range of offences. In order to provide the information necessary to the Court, ALST has an employee whose sole responsibility is to write the reports contemplated in the *Gladue* decision. While the work of the Court, and in particular the *Gladue* court caseworker, have had a very positive impact on the sentencing of Aboriginal people, funding for the position comes from an Aboriginal employment and training fund and from ALST. The federal government does not contribute directly to the position at all.

## ARTICLE 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular:
  - (i) The right to freedom of movement and residence within the border of the State;
  - (ii) The right to leave any country, including one's own, and to return to one's country;
  - (iii) The right to nationality;
  - (iv) The right to marriage and choice of spouse;

- (v) The right to own property alone as well as in association with others;
  - (vi) The right to inherit;
  - (vii) The right to freedom of thought, conscience and religion;
  - (viii) The right to freedom of opinion and expression;
  - (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
- (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
  - (ii) The right to form and join trade unions;
  - (iii) The right to housing;
  - (iv) The right to public health, medical care, social security and social services;
  - (v) The right to education and training;
  - (vi) The right to equal participation in cultural activities;
- (f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

### **Article 5(A) Right To Equal Treatment Before The Tribunals And All Other Organs Administering Justice:**

#### **Courts and Tribunals**

In Canada Aboriginal Peoples were prohibited by statute from hiring lawyers to assist them with initiating any legal claim up until 1951. As such, only four decades have passed since Aboriginal Peoples have had any access to tribunals and other organs administering justice.

The access to courts and tribunals that has occurred has been limited by various factors. One such factor is that Aboriginal people have little or no trust in the foreign justice systems in place. The mistrust is well founded given the history of Aboriginal Peoples and the courts. The Federal and Provincial governments have done little in the area of civil justice reform to make courts and tribunals accessible to Aboriginal Peoples.

ALST was created as the result of a study that showed that Aboriginal Peoples were not seeking assistance from Ontario's legal aid clinics even though they had many legal needs. The Report concluded that a one-stop shop for Aboriginal Peoples was required: a clinic that could provide legal assistance in all areas of law including criminal and family law. The Ontario government funds the ALST Legal Clinic, however, does not allow the clinic to practice family or criminal law. The clinic, year after year, has requested additional funds to expand its services in all areas. These requests have been refused. As a result, Aboriginal Peoples in Toronto are left un-represented in many

areas of law and/or have no access to civil justice. The Federal government provides no funding to the Legal Clinic.

Aside from the issue that neither the Federal nor Provincial governments have met the legal service needs of Aboriginal Peoples, the process and procedures of various tribunals in and of themselves prohibit Aboriginal Peoples effective participation.

One example of a barrier for Aboriginal Peoples in courts and tribunals, and an example of unequal treatment, relates to the process of swearing in or oath affirming. Many Aboriginal people because of their history and life experiences do not wish to swear on the Bible nor do they wish to make an affirmation. Some Aboriginal people may wish to make an affirmation while holding an Eagle Feather, which holds great cultural significance and responsibilities to the Aboriginal person so affirming. While some Aboriginal clients may wish to make an affirmation holding the Eagle Feather, others may wish to “smudge” themselves and the environment in which the examination is being conducted. The “smudging” ceremony is a cleansing ceremony and represents an affirmation of honesty, truth, respect and responsibility. Unfortunately, Canadian and provincial courts and tribunals have yet to fully accept an Aboriginal person’s right to affirm using feathers, or to smudge, thereby effectively discriminating against ceremonial spiritual and judicial practices.

### **Article 5(B) The Right To Security Of The Person And Protection By The State Against Violence Or Bodily Harm, Whether Inflicted By Government Officials Or By Individual Group Or Institution...**

#### **Police Violence Against Aboriginal Peoples**

Aboriginal people continue to be victims of excessive use of force and violence by police. Examples of police violence against Aboriginal Peoples are found across Canada. There are several recent high-profile cases involving police violence. One such case deals with the recent inquiry into the practice of Saskatoon City Police in taking Aboriginal people from the city into the countryside at night, dumping them in a rural area in severe cold weather conditions. Another very important case here in Ontario is the police killing of Aboriginal activist, Dudley George, who died at the hands of the Ontario Provincial Police while peacefully defending Aboriginal lands.

ALST has filed numerous complaints against the Toronto police force alleging police misconduct, including illegal strip searches, assaults, and wrongful arrests. The *Police Services Act*, a provincial legislation, governs police officers in Toronto. The *Act* contains provisions dealing with police misconduct, criminal activity and public complaints. However, the system to deal with police misconduct has failed, largely due to the fact that under the system it is the police who investigate themselves. Officers break the law and are not held responsible for their actions, either criminally or professionally. Officers know that they are free to do as they please and that they will not be punished for their crimes. There is a code of silence over police brutality in that those men and women who choose to dishonour their oath know that their fellow officers will protect them. Every police complaint that ALST has filed since its inception has been found to be “unsubstantiated” by the Chief of Police. Officers support each other’s stories, sometimes, word for word in their notebooks. Other times, they just refuse to respond to the complaint, citing their section 7 *Charter* right to remain silent.

Officers break the law and remain employed, continue to be armed, and are protected by their colleagues. Police officers simply will not charge police officers. An example of the police abuse of power is with respect to their authority to conduct strip searches. The Toronto Police Services has implemented a policy to strip search all persons detained at the police station, regardless of their charge, age, or condition. As such, people are being strip searched for drunk driving, and for minor provincial offences such as public mischief and loitering. The Supreme Court of Canada in the case of *Ian Vincent Golden v. Her Majesty the Queen* [2001] held that a blanket policy to strip-search was unconstitutional and a breach of a persons section 8 *Charter* right to be secure against unreasonable search or seizure. Following the release of the decision, Toronto police continue to strip search each and every individual that they detain at the police station, regardless of what the Supreme Court of Canada has held.

Police clearly are above the law in the Province of Ontario and the Ontario government will continue to be in breach of this Article until they reform the *Police Services Act* and remove police oversight from the hands of the police.

A further area where both Ontario and Canada are in breach of this Article is with respect to incarcerated Aboriginal people. A review of the number of deaths of Aboriginal people while in custody is alarmingly high and disproportionate as compared to the non-Aboriginal inmate population. A number of in custody deaths have suspicious circumstances. ALST and various other Aboriginal groups and organizations will be pressuring the Federal government to call an inquiry into the rate of Aboriginal deaths in custody.

## **Article 5(c) Political Rights**

### **Inherent Right To Self-Government and Urban Aboriginal Peoples**

In its Report, the Government of Canada asserts that it is acting on the premise that the inherent right of self-government is an existing Aboriginal right within section 35 of the Constitution Act, 1982, and that negotiations concerning arrangements to give effect to the inherent right of Aboriginal self-government are ongoing. However, it is submitted that very little progress has been made with respect to Aboriginal self-government. Most First Nations communities continue to be subject to a system of band governance imposed on reserve communities by provisions of the Federal *Indian Act*. Other non-reserve Aboriginal communities receive little or no government support towards meaningful self-government initiatives. Further, as recognized by the RCAP Report, there is a pressing need to address governance issues in Canada's urban centres, particularly as the proportion of Aboriginal Peoples living off reserve and in urban centres continues to increase.

With regard to Aboriginal Peoples registered under the *Indian Act* alone, RCAP has projected that the numbers are expected to increase from the 1991 figure of 438,000 to 665,000 by 2016. RCAP further found that the urban Aboriginal population increased by 55% between 1981 and 1991 and has estimated a 43% rate of growth by the year 2016.

Despite the increase in the population of Aboriginal Peoples living off-reserve, prior to the recent decision of the Supreme Court of Canada in *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203, section 77(1) of the *Indian Act* required that First Nations people reside on their reserve in order to participate in the

governance of their Band. In *Corbiere*, the Supreme Court declared section 77(1) unconstitutional, confirming that the section discriminated by excluding off-reserve band members, contrary to the equality provision in section 15 of the *Charter of Rights and Freedoms*. The Court noted that denying off-reserve Band members the right to vote and participate in their band's governance perpetuated the historic disadvantage of off-reserve members, treated them as less worthy, and denied them substantive equality.

In the *Corbiere* case, the Government of Canada argued that the purpose of restricting the vote to those who are "ordinarily resident on the reserve" was to restrict the vote to those who have "the closest connection to the reserve community and who are "governed" by band council decisions." However, the exclusion of non-resident Band members was based on the irrational assumption that Aboriginal people living off of their reserve have no interest in or connection to their First Nation. Section 77(1) discounted the very real connection and interest that non-resident Aboriginal people have towards their Band and punished Aboriginal people for leaving their reserve. The residency requirement was based on an outdated mandate that confined Aboriginal people to reserves and forced them to assimilate if they left their reserve.

Numerous First Nation people now live off of their reserves as previously noted. This is in large part due to the historic disenfranchisement of Aboriginal Peoples through the operation of previous Indian Acts. Also, many people continue to leave their reserves to pursue education and employment opportunities and reside in other communities. Despite this, as noted by RCAP, "Territory, land and home have always been important to Aboriginal people. Those living in urban Canada are no different." Accordingly, there is a pressing need for all levels of Canadian governments to recognize the inherent right of self-determination and self-government of all Aboriginal peoples of Canada, including First Nations, Inuit and Métis, wherever they reside.

RCAP has recognized that self-government in urban areas requires a different approach than the land-based models most often associated with Aboriginal self-government. RCAP considers three models for urban Aboriginal self-government, including:

1. Reforms to existing public institutions to accommodate urban Aboriginal Peoples' aspirations for greater participation in governance where they live and work;
2. An urban Aboriginal community of interest approach, involving members with diverse Aboriginal origins, and
3. Approaches premised on the Aboriginal nation.

It is submitted that, whatever approach is taken to urban Aboriginal self-government, the Federal Government must assume some degree of responsibility for Aboriginal People in urban areas and not continue to draw lines separating Aboriginal people on reserves and Aboriginal people off-reserves and in urban areas in a discriminatory manner.

### **First Nations Governance Act – Re-Writing the Indian Act**

The *First Nations Governance Act* (Bill C-61) was introduced to Parliament in June 2002 with an inadequate consultation process that reached only a small proportion of the Aboriginal Peoples of Canada. Many national Aboriginal organizations boycotted the consultations due to the inadequate process. It is our position that, despite the representations made by the Canadian Government to the contrary, that the Bill does not truly reflect the aspirations of Aboriginal Peoples in Canada. Furthermore, there is

some question as to whether the proposed Act, which has effects on the Aboriginal and Treaty rights enshrined in s.35(1) of the *Constitution Act, 1982* is in keeping with the duty to consult where s.35(1) rights will be affected by governments, as laid out in the jurisprudence and most recently articulated by the Supreme Court of Canada in the case of *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010.

### **The Anti-Terrorist Act**

The *Anti-Terrorist Act* S.C. 2001 c.41 was passed in Canada in the wake of the September 11, 2001 terrorist attacks in the United States. The Act is intended to provide stronger measures to protect Canadians from terrorist forces. However, the Act threatens the security of Canadians themselves by making them subject to potential infringements of their rights to freedom of expression, freedom from unreasonable search and seizure, and to security of the person, as against the Government of Canada. Given the already existing of reality for Aboriginal Peoples who we submit are already over-policed within Canada, this legislation will impact detrimentally on Aboriginal Peoples across Canada.

In part, the Act defines terrorism and criminalizes activity or “conspiracy” to commit such activity that, for political purposes, has the effect of causing damage to property or stopping essential services with the effect of endangering life or causing bodily harm. It also criminalizes the financing of such activity, and provides for the seizure of property of suspected terrorist groups as well as the keeping of a registry of suspected terrorists.

It is our position that this broad characterization of terrorist activity could result in the criminalization of political protest by Aboriginal Peoples against the federal government’s policies, or against the federal government’s participation in the unlawful exploitation of Aboriginal lands and resources. Certainly, political protests in the past by Aboriginal Peoples undertaken to protect their lands and resources fall within this definition. This is an infringement of many of the rights of Aboriginal Peoples as guaranteed by the Charter of Rights and Freedoms, and this Convention, and would effectively result in the criminalization of Aboriginal Peoples in their attempts to enforce Aboriginal and Treaty rights as recognized under s.35(1) of the *Constitution Act, 1982*. The Act could also result in the seizure of Aboriginal property as well as the naming of Aboriginal political leaders as a result of this definition of terrorism.

### **Article 5(d)(i) Freedom of Movement**

The Canadian government of Canada has breached this Article by limiting the mobility of Aboriginal Peoples. Aboriginal people are not free to move from one territory to the other, from one province to the other, from one Band to the other, as upon doing so they will relinquish their Aboriginal rights, treaty rights and rights that may flow from the *Indian Act*. An individual’s rights do not move with the person. For example, Indians residing on a reserve have certain rights that Indians living off reserve do not enjoy, such as tax exemption. If an Indian wishes to maintain their tax exemption status, fishing and hunting rights, that person must remain a resident of their Band or within their treaty area. Such restrictions limit one’s freedom of movement.

### **Article 5(d)(iv) The Right To Marriage And Choice Of Spouse**

As noted above, the *Indian Act* has two categories of Indians, section 6(1) Indians and section 6(2) Indians. Aboriginal people that are registered pursuant to section 6(2) of the *Indian Act* cannot pass on their status as an Indian to their offspring unless the both parents are registered as Indians under the Act. This second-generation cut-off rule

interferes with a status Indian's choice of life partners. If one wants their children to be considered Indian, which in turn allows the child to reside on reserve, inherit land, and enjoy other rights that arise from being Aboriginal, one has to procreate with another Indian. Until this second generation cut off rule is eliminated, Canada will be in breach of this Article.

#### **Article 5(d)(v) The Right To Own Property Alone As Well As In Association With Others**

The *Indian Act* does not allow a person registered as an Indian to own property on reserve alone. Reserve lands are held by Her Majesty the Queen. Indians are only permitted to have possession of the land. Since lands are held by Her Majesty the Queen and not the individual, the individual is not able to mortgage the land or have the same enjoyment of their lands as non-Aboriginal people do.

A further breach of this Article is with respect to the division of property rules, or lack of, pursuant to the *Indian Act* on the break up of a marriage between Indian men and women. The *Indian Act* does legislate how property is to be divided when a marriage is terminated and it excludes provincial laws from applying. As such, Aboriginal women are often left without any rights to the land, or home, that they shared with their husbands. A *Charter* challenge has been launched regarding this issue, and the Canadian government is vigorously defending the provisions of the *Indian Act* that are being challenged.

#### **Article 5(d)(vi) The Right To Inherit**

The *Indian Act* limits the right to inherit. A person is only permitted to inherit the possession of reserve property if they are registered as an Indian and a Member of the Band to which the property is associated with. As a result of the second-generation cut-off rule, many children will not be able to inherit lands from their parents.

#### **Article 5(d)(vii) The Right To Freedom Of Thought, Conscience And Religion**

Please refer to other discussions regarding Residential Schools and assimilation policies.

#### **Article 5(d)(ix) The Right To Freedom Of Peaceful Assembly And Association**

The Canadian *Charter of Rights and Freedoms*, pursuant to section 2(d) guarantees the freedom of association, as does the Covenant. This freedom however is not available to many Aboriginal people as the result of the membership provisions of the *Indian Act*. As discussed above, the Government of Canada defines who is an Indian, and essentially controls Band membership. By limiting its funding to First Nations on a per registered Indian basis, it is denying Aboriginal people the right to associate with their First Nation. If First Nations are not provided with extra land bases or resources, they will be unlikely to accept new members into their communities unless these new members are recognised by the government to be a member, for to do otherwise would mean increasing the Band population without an increase in resources to serve the members. The second-generation cut-off rule acts as a bar for many persons to associate with their First Nation.

A further problem in the Aboriginal community is with regard to the large number of persons that were apprehended by the government and adopted into non-Aboriginal families. The *Ontario Child and Family Services Act* prevents disclosure of an

adoptee's birth records, save and except for certain rare circumstances. Ontario has the most restrictive non-disclosure rules in Canada. As a result, Ontario Aboriginal adoptees are often denied the right to associate with their First Nations because they are unable to determine which First Nation they are entitled to be members of.

### **Article 5(e)(iii) The Right To Housing**

The migration of Aboriginal Peoples into the City of Toronto has increased significantly over the last ten years. As noted earlier, RCAP estimated that the Aboriginal population in urban areas in Canada could be expected to grow by 43 percent, reaching almost 457,000 by the year 2016. Many of those migrating to the cities end up living in Toronto.

It has been estimated by the Toronto Report of the Mayor's Homelessness Action Task Force that there are, in any one-year, approximately 3,750 Aboriginal people homeless in the streets of Toronto, and another 8,000 at risk of becoming homeless. The Task force noted that the Toronto Aboriginal population is over-represented in the homeless population compared to the general population.

One of the causes of the high level of homelessness of Aboriginal people is the federal government's offloading of its responsibilities for Aboriginal Peoples to the provinces and municipalities.

The Federal Department of Indian and Northern Affairs in the 1950's and 1960's operated a program to assist Aboriginal people migrate to urban areas. Thereafter it created Aboriginal controlled housing corporations that were administered by Canada Mortgage and Housing Corporation(CMHC). CMHC in turn created the Urban Native Housing Program. In 1986 CMHC entered into cost sharing agreements with the Provinces. In 1993, CMHC announced that no new social off-reserve housing allocations would be made. As such, the increase of Aboriginal people into the City has not been met with an increase in housing assistance from the federal government.

A further problem that exists for Urban Aboriginal Peoples regarding housing is that landlords continue to discriminate against Aboriginal people. Although the Ontario *Human Rights Code* prohibits such discrimination, the Ontario Human Rights Commission, has been and continues to be, inaccessible to many Aboriginal complainants. Access to many social services has been an issue for Aboriginal people as the result of the services being designed and implemented without input from Aboriginal people.

### **Article 5(e)(vi) The Right To Equal Participation In Cultural Activities**

The Royal Commission on Aboriginal Peoples recommended that Aboriginal Cultural identity be supported and enhanced in urban areas by:

- a. Aboriginal, municipal, territorial, provincial and federal governments initiating programs to increase opportunities to promote Aboriginal culture in urban communities including means to increase access to Aboriginal elders;
- b. municipal governments and institutions and Aboriginal elders cooperating to find ways of facilitating Aboriginal practices in the urban environment; and,
- c. all governments cooperate to set aside land in urban areas dedicated to Aboriginal culture and spiritual needs.

None of these recommendations, made in 1996, have been implemented. As a result, Aboriginal People in urban areas are not provided the same level of participation to their culture as non-Aboriginal people.

The inability to participate in cultural activities is greatest for those Aboriginal people that have been incarcerated in a Provincial or Federal institution. Prisoners are denied access to elders, and to sacred medicines. New policies must be instituted to permit Aboriginal prisoners the right to access their culture while incarcerated.

### **Residential Schools**

The *Indian Act* of 1876 gave the government sole authority over “Indians and lands reserved for Indians”. To Minister of Indian Affairs was given full, total and final control over the lives of all Indians as defined by the Act – this situation continues to this day. By virtue of this authority the Canadian Government then set out to develop residential schools.

The Report of the Royal Commission on Aboriginal Peoples addressed issues relating to residential schools in depth. In its report at Volume 1, Chapter 10 (p.341) the Report states, “Prior to the mid-1800s, the government attempted to educate adult Indians. They were unsuccessful in their efforts because, the adult Indians already had their beliefs, values customs and practices established; therefore, were too hard to influence. Consequently, the residential school system began its full practice in the mid 1800s “with a three part vision of education in the service of assimilation. It included, first the justification for removing children from their communities and disrupting Aboriginal families; second, a precise pedagogy for re-socializing children in the schools; and third, schemes for integrating graduate into the non-Aboriginal world”. It was legislated in its entirety in the *Residential Schools Act* of 1894. The residential school era lasted for a century. The last residential school, in Canada, closed in 1988.

Through the residential school process Aboriginal Peoples were removed not only from their community but also from their regional and provincial territories. Aboriginal Peoples, being of a nomadic culture, suffered enormously. Often children were out assisting their families with hunting, trapping and fishing and upon their return as a family, were abducted by Indians agents or their designates and sent to the residential and boarding schools. The children did not have any personal awareness of where they were going, due to their inability to speak, read or write a foreign language. English or French were the two languages used for giving notice and in apprehension.

Once in the schools the children were forbidden to speak to their brothers, sisters or fellow students. “E.F Wilson informed the department (of Indian Affairs) that at Shingwauk school, *‘We make a point of insisting on the boys talking English, as, for their advancement in civilization, this is, of all things the most important necessary’* (RCAP 1996 - p. 341).” Children throughout the history of the system were beaten for speaking their language.

The story of Tom Wassaykeesic is like the stories of many other residential school children, as told in *Residential Schools: The Stolen Years* 1993, pp. 142-143:

I think it was about 1966, after I had completed grade two that I was sent to residential school. I, along with others, we were put on the nearest railway station at Savant Lake (Ontario). There, we were put on the train to Sioux Look Out where officials from the Department of Indian Affairs had gathered children from all points north. We continued on [south

*several hundred miles* (emphasis added)] to Sault Ste. Marie, Ontario...to the Shingwauk Hall residential school. Once inside the school the first step of being 'processed' was getting our hair cut, which for some kids was an ordeal. The staff then explained the routine and the rules: when to eat, sleep, shower, and *above all to never speak in Ojibwa*(emphasis added), if that was your first language. We ate in a large dining hall, the girls on one side and the boys on the other. Sometimes I could see my Aunt, but I wasn't allowed to talk to her. In many ways Shingwauk Hall was like a prison. The attempt at assimilation largely failed but the legacy remains. It is a legacy of alcoholism, drug abuse, suicides, violence, family breakdowns, prisons and psychiatric hospitals. The list is endless. Many generations of Natives went through the residential school system and the effects are still with us".

The intent of the *Residential Schools Act* was deliberate racial discrimination and a crime against all Aboriginal Peoples for several generations. To date there has been no recourse against governmental Ministers of Indian Affairs considered; no government officials have been charged, convicted or imprisoned relating to any crimes against the children that took place while they were in authority.

The present day Prime Minister Jean Chretien was a Minister of Indian Affairs who authored, with the Minister of Justice at the time (now deceased former Prime Minister Pierre Elliot Trudeau), the White Paper of 1969. The White Paper of 1969 was intended to finally eradicate the distinct identities of Aboriginal Peoples. It was to be the final Act to assimilate Aboriginal Peoples into Euro-Canadian culture. In bringing forth this Bill, both of these architects acted in full awareness of their actions. Fortunate for all of Canada and Aboriginal Peoples, the Bill did not pass due to the chorus of Aboriginal voices that protested the document. While this particular Bill did not pass, the system of absolute authority over "Indians and land reserved for Indians" remains in effect to this day.

In *Reconstruction of Being: Reconstructing Native Womanhood* (Anderson: 2000) at pg. 5, we are reminded by our teachers and Elders that, "(W)e have much to celebrate. The fact is we still exist -- that we are living and working within our communities is in and of itself an achievement. We have Elders who will guide us, and our children. We also have to be aware that we carry the struggles of the past five centuries into this new one. I have heard it said, "it took us five hundred years to get to this situation, we are not going to get out of it in fifty!" Poverty and violence are some of the heavy burdens Native women *and our/ their families* (emphasis added) are still carrying. Over half of the women I interviewed indicated that they endured relationships where they were physically, emotionally or sexually abused. Their needs have been considered secondary in partnership with Native men as well as white men." This is a common and destructive experience in many of our families' communities and in society in general, since many of our people have migrated to the larger cities and towns. This is the situation with which ALST attempts to meet the needs of the community.

A community member who works with men in the prison system in the City of Toronto states that, "Of the population of men she works with, approximately 80% of the men are children of residential school survivors. The other 20 % are children who were adopted and or fostered to non-Aboriginal people who had little or no interest or familiarity in the Aboriginal heritage or ancestry of the their wards. These statistics are supported in the Native Child and Family Services of Toronto's records for the Men's Program at the Metro Toronto East Detention Centre.

Kenn Richard, Executive Director of Native Child and Family Services of Toronto writes that, "As Justice Kimelman did in 1985, presenters at our hearings linked current child welfare issues with the history of interventions by non-Aboriginal government in the affairs of Aboriginal families of our clients - probably 90% of them - are, in fact, victims themselves of the child welfare system. "Most of our clients are young, sole support mothers who very often were removed as children themselves. So we are dealing with perhaps the end product of the child welfare system that was apparent in the "Sixties Scoop"(emphasis added). Actually the sixties scoop lasted well into the 70's and we are seeing the reality of that in our case loads...We take the approach in our agency that it is time to break that cycle. The other interesting note is that while the mother may have been in foster care, the grandmother - I think we all know where she was. She was in residential school. So we are into a third generation".

The following excerpts are from statements by residential school students regarding their experiences. Although these people are from other provinces the stories remain the same in Ontario. Residential schools existed all across the country, from north to south and east to west, as well as in the United States.

- Jeannie Dick of Canim Lake, BC 08/03/93 tells us, "I stayed in that residential school for 10 years. I hurt there. There was no love there. There was no caring there, nobody to hug you when you cried; all they did was slap you over;" Don't you cry! You're not supposed to cry". Whipped me when I talked to my brother. That's my brother for God's sake. We were not supposed to talk to these people".
- Wilson Okeyma of Hobema, AB,10/06/94 reports, "I was one of the fortunate ones in the residential school, but the boy who slept next to me wasn't very fortunate. I saw him being sexually abused. As a result, he died violently. He couldn't handle it when he became of age 8".

Elder and Spiritual Leader and Traditional Teacher Art Solomon (1913-1997) tells us some of his experience as shared while teaching in the Native Studies Department at Laurentian University, Sudbury, Ontario: "You were just a kid doing a man's work. You know, we had to stand by that blacksmith fire well past what was reasonable or tolerable for children. We were kids, just like little Indian slaves. There was no one to comfort you or show you any care. For God's sake, I couldn't even see my sisters because they were all together, in another building. And, we, my sisters and brother were separated by the road between us. We could only go home once a year, maybe at Christmas, if we were lucky enough to have some one who was able to come. My Mother had nine of us and she sure as hell couldn't leave her babies for us bigger ones. There was no money in those days. It was in the time of the First World War. My father couldn't come because he was a lumberjack working in the bush. That was the season he had to do the cutting in. During the summer, he was a fishing guide, a deep sea fisherman and a sailor who would go by train to Minneapolis and Detroit to pick up the boats of the wealthy Americans who were coming to Killarney, on the Georgian Bay (of Lake Huron). There was lots of fish in the big waters (Lake Ontario and Lake Superior). It was a really hard time, those days. And that stuff stays with you. You learned it in your early childhood. It was really all you knew; the earlier stuff you forgot out of fear. Then we are left with trying how to figure it out on our own. It was very hard on my mother. We were a big help to her when we came home. But all that changed when they came back in August to take us away. That's all I have to say about it".

At this point in time, here in Ontario, "Residential School Survivors" are currently going through the discovery process in the courts relating to their lawsuits against their

abusers. The issue of greatest magnitude is the fact that the legal process prohibits a non-litigant from supporting and/or assisting the victim throughout the discovery process. For the most part the lawyers involved in these lawsuits are non-Aboriginal with little or no cultural competency or cultural sensitivity. This situation takes the residential school victim/survivor into some perilous territory. Once again without anyone to be there and show any care, the victim is at risk of being, at the very least, re-traumatized, and at the very worst, is a potential candidate for committing suicide through drugs, alcohol and/or by any other means at their disposal i.e., drunk driving, night swimming or anything else they think of. We must have a judicial system that is tempered with mercy the same way the Creator treats us, with mercy. The federal and provincial governments have not assured a legal process that takes into consideration the needs of Aboriginal Peoples who seek justice.

With residential schools there are more than three generations of Aboriginal Peoples affected at this time. The future generations will have a tremendous amount to deal with. They have to unlearn the destructive and abusive parenting skills that the previous generation(s) learned in residential schools. Today we need our Elders, Faith-keepers, Spiritual Leaders, Traditional Teachers, storytellers, ceremonialists and other seniors to do their own healing so that we have role models to follow. We need to develop a new kind of relationship with the white visitors who have come here to live. The closing words of Elder Art Solomon at a conference at University of Sudbury in 1992 were:

“We listened to three women yesterday. What they had to say tells me that spiritual rebirth is happening; spiritual rebirth is absolutely essential. The imperative for us now, as Native people, is to heal our communities, and heal our nations, because we are the final teachers in this sacred land. We have to teach how to live in harmony with each other and with the whole creation. People will have to put down their greed and arrogance before they can hear what we are saying. I am not sure how many will do that. So we are in the process of healing ourselves, healing our communities, and healing our nations”.

We are also told by Elder and Wampum Belt keeper William Commanda, Algonquian Nation, speaking at the *Cry of the Eagle Conference* 1993, held on the Six Nations of the Grand River Territory, “ we need these old ways to know how to get along in the new age or we won't survive”.

As the Royal Commission on Aboriginal Peoples Report states in Volume 5, Chapter 4, p. 118, “clearly, then, understanding the concept of negotiation is central to understanding and implementing many of the recommendations in this report”.

In conclusion on the issue of residential schooling, we ask as that the newcomers to this land and their heirs come to us, listen to us, and allow us to begin a new relationship based on total respect of our Culture -- our teachings, languages, practices, values, norms and mores, ceremonies, sacred and secular items, land and the land they live on and all other elements of our culture un-stated -- relating to our sacred Mother the Earth. Only through these relationships will we be able to heal the pain of residential schools and the host of other atrocities committed against us. The healing must begin.

We believe that the International Convention speaks to these relationships that must be based on respect for Aboriginal Peoples. We submit that to date both Canada and the provinces have failed to honour their commitments to enter into respectful relationships with Aboriginal Peoples in Canada.

## **Article 5(f) The Right Of Access To Any Place Or Service Intended For Use By The General Public, Such As Transport Hotels, Restaurants, Cafes, Theatres And Parks**

For many Aboriginal Peoples living in Toronto, access to public places is limited. Aboriginal Peoples are often the target of police and security guards in shopping centres, public parks, restaurants and other public areas. Although the Canadian *Human Rights Act* and the Ontario *Human Rights Code* both prohibit discrimination in this regard, the human rights commissions responsible for the implementation of these Acts have done little in the area of enforcement for Aboriginal Peoples. Most complaints made by Aboriginal Peoples to the human rights commissions, whether federal or provincial, do not proceed to a hearing.

In Toronto, the police service is known to conduct “sweeps” of Toronto during the summer months, when tourism is at its peak. Such sweeps result in Aboriginal homeless people being moved from parks or other public places such as street corners. The “sweeps” are orchestrated to clean up the streets and to hide the blunders of the City. People are often arrested for minor provincial offences so that they can be removed from the view of the public. Such “sweeping” is currently occurring in preparation of World Youth Day and the Pope’s visit to Toronto scheduled for late July 2002. Unfortunately, in Ontario and the rest of Canada, the image of a “criminal” is that of an Aboriginal person. Until Canada and the Ontario government can improve their human rights complaint procedures as they relate to Aboriginal Peoples, this Article of the Convention will not be adhered to.

## **ARTICLE 6**

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

### **Canadian and Ontario Human Rights Commissions**

Much has already been submitted on the ineffectiveness of both the federal and provincial human rights commissions to combat racism, provide adequate remedies, or promote racial tolerance. The commissions and the legislation they operate under remain largely inaccessible to Aboriginal Peoples in Canada.

## **ARTICLE 7**

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

## Education

So long as the concerns raised above regarding Canada's treatment of Aboriginal Peoples, its legislative and policy agenda to continue to control and assimilate, and its failure to implement the recommendations of the Royal Commission on Aboriginal Peoples, any efforts of the government to invest in the fields of teaching, education, culture and information will continue to be undermined.

Astonishingly, both the federal and provincial governments have very little to report to this Committee in regards to efforts made under Article 7 that specifically address the extreme racism faced by Aboriginal Peoples in Canada. Unfortunately, it is still quite common to hear from school aged children in Canada that Aboriginal Peoples were simple and savage folk who could not appreciate the great resources of this land and were conquered by the European colonizers. Of course, nothing could be farther from the truth. Curriculum continues to misrepresent Aboriginal Peoples and perpetuate stereotypes of Aboriginal Peoples, ensuring new generations of Canadians with little accurate knowledge of Aboriginal Peoples and fuelling the racism which is alive and well within Canada.

## Conclusion

When important decisions are made in the Aboriginal community we are often reminded by the Elders that we must think seven generations ahead. As Oren Lyons - Faithkeeper of the Onondaga Nation has said:

In our ways of life, in our government, with every decision we make, we always keep in mind, the seventh generation to come. It's our job to see that the Peoples coming ahead, the generations still unborn have a world no worse than ours - hopefully better. When we walk on Mother Earth we always plant our feet carefully because we know the faces of our future generations are looking up at us from beneath the ground. We never forget them.

As Aboriginal peoples, we realize that it is difficult for some Peoples to think ten or fifteen years into the future, much less seven generations. The sad reality of racial discrimination, can be at least partially understood by the fact that historically decision-makers in Canada seldom looked at the impact of their decisions on Aboriginal Peoples.

As we have written elsewhere, our crisis may be expressed in the element of T.I.M.E., which can be used as an acronym to relate the importance for our need for growth and change. [T.I.M.E.] The tools that are needed to grow and change are **T**rusting one another; **I**nspiring a new and different identity and moving away from the false concept of race; **M**oving in a positive direction; and **E**mbracing one another as we struggle together to make our world a better place to live.

In order to achieve full and equal participation of Aboriginal Peoples in Canada the onus rests on the shoulders of the Canadian government to create a climate of trust. Inherent within trust, is the responsibility of reciprocity. We need to develop and nurture reciprocal relationships that are founded on trust. From an Aboriginal perspective, a history of Canadian deception, theft, and betrayal has resulted in a collective and individual attitude of distrust towards mainstream society. This distrust is translated into a profound reluctance to enter the Canadian social and economic mainstream. Unless the Canadian government takes responsibility for its laws, policies, and actions, and is accountable for the injustice inflicted on Aboriginal Peoples, honour and implement treaties and agreements, remove barriers and prevent exclusion, provide for equitable

redistribution of land and resources and provide adequate constitutional guarantees of justice in the future, Aboriginal Peoples in Canada will remain distrustful and apprehensive about participating in the mainstream society.

Inspiring new and different identities that are not “race” based but are based on mutual respect, dignity, humanity and reciprocal relationships is essential. It is imperative that throughout this process, the concept of “race” and its relationship to colonialism be eliminated. The International Convention on the Elimination of all Forms of Racial Discrimination, 1969 was ratified by Canada. The Convention affirmed that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, social unjust and dangerous. It affirmed that there is no justification for racial discrimination, in theory or in practice. In order to eliminate racism, the false notion of “race” must also be eliminated.

Movement toward working together to further the decolonisation of Aboriginal Peoples is critical. Decolonisation involves, in part, the replacement of present Euro-Canadian conventional systems with re-integrated aspects of traditional systems displaced during colonization. While it may not be possible to restore our traditional systems to their original strength, nonetheless, all strategies must always reflect and be cognizant of our history in order to protect our traditional systems in ways that are consistent with honoured traditions.

Embracing each other as brother and sister nations in order that we may create a better world for our children and at least seven generations in the future is essential. It is important for past wrongs and painful experiences to be addressed.

Throughout this process, we need to take T.I.M.E. According to an Elder’s teaching, *we must be sure that we use our time wisely to ensure that we leave a path for future generations to come. If we move too quickly, we may create dust and the generations to follow may become lost. We must be absolutely conscious of the value of life we are dealing with* (Elder’s teaching).