

APPENDIX “C”



Anishinabek Perspectives on Resolving Rights Based Issues and Land Claims in Ontario

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This paper is based on the author's experience while engaged in consultations, policy analysis, and tripartite negotiations on behalf of the forty three (43) member First Nations while employed with the Union of Ontario Indians from 1994 until 2003. I would like to gratefully acknowledge the assistance of Melissa Restoule, Allan Dokis and Fred Bellefeuille for their assistance in the preparation of this paper.

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Thesis Statement

The objective of this paper is to assist the Inquiry in developing recommendations that, if implemented, will help avoid confrontations over Aboriginal land and treaty claims. The paper will discuss how the issue of unresolved land claims is a contributing factor to the overall challenges facing Anishinabek First Nations and their desire to improve the social and economic well being of their community members.

In addition to this, the paper will discuss the related matter of the lack of recognition and respect of Aboriginal and treaty rights and how these issues together pose a barrier to maintaining healthy relationships between Anishinabek First Nations, government and police services. More often than not, Anishinabek First Nation people exercising their treaty and Aboriginal rights find themselves under the scrutiny of not only the police and Ontario Ministry of Natural Resources, but by a public that have not been educated on First Nation treaty and Aboriginal rights. In many instances, these difficult relationships are not limited to only policing and natural resource enforcement but also social issues.

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and Land Claims in Ontario*

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1.0 Executive Summary

The Anishinabek Nation has always been a self-determining, self-directing nation of people that share a common worldview, similar languages, culture, history and rights. The vision of the Chiefs that signed the treaties during the 19th and early 20th centuries remains true and consistent today. The Anishinabek relationship to the land remains a vital and necessary link to the identity of Anishinabe people.

The treaties recorded and defined that relationship and ensured that Anishinabe people would always be able to maintain their way of life and closeness to the land. They also ensured that the Anishinabek would have a say in the way their lands, resources and communities were governed. First Nation leadership continues to strive to articulate the vision of the Chiefs that entered into those treaties and ensure that the rights that were guaranteed under those arrangements were protected and respected. Access to land and resources continues to be a central issue for First Nations that are struggling to build healthy communities and strong economies.

However, it has been a difficult and often frustrating process for the Chiefs and Councils that govern First Nations. There is a lack of education within the general public that requires extra efforts be made to ensure that the broader society understands the rights, goals and aspirations of First Nations today. There are a number of initiatives being led by First Nations and their respective advocacy organizations that are designed to break down barriers and improve communications between First Nations and the people of Ontario and Canada.

There is also a perception that exists within many First Nations that the media feeds ignorance and bias in their manner of reporting and editorializing about First Nation issues. That being said, efforts are underway to improve the balance in reporting and ensure that articles and information about First Nations reflect the real issues First Nations and their people are facing.

Beyond the general public and media, many First Nation leaders also have serious concerns about government policies relating to Aboriginal people, or lack thereof. During the 1990's, there were a number of initiatives undertaken by the Ontario government with third party user groups while First Nations rights and interests were effectively ignored. The Statement of Political Relationship between the Ontario

Government and First Nations was also shelved. Other government initiatives during the mid to late 1990's confirmed that First Nation rights and interests were not on the agenda of the Ontario government.

Interest groups, most notably the Ontario Federation of Anglers and Hunters, took on a much greater policy role, particularly within the mandate of the Ontario Ministry of Natural Resources (MNR) during this time. This was extremely frustrating for First Nation leaders and the Anishinabe people who were striving to achieve a greater role in the management of the lands and resources that surrounded their communities and that their people had always depended on. Similarly, the forest industry and management of forest planning is also a long standing concern of First Nations, particularly in northern Ontario.

The result was greater mistrust and cynicism toward the MNR by Anishinabek harvesters and some First Nation leaders as they witnessed vast quantities of resources being extracted from their traditional areas, their treaty lands being reduced and little or no benefit accruing to their communities. In most circumstances, First Nations were inadequately consulted prior to these resource management decisions being made.

However, there are some new processes that may move these issues forward. The Anishinabek Nation has been active in the creation of roundtables and institutions that promote dialogue including the Anishinabek Ontario Fisheries Resource Centre and the Anishinabek Ontario Resource Management Council. Building on the moderate success of these processes and institutions provides hope for the future.

Yet many outstanding obligations remain and progress is slow. There is a long list of land claims that remain to be settled, a number of resource management issues to be consulted and agreed upon and many problems left to solve. The courts have been too expensive and ambiguous to be used as a means to resolve problems. A new tripartite process is required but this will require political will, human and financial resources and time to properly implement. However, the issues at stake have to be addressed in a manner that brings results and holds all parties accountable.

Consultation with First Nations, particularly in the area of resource management continues to be a frustrating process for all parties involved. The expectations of First Nations are very high while resources to properly consult First Nations are limited. This has resulted in missed opportunities for every party involved in natural resource management processes,

from First Nations to government to industry to the general public. However, there are models that can be reviewed and used to strengthen and improve consultation with First Nations, many of which have been proposed by First Nations leaders.

The next steps are many of the same steps that have been taken already. Continue to promote dialogue, improve communications, strengthen policy development processes and ensure that there is follow up. The stakes are high and the course of action will be difficult, but the benefits will far outweigh the costs of doing nothing.

2.0 The Anishinabek Declaration

“When Mr. Robinson came to the Indians to make a Treaty for their lands, they were not willing to give up their lands and would not sign a Treaty. He then told them they need not be afraid to give up their rights because Government would never do anything to make them suffer, he said you know yourselves where you have the best lands and there is where you have your Reserves for yourselves and your children and their children ever after. He also said if at any time you have grievance you can go to the Governor and he will see that you get all your rights or whatever you may ask”.

-- Chief Dokis of Lake Nipissing – late 1870’s – having attended the negotiation of the Robinson-Huron Treaty, stated his understanding of it¹.

Chief Dokis’ words are echoed today in the efforts of Anishinabek Chiefs and Councils to work with the governments of Canada and Ontario to ensure that the treaties and the rights affirmed therein are protected and exercised fully. These rights are not limited to hunting and fishing, but all manner of harvesting, language, culture, self-determination and the Anishinabek people’s relationship to their traditional territorial lands. Inherent aboriginal rights and the treaties remain the foundation for discussion with other levels of government.

In November 1980, during the repatriation of Canada’s Constitution, a nation of people reintroduced themselves to the people of Canada. The “Declaration of the Anishinabek” was a definitive statement to the Government of Canada and the provinces which outlined the Anishinabek Nation’s place within Canada and its continuous existence as a nation. This was an important event in the political history of the Anishinabek Nation and its corporate secretariat, the Union of Ontario Indians (UOI).

For the first time, the Anishinabek people had formally defined themselves to other levels of government as a people. Not as a group on “Indian bands” or reserves, but as a larger political entity that shared a number of common attributes. The Ojibway, Ottawa,

¹Robinson-Huron Treaty Rights: 1850 and today (Nipissing First Nation: UOI, 1994) 2.

Pottawotomi, Delaware and Algonquin nations that surrounded the northern shores of the Great Lakes had articulated who they were, their shared history and culture and, most importantly, how they saw themselves working on a government to government level with Canada and Ontario. This declaration also outlined how the Anishinabek related to the land, an integral part of this worldview.

The most integral piece of this declaration is entitled “On our Existence and Rights Today”. It states:

We are Nations.

We have always been Nations

We have voluntarily entered into a relationship of friendship and protection with the Crown, which we have for two centuries referred to as the Covenant Chain. In placing ourselves under the Crown’s protection, we gave up none of our internal sovereignty.

We have never concluded any Treaty with the Dominion of Canada, nor have we ever expressly agreed to accept the Dominion of Canada in place of Great Britain as the party responsible under the British obligation to protect us.

We retain the right to choose our own forms of Government.

We retain the right to determine who our citizens are.

We retain the right to control our lands, water and resources.

We retain our rights to those lands which we have not surrendered.

We retain the use of our languages and to practice our religions and to maintain and defend all aspects of our culture.

We retain those rights which we have in Treaties with other Nations, until such time as those Treaties are ended.

We retain the right to choose our own future, as peoples.

The only process known to international law whereby an independent people may yield their sovereignty is either by defeat in war or by voluntary abandonment of it formally evidenced. Our Nations have never yielded our sovereignty by any formal abandonment of it. We have never been conquered in war by any power on earth of which there is a record or tradition². The UOI forms the corporate arm of the Anishinabek Nation. Incorporated in 1949, its roots are in the Grand General Indian Council of Ontario, which was initiated in the early 1800’s. Prior to that, the Ojibway,

Ottawa (Odawa) and Pottawotomi peoples formed the Council of the Three Fires or Three Fires Confederacy. The Confederacy's roots date back to the time of earliest European contact.

UOI, *Declaration of the Anishinabek*, Toronto, November 1980. 10.

3.0 Treaties are Living Agreements

First Nations interpret and articulate their rights in their own way. Decisions on how rights will be exercised within First Nation traditional territories are matters that are considered by the Chief and Council and the community as a whole. Each First Nation maintains the authority to determine where personal and individual rights end and where communal rights begin. An example might be how much fish is appropriate for one's personal use.

In the end, it is up to each First Nation to determine the most appropriate management of resources within its traditional territory. The traditions and culture of the community guide and govern how resources are used while allowing rights to evolve over time to remain in a contemporary form. Consultation within the community and perhaps with neighbouring First Nations that share traditional territories on issues is an important element in this process.

Chief Shingwaukonse (Little Pine) of Garden River led treaty negotiations for his people during the discussions that eventually led to the signing of the Robinson-Huron treaty. His vision was the same vision that First Nation leaders continue to promote today. Shingwaukonse believed that the natural resources that the Creator had placed upon the land, like the fish and wildlife, were gifts that had been bestowed to ensure that the Anishinabek would be able to continue to exist as a self sufficient nation. He had foreseen that fish, fur and wildlife would not be able to sustain his people forever, primarily due to the exploitation of fish and wildlife and their habitat that he had witnessed by large companies.

In her book The Legacy of Shingwaukonse, Janet Chute uses Shingwaukonse's own words to describe his vision for the future.

“The Great Spirit in his beneficence, foreseeing that this time would arrive when the subsistence which the forests and lakes afforded would fail, placed these mines in our lands, so that the coming generations of His Red Children might find thereby the means of subsistence. Assist us, then, to reap that benefit intended for us...

Enable us to do this, and our hearts will be great within, for we will feel that we are again a nation”³.

This view has not changed in the years since the treaty was signed. The Anishinabek, particularly in the Robinson-Huron and Robinson-Superior treaty areas, maintain this position and believe that the treaties signed in 1850 affirmed that right. Today, many First Nations see access to resources, particularly in the area of forestry, mining, and hydro development, as a key element of long term economic sustainability for their communities. Recognition of this position and meaningful dialogue with Canada and Ontario about access to resources remains frustratingly elusive.

Despite some commonly held views that the treaties are ancient documents and should be interpreted narrowly, the Anishinabek people believe that the honour of the Crown demands that the Anishinabek perspectives on access to resource and settlement of land claims be given thoughtful and careful consideration and liberal and just interpretation by the Crown.

The Robinson-Huron Chiefs articulated their concerns clearly in 1994 stating that a number of issues arising from the Treaty remain outstanding. These issues include the treaty’s territorial boundaries, the reserve boundaries, sharing of resource revenues and ownership of the Islands in the Great Lakes. These issues remain contentious today⁴.

3.1 The Struggle to Recognize Aboriginal and Treaty Rights

3.1.1 Lack of Education by General Public

Many Anishinabek people feel that Aboriginal and treaty rights are misunderstood by the general public and that there is a need for much improved public education on treaties and other issues facing First Nations. This has been stated time and again for years, by First Nation leaders, government officials, the courts, the Royal Commission on Aboriginal Peoples among many other sources. Yet First Nations leaders are constantly compelled to reiterate and defend the exercise of rights.

³ Shingwaukonse was quoted in the Montreal Gazette 7 July 1849.

Work cited: Janet Chute, The Legacy of Shingwaukonse: A Century of Native Leadership (Toronto: University of Toronto Press Incorporated 1998) 123.

⁴ UOI. Robinson-Huron Treaty Rights: 1850 and Today (Nipissing First Nation: UOI, 1994) 5.

This lack of understanding has occasionally manifested itself in some very ugly ways. In August 1995, a mob of sports anglers, angry about native netting in Owen Sound Bay, confronted a member of the Chippewas of Nawash and her children who were selling fish with her children in an Owen Sound farmers' market⁵. While these confrontations are rare, they still occur. The issue of fishing in the Owen Sound Bay is still very contentious.

The UOI and First Nations have long emphasized the need for education about the treaties and history of local First Nations in school boards, the media and government. Too often, students only learn about general history of Native people in Canada, with little or no local context. While this may not prevent the kinds of incidents that occurred in Owen Sound, it may better prepare people who see about these stories in the media to understand the issue. An overriding concern is that with little knowledge about the First Nations in one's surrounding area, there is a tendency to presume that if there are financial, environmental or other problems occurring in a First Nation somewhere, that reflects the reality in all First Nations.

Over the past few years, the UOI has increased its efforts to raise awareness of issues facing aboriginal people through the development of what is known in northeastern Ontario as the "Nijiji⁶ Circle." Initiated in the fall of 2001, the purpose of the Nijiji Circle is "to build relationships that create respect and understanding among all peoples in the Anishinabek Nation territory"⁷.

Some of the projects undertaken by the Nijiji circle include participation in an anti-racism project in 2004 entitled "Debwewin⁸", which surveyed three cities in northeastern Ontario, a weekly page is published in the North Bay Nugget, and cross cultural training for media, the Ontario Ministry of Natural Resources (MNR) and the Canadian Armed Forces.

⁵ John Wright, "Fish fight: Angry area anglers storm market fish stand," Sun Times (Owen Sound) 8 Aug. 1995: 1.

⁶ "Nijiji" is the Ojibway word for "friend".

⁷ UOI, "Anishinabek Launches 'NIIJII Circle' with information session on treaties", October 29, 2001. <http://www.anishinabek.ca/uo/comm102901.htm>. (2 April 2005).

⁸ "Debwewin" is the Ojibway word for "truth".

3.1.2 Real or Perceived Media Bias:

On March 3, 2005 John Ibbitson, political affairs columnist for the Globe and Mail wrote an article criticizing Prime Minister Paul Martin's lack of action and resources to deal with Aboriginal issues in Canada. He was very critical of the government's inaction despite repeated promises in throne speeches over the past ten years. However, he closed the article by stating that half of Canada's aboriginal population is under 25 and "There are a great many young native men, and many of them are angry." He went on to add that National Chief Phil Fontaine and Indian Affairs Minister had staked their political careers on delivering change to Aboriginal people and ended his column with a dire warning. He stated "If they fail, remember Oka"⁹.

This is particularly distressing given that Oka was a long standing land dispute that involved destroying a Mohawk cemetery to build a golf course, not a political dispute about the amount of funds flowing to First Nations. The stereotype employed by Mr. Ibbitson certainly served its purpose for the author, but it undermined his entire article. It only served to reinforce existing stereotypes and diminished the important points he had made in the article.

These sorts of articles and editorials are found regularly in the media. From an Anishinabek perspective, it seems there often is no better story for mainstream media than a confrontation, over land or resources, between Native and Non-Native people. When this does occur, often the images of Oka or another violent confrontation are used as file footage to add colour to the news item. What lacks is context, real background information and thoughtful analysis. It's hard for Aboriginal people to understand why the media doesn't dig deeper. Is it ignorance, concern that the story might not be as appealing or just plain laziness?

As previously mentioned, like the Nijiji circle page in the North Bay Nugget, there are examples of media working to better understand First Nations all the time but the pace is

⁹ John Ibbitson, "Paltry sums, promises raise Martin's stake in aboriginal gamble", March 3, 2005. <http://www.theglobeandmail.com/servlet/story/RTGAM.20050303.wibbitson03/PPVStory/?DENIED=1>. (3 April 2005).

slow¹⁰. The UOI recognizes the power of the media and has embraced it, with its own newspaper, website and communication department. It is vigilant in responding when media misses something and encourages First Nations to do the same. This approach seeks to ensure a balanced account of news items on First Nation issues.

3.2 Government Policies and Procedures: Ignorance, Bias and Lack of Political Will

Many First Nation harvesters and leaders believe that there is a systemic effort to keep First Nations people from exercising their Aboriginal and treaty rights. This has been articulated consistently by the Chiefs through resolutions, letters to government and meetings with MNR officials. Many First Nation leaders believe that there has been an effort to diminish the government to government relationship that had been fought for during the 1970s and 1980s.

3.2.1 Shelving the Statement of Political Relationship

Often the actions of government reinforce this perception. After the 1995 election, the Harris government ignored the Statement of Political Relationship signed in August 1991 and cut the staff of the Ontario Native Affairs Secretariat (ONAS) and narrowed the mandate of ONAS to that of supporting self-sufficiency of First Nations. First Nations were now seen as another stakeholder or special interest group.

Throughout the 1990s there were a number of government enforcement and policy decisions related to natural resource management that were perceived by the Anishinabek to favour sportsmen's groups and other special interests. While many of these decisions were based on the financial situation of the province, it was evident to the Chiefs that groups like the Ontario Federation of Anglers and Hunters (OFAH), the Ontario Fur Managers Federation (OFMF) and other groups were being recognized for their role in natural resource management while First Nations were effectively ignored.

¹⁰ Osprey Media has developed a series entitled "[Aboriginal Ontario: Open for Business](#)" which is published twice a year. It labels itself as a "Special Report on Economic Development" and provides a number of interesting features including success stories in Aboriginal business, resources for Aboriginal entrepreneurs and marketing kit for companies that want to advertise to the Aboriginal community.

Some of the policy decisions and actions that have been taken in recent years have infuriated First Nations leaders and left many Anishinabek people cynical and frustrated with the Ontario government. The events at Ipperwash are the most obvious example of the heavy handedness of the Ontario government, in particular Premier Mike Harris and the MNR. However there are a number of other, lesser known examples that demonstrates a predilection to dismiss First Nation interests and reduce “special privileges” to First Nations on the part of the Ontario government.

3.2.2 Harassment of First Nation Harvesters

The involvement of local MPP Bill Murdoch in the confrontation at the Owen Sound Farmers market between a mob of sportsmen and an Aboriginal woman in August 1995 infuriated First Nation leaders, as did his dismissal of the burning of Aboriginal commercial fishing vessels at a federal government dock on the Bruce peninsula. Mr. Murdoch went so far as to blame the harvesters from the Chippewas of Nawash themselves for burning the boats¹¹. Mr. Murdoch was the Parliamentary Assistant to the Minister Natural Resources, Chris Hodgson at the time of these events.

Harassment was not only experienced at the hands of mobs, but First Nations across Ontario have complained for years that MNR and its predecessor, Lands and Forests, had an active agenda to keep First Nations from exercising their rights. Resolution 93.8 from the 1993 Grand Council stated “the Chiefs-in-Assembly demand that harassment from the Ministry of Natural Resources in the Nipigon District be stopped¹²”. In 1997, the Chiefs reiterated “hunters believe that the MNR will continue this harassment and systemic encroachment of their Aboriginal and treaty rights to hunt¹³”.

¹¹ Peter Moon, “Fish war entangling natives, sportsmen,” Globe and Mail (Toronto) 11 Sept. 1995: A1+

¹² Union of Ontario Indians, “Resolution 93.8: Ministry of Natural Resources Harassment(*sic*)”, July 1993.¹³ Union of Ontario Indians, “Resolution 97/14: Support for Kettle & Stony Point Hunting and Fishing Rights”, May 1997.

3.2.3 Cancellation of Community Harvest Agreements

During the summer of 1995, Minister Hodgson also cancelled Community Harvest agreements with Williams Treaty First Nations¹⁴. These agreements had been negotiated by the previous NDP government following the *Howard* decision in 1994. This move was widely viewed by Aboriginal people as pandering to the interests of sportsmen and taking away the “special interests” of First Nations harvesters.

Indeed, the press release issued by the Ministry of Natural Resources confirmed the Minister’s position on behalf of the government. It stated “The termination of the agreements help fulfill a commitment by the current government to restore balance to hunting and fishing agreements”. The press release quotes Hodgson “This will ensure hunting and fishing opportunities for everyone”¹⁵. There was no consultation with the communities affected.

3.2.4 Transfer of Management Responsibility to Third Party Interest Groups

In May 1996 the Ontario government began the active dismantling of some of the administrative responsibilities for natural resource management in the province. On May 30, 1996 Minister Hodgson announced the MNR’s intentions of negotiating a new business relationship with the Ontario Fur Managers Federation (OFMF)¹⁶. This would transfer MNR responsibility for issuance of licenses to the OFMF and effectively transfer responsibility for administration of many elements of fur management in the province as well.

Responsibilities that the OFMF would take over included the issuance of trapping licenses, collection of harvest data and delivery of the mandatory trapper education program.

Once more, Minister Hodgson and MNR failed to consult with First Nations leaders and Aboriginal trappers. The UOI and other First Nation organizations had a number of serious concerns with this development. It placed First Nations harvesters in the position

¹⁴ The seven signatory First Nations to the Williams Treaty are Alderville First Nation, Beausoleil First Nation, Curve Lake First Nation, Georgina Island First Nation, Hiawatha First Nation, Mnjikaning (Rama) First Nation and the Mississaugas of Scugog Island First Nation.

¹⁵ Ontario Government, Ministry of Natural Resources, News Release: Ontario Moves to Terminate Community Harvest Conservation Agreements (Toronto: Ontario Government, 30 Aug. 1995) 1.

¹⁶ Ontario Government, Ministry of Natural Resources, News Release: New Partnership for Fur Management in Ontario (Toronto: Ontario Government, 30 May 1996) 1.

of having to obtain a license and trapper education programs from a third party user group. This was insulting to many First Nations leaders and harvesters who now felt that their treaty right to harvest wild fur was under the management and administration of a user group.

First Nations were also insulted that efforts to negotiate a similar trapping agreement through the Indian Commission of Ontario had not had any success yet the OFMF and the Ministry had established a framework for negotiations in a very short time. In fact, less than a year later, an agreement would be struck by the OFMF and the Ontario government.

The UOI responded by working with the Nishnawbe-Aski Nation (NAN) and Grand Council of Treaty #3 (GCT#3) to issue First Nation trapping licenses. This prompted the MNR to come to the negotiating table with First Nations, however, the UOI negotiations with Ontario would drag on for another decade. It would take a change in government for the negotiations to reach a final agreement stage. A final agreement was signed on April 28, 2005 in Sault Ste. Marie, Ontario.

However, trapping is not the only area of natural resource management that the MNR and government of Ontario have proceeded with transfers of management responsibility. During the time the Harris Tories were in office, a number of industry associations and third party user groups were granted unprecedented levels of responsibility through what the Ontario Government termed “New Business Relationships” (NBR). NBRs would eventually be negotiated in virtually every natural resource management sector in Ontario¹⁷. These agreements recognized the role of industry and third party user groups in the management of natural resources while systematically ignoring the role of First Nations in natural resource management.

A formal agreement with the Ontario Commercial Fisheries Association (OCFA) was signed on January 12, 1998, which allowed for “industry to assume a larger role in

¹⁷ Over the last ten years, the Ontario government has negotiated NBRs with the Ontario Fur Managers Federation, the Ontario Forest Industry Association, the Ontario Marine Operators’ Association, the Bait Association of Ontario, and the Ontario Commercial Fisheries Association.

managing the long-term health of the province's commercial fishery"¹⁸. First Nations were never consulted about this NBR with the OCFA. In fact, there were numerous requests from First Nations for discussions with the MNR regarding commercial fishing negotiations during the same period. This agreement would eventually result in the OCFA becoming more involved with the MNR in activities that First Nations had long advocated their involvement in. One area in particular was fisheries assessment, an activity that First Nations on Lake Superior, Lake Nipigon, Lake Nipissing and Lake Huron were actively seeking to become more involved in.

A similar agreement was also signed with the Bait Association of Ontario, which resulted in increases in fees for bait harvesters and dealers, while increasing the involvement of the association in administrative responsibilities which were previously undertaken by the MNR¹⁹. Once again, an agreement had been signed with an industry association without any consultation and despite the protests of First Nations.

In addition, in November 2000, the MNR began to negotiate NBRs with the Tourism and forest industries in northern Ontario under what were termed "Resource Stewardship Agreements". There was no provision for any First Nation input, consultation or involvement in these negotiations which allowed tourist outfitters to "protect tourism values that are important to their operations" while ensuring the forest industry would benefit by streamlining the forest management planning process. First Nation rights and interests were not included in these resource stewardship agreements²⁰.

The Influence of the OFAH

However, the most influential relationship that exists between third party user groups and the Ontario Ministry of Natural Resources is with the Ontario Federation of Anglers and Hunters. The OFAH is the most organized and influential organization that lobbies the

¹⁸ Ontario Government, Ministry of Natural Resources, [News Release: Snobelen Signs Commercial Fishing Agreement](http://www.mnr.gov.on.ca/MNR/csb/news/jan12nr98.html) (Toronto: Ontario Government, 12 Jan. 1998)

¹⁹ Ontario Government, Ministry of Natural Resources, [News Release: MNR and Bait Association of Ontario Enter New Partnership](http://www.mnr.gov.on.ca/MNR/csb/news/jul27nr99.html) (Toronto: Ontario Government, 27 July 1999)

²⁰ Ontario Government, Ministry of Natural Resources, [News Release: Ontario Government Moves Ahead on Building New Business Relationship for Tourism and Forest Industries](http://www.mnr.gov.on.ca/MNR/csb/news/nov15bnr00.html) (Toronto: Ontario Government, 15 Nov. 2000)

Ontario government on natural resource management issues. Its relationship with the Ontario government has been described as “so entwined as to be virtually indistinguishable”²¹.

At the urging of the OFAH, the Harris Tories undertook a number of policy and legislative initiatives that resulted in third party special interest groups becoming much more involved in management and administration of natural resources in the province. This included the development of a special purpose account wherein all funds derived from fishing and hunting licenses would be segregated and spent on projects to benefit hunting and fishing, often involving activities of local game and fish clubs. A fish and wildlife advisory board was also established. This board was largely comprised of senior representatives of organizations closely aligned with the OFAH. This eventually morphed into the Fish and Wildlife Heritage Commission, which was created after the passing of the *Heritage Hunting and Fishing Act, S.O. 2002*. First Nations were not permitted to participate with either the Fish and Wildlife Advisory Committee nor the Fish and Wildlife Heritage Commission.

The OFAH has not restricted its lobbying to increasing opportunities in resource management for its own benefit. It has also been one of the most aggressive and outspoken opponents of negotiations between the Ontario government and First Nations on resource management and land claim issues. Some examples include the OFAH’s position against commercial fishing agreements on the Bruce Peninsula and the successful lobby for the cancellation of the Community Harvest Agreements that the Williams Treaty First Nations had signed.

What is particularly offensive to the Anishinabek Nation is the fact that the OFAH has successfully had non-Native peoples “rights” to harvest recognized under the Heritage Hunting and Fishing Act and by other means while demeaning and diminishing the rights of First Nations harvesters. The fact that the Harris Tories put hunting and fishing for sport ahead of the recognition of constitutionally protected rights is particularly insulting. It is also frustrating and sad that efforts by First Nations to become more involved in

²¹ Thomas Walkom, “Not the Pals They Once Were,” Toronto Star 15 Apr. 2000.

resource management were largely ignored while industry and special interests agendas were not only accepted but supported by the use of government funds.

3.2.5 Barriers to Entering the Forest Industry

Traditional endeavours like hunting and fishing are not the only harvesting activities wherein the Anishinabek have sat on the sidelines while the industry and third party interests moved ahead with government support. As Chief Shingwaukonse envisioned, access to other natural resources are viewed as legitimate means for First Nations to build economies, particularly in northern Ontario. Forestry in particular is seen as an excellent opportunity for First Nations to become involved in resource management and derive meaningful economic benefits as well.

In May 1994, the Class Environmental Assessment for Timber Management Planning in Ontario (Timber EA) was released. Chapter ten of the Timber EA reflected what the EA panel had heard from First Nations across the north. The panel affirmed what many Chiefs and Aboriginal people had been saying for years. They stated that MNR's characterization of First Nations people as "stakeholders" was incorrect and that First Nations should have the same access to benefits from timber management planning as other people in Ontario. MNR had argued that the social and economic benefits that First Nations were not receiving should not be considered by the EA Board.

We discuss our findings that First Nations and Aboriginal peoples should, but do not, have the same access to the benefits from timber management planning as do other northern communities and forest users in the area of the undertaking. This exclusion has developed as a result of historical circumstances and ongoing uncertainty about the meaning and definition of Treaty and Aboriginal Rights. We disagree with MNR that access to the social and economic benefits of timber management planning, which was called the "allocation" issue at the hearing, is entirely outside our consideration²².

²² Anne Koven and Eli Martel, Reasons for Decision and Decision: Class Environmental Assessment by the Ministry of Natural Resources for Timber Management on Crown Lands in Ontario. Environmental Assessment Board. (Toronto: Ontario Government, 20 April 1994) 346.

First Nations leaders were heartened with the affirmation that chapter ten of the Timber EA provided. This was one of the few times in Ontario's history that a government authority recognized that First Nations rights and concerns had been ignored. In the end, the Board granted approval with 115 conditions attached. Among those 115 conditions of approval was Condition #77, which was viewed by First Nations leaders as one of the most essential conditions in the document.

Condition 77 states:

During the term of this approval, MNR district managers shall conduct negotiations at the local level with Aboriginal peoples whose communities are situated in a management unit, in order to identify and implement ways of achieving a more equal participation by Aboriginal peoples in the benefits provided through timber management planning. These negotiations will include but are not limited to the following matters:

- (a) Providing job opportunities and income associated with bush and mill operations in the vicinity of Aboriginal communities.
- (b) Supplying wood to wood processing facilities such as sawmills in Aboriginal communities.
- (c) Facilitation of Aboriginal third-party licence negotiations with existing licensees where opportunities exist.
- (d) Providing timber licenses to Aboriginal people where unalienated Crown timber exists close to reserves.
- (e) Development of programs to provide jobs, training and income for Aboriginal people in timber management operations through joint projects with the Department of Indian and Northern Affairs²³.
- (f) Other forest resources that may be affected by timber management or which can be addressed in the timber management planning process as provided for

²³ It is interesting to note that there has never been a program considered or discussed to implement this part of Condition #77.

In Condition 23(c).

MNR shall report on the progress of these on-going negotiations district-by-district in the Annual Report on Timber Management that will be submitted to the Legislature (Condition 82 and Appendix 20).

However, implementation of this condition has proven to be frustratingly elusive. MNR took years to come out with draft implementation guidelines for this condition and First Nations had a number of concerns. Chiefs and First Nation forest technicians questioned the willingness of the MNR to seriously implement the condition and called for tripartite negotiations with the Governments of Canada and Ontario²⁴. This request was all but ignored by both levels of government. Other concerns related to the preconceived notions that both MNR and the forest industry about the role of First Nations in forest management planning and the degree of discretion that local MNR officials had to work with First Nations on implementing the condition²⁵. In the end, First Nations found themselves almost entirely shut out of opportunities for meaningful economic benefits as virtually all of the forested land in Ontario had been allocated prior to the development of guidelines to implement Condition #77. First Nations continue to work on developing an approach to working in the forest today.

The absence of ONAS from any of these discussions is questionable given their mandate of increasing First Nation economic opportunities. They have not participated in or facilitated any meaningful discussion between First Nations, the forest industry or MNR.

3.2.6 Mistrust and Cynicism toward MNR

It is easy to see where some Anishinabek people's deep level of mistrust and cynicism toward government comes from. Very often, First Nations leaders are asked for patience and understanding in having their issues dealt with. But in the meantime, Anishinabek

²⁴ Union of Ontario Indians, "Resolution 98/31: Anishinabek Forestry Rights and Condition #77", November 1998.

²⁵ **National Aboriginal Forestry Association and the Institute On Governance, "Aboriginal-Forest Sector Partnerships: Lessons for Future Collaboration", (Ottawa: National Aboriginal Forestry Association, June 2000) 11.**

people see opportunities for their neighbours and stakeholder groups being offered and natural resources, land and funds being allocated everywhere except in their communities.

It is a commonly held view among First Nations people that the treaties are the basis for existing relationships. It is also a widely held belief that the treaties are the mechanism that allowed Canada and Ontario to prosper, often at the expense of First Nations. In the north, many Anishinabek believe that every truckload of logs and load of ore that leaves the territory makes them poorer and someone else richer. Northern First Nations also are witnessing unprecedented reduction in the size of their treaty areas, which is a direct infringement on their ability to exercise their rights. Having witnessed the lack of Crown land available to First Nations in southern Ontario and Manitoulin Island, this is particularly disturbing.

The reduction in areas for First Nations to exercise their rights in may occur in different ways. It might take the form of a direct sale of public land by the province. It might be the development of a new snowmobile trail that results in a trapper or harvester having to pay to access their trap line. It could be a new land use designation or it could be a clear-cut that results in the change of the natural landscape. No matter how access or the land itself is changed, the result is the same in the eyes of Anishinabek people. The prevailing sentiment is that First Nations are being told to give something else up so that another group, entity or person can prosper. How long can First Nation harvesters be expected to be patient in waiting for resolution of these issues?

The result is that it is becoming increasingly difficult for First Nation leaders to engage community members in supporting any discussion with governments and certain ministries, the MNR in particular. There is a tremendous sense among community members that, because they have been ignored and, in many circumstances, harassed for so long, there is no point in wasting their time trying to work with the MNR. In a few cases, some community members even become distrustful of their own Councils when they engage in discussions with the MNR about resource management issues.

3.2.7 Cooperation and Moving Forward

While there are many other examples where First Nations leaders have been frustrated by the advancements of third party interests at the expense of their communities, there are some examples of success stories related to natural resource management that offer hope for the future.

Anishinabek/Ontario Fisheries Resource Centre

In 1993, the UOI successfully negotiated the Anishinabek/Ontario Conservation and Fishing agreement, which led to the development of the Anishinabek/Ontario Fisheries Resource Centre (A/OFRC). The A/OFRC was created to act as “an independent source of information on fisheries assessment, conservation and management, promoting the value of both western science and traditional ecological knowledge. The A/OFRC is a not for profit corporation controlled by a Board with equal representation from Native and non-Native Directors”²⁶.

The A/OFRC has a successful track record in terms of funding a number of assessment projects with First Nations; however, concerns remain about how much traditional knowledge is being incorporated into the work being done. There are also questions about how much attention the MNR pays to its findings.

Anishinabek/Ontario Resource Management Council

In 2001, Grand Council Chief Vernon Roote signed a Memorandum of Understanding with Minister John Snobelen which created the Anishinabek/Ontario Resource Management Council (A/ORMC). This forum was developed to bring together Chiefs and technical staff from First Nations with senior managers from the MNR in an effort to improve communications and policy development in areas of mutual concern.

In the few years that it has been working, the A/ORMC has discussed land use planning, water management planning, conservation and enforcement, fish and wildlife

²⁶ “Mission Statement,” Anishinabek Ontario Fisheries Resource Centre Home Page. 10 April 2005. < http://www.aofrc.org/mission_statement.htm >.

management and forest policy. While many issues remain unresolved, many believe that a forum like this, that meets regularly, is essential to resolving issues.²⁷

Building on the Processes

The processes mentioned above are just a start. They represent a willingness on the part of the Ontario government and the Anishinabek Nation to commit to a process of dialogue. However, what they lack are mechanisms to compel the parties to get past identification of the problems and to develop solutions. Very often, once a problem is identified, the parties revert to a position based approach that doesn't provide the flexibility to solve the problem.

A true dispute resolution process for resource management issues is required. A process wherein both traditional Anishinabe dispute resolution processes are employed along with new alternative dispute resolution techniques.

The government to government relationship, based on obligations affirmed in the treaties, must also be considered. All too often bureaucrats come to meetings with no mandate to discuss treaty issues or expressing that it takes too long to deal with treaty and aboriginal rights issues. Virtually every piece of provincial and federal legislation and policy that might affect First Nations contains a non-derogation clause that states something to the effect that "nothing in this document shall abrogate or derogate from existing Aboriginal and treaty rights" yet when it comes time to discuss these rights, there is no political mandate on the part of the governments. Very often, the parties are reduced to discussing the peripheral issues, instead of the rights issues.

3.3 Outstanding Obligations

The settlement of the issues mentioned previously and historical land claim agreements are ponderously slow. There is ample evidence as to the need to settle these issues, many of which were initiated more than a century ago. Yet the backlog is long and growing.

²⁷ For more information regarding the UOI's experience in developing and maintaining the A/ORMC, please read Fred Bellefeuille's submission entitled "*Anishinabek Perspectives on Roundtable Forums that Support Issue Resolution*".

The Ontario Native Affairs website reports 48 land claims in pre-negotiations stage, 11 current land claim and land-related negotiations, five agreements in principle (some more than 7 years old), three final agreements awaiting ratification, three land claim final agreements being implemented (one of these, the Manitoulin Settlement Agreement was signed in 1990 yet still remains in the implementation phase), 8 implemented agreements and seven “other” agreements²⁸. There is no information on how long these claims have been with the Ontario government.

A “Mini Summary” from the Indian and Northern Affairs Canada website states that the total claims for Ontario are 242 for the period between April 1, 1970 and December 31, 2004. Of these 242 claims, 31 have been settled, 14 had no lawful obligation found by Canada, six were resolved through an administrative remedy and ten files were closed²⁹. While these processes are long, tedious and frustrating, Anishinabek leaders still prefer the negotiation process to the alternative, taking the matter through the courts.

3.3.1 The Reluctance to Litigate

While Canadian Courts have recognized Aboriginal rights and concerns over the years through such landmark cases as Sparrow, Delgamuukw, Calder, and the like, there remains a massive amount of work to be completed to fully implement these decisions. What is required is an ongoing process to follow up on court decisions and deal with issues in a constructive manner.

First Nations have been slower in Ontario than in other provinces to utilize the courts as a means to resolve outstanding grievances. There are two primary reasons for this. Firstly, the courts cost too much with too little certainty in the outcome. First Nations have to be prepared for appeals if they win their case and very often the cost outweighs the benefit. The cost of litigation, combined with the uncertainty of outcomes, only serves to divert resources from where they are really needed, the First Nation community. The second reason is that even when the courts reach a decision that favour the aboriginal or treaty

²⁸ “Native Affairs Negotiations”, Ontario Native Affairs Secretariat Website, 10 April 2005. <www.nativeaffairs.jus.gov.on.ca/english/negotiate/negotiate.htm>

²⁹ “Mini Summary by Province – Ontario”, Indian and Northern Affairs Canada Website, 10 April 2005 <http://www.ainc-inac.gc.ca/ps/clm/msp7_e.pdf>

rights argument put forward by First Nations, governments have been slow to take up their legal duties.

3.3.2 The Need for a Renewed Tripartite Process

Increasingly, First Nations are looking toward negotiations as a means of resolving their outstanding issues. Yet there is an astonishing shortage of resources for governments and First Nations to use to resolve their outstanding issues.

The closure of the Indian Commission of Ontario (ICO) in 2000 was the beginning of a steep decline in the level of resources available to First Nations to resolve problems. It was Minister of Indian Affairs Robert Nault's refusal to renew the ICO's orders-in-council that led to the closure of the ICO. Many First Nations leaders believe that the closure of the ICO was rooted in a political dispute between the Ontario Tories and federal Liberals. The ICO's function as a neutral facilitator provided all parties with a common source of information, a neutral location for meetings, access to trained facilitators and a means to ensure follow up from meetings. In short, the ICO provided an important line of communication between First Nations, governments and the general public.

One of the most compelling reviews of the lack of progress in resolving issues in Ontario was produced following the closure of the ICO. Produced by former Ontario Cabinet Minister Bud Wildman and Grant Wedge, their *Review of Tripartite Processes in Ontario* was commissioned by and submitted to Robert Nault, the Minister of Indian Affairs at the time. The Ontario government refused to participate in the review.

The findings of the report echo many of the concerns that First Nations continue to express today. The authors found³⁰ :

- That governments were taking too long with their analysis of claims and too long to decide whether they would negotiate settlements.

1. ³⁰ Bud Wildman and Grant Wedge. At a Crossroads: Choosing Paths to First Nations' Self-Reliance. Government of Canada, 2000. A review of Tripartite Processes in Ontario. 44-48.

- The length of time it took to negotiate claims settlements was too long, on average eight years per claim. This does not include the time it took to research, review and accept the claim for negotiation.
- Jurisdictional conflicts between Ontario and Canada and the division of responsibilities were a source of frustration for First Nations.
- The Ontario Government's refusal to discuss self-governance, except to protect provincial interests, meant First Nations could not move ahead with negotiations for self-government agreements.
- The tripartite process was flawed because the Indian Commissioner was not granted the proper level of authority to compel the parties to resolve issues.
- There was a lack of political will to resolve issues.

Unfortunately, despite Robert Nault's commitment to replace the ICO and Tripartite process with a more effective mechanism, there was never any new process developed to replace the ICO. To this day, there is no tripartite forum in Ontario for the resolution of issues.

It is time for a clear break and for all parties to recommit to resolving issues. This will take political will, human and financial resource and more time, but what is at stake is enormous. One only needs to review statistics related to First Nation population growth, the lack of infrastructure, housing, and the social conditions in many First Nations to see that all governments will be facing a crisis if serious efforts to resolve land claims and other issues is not made in the immediate future. First Nations must settle land claims to obtain capital for investment and to create a foundation for a sustainable economy. Industry and governments want certainty, which can only come from dealing directly with First Nations and resolving these long standing issues.

3.3.3 A Case in Point: The Anishinabek Trapping Agreement

As previously mentioned, the Anishinabek Trapping Agreement is a prime example of how a simple, straightforward discussion can become bogged down by a lack of political will. As previously mentioned, the Ontario Fur Managers Federation (OFMF) negotiated

and signed an agreement with the government of Ontario to take over administrative responsibilities related to fur harvesting in Ontario in roughly one year.

In 1994, the UOI sought to undertake a similar negotiation (prior to the OFMF agreement) to take over administrative functions related to fur harvesting for Anishinabek trappers. This would include trapper education, licensing and harvest data collection. The rationale for pursuing this agreement was the concern the UOI had that Anishinabek trappers who are exercising a treaty right to trap, should not have to obtain permits from a third party user group to market their fur.

What took the OFMF less than 18 months from initiation of discussions to operational agreement took the UOI a decade, with a final agreement signed in April 2005. This leads many to question the commitment of governments to negotiate on these matters and the need for a properly facilitated process.

3.4 Ontario's Method of Consultation versus Anishinabek Expectations

In addition to the frustrations experienced by First Nations related to access to resources and the settlement of land claims, First Nations have also been frustrated by the methods, or lack thereof, employed by the Ministry of Natural Resources to consult with them on decisions that effect their communities and traditional lands. Every planning and allocation decision undertaken by the Ministry of Natural Resources and Ministry of Northern Development and Mines has the potential to directly or indirectly affect First Nation rights. Yet every day these decisions are made with inadequate consultation and participation by First Nation members and leadership.

This results in missed opportunities for industry, governments and First Nations, not only in an economic sense. Building relationships takes communication, exchange of perspectives and information and a level of engagement by all parties. By failing to consult meaningfully with First Nations, the prospect for certainty is diminished and First Nations continue to miss out on potential benefits for their communities. The Crown also fails to honour its fiduciary obligation to First Nations when it fails to adequately consult. This may lead to cultural loss, infringements on harvesting and other rights, destruction

of habitat which may affect the well being and economy of the First Nation and many other damages.

First Nation leaders contend, and the courts have agreed, that the concerns of First Nation people have to be substantially addressed through meaningful consultation³¹. Dr. Dean Jacobs, Chief of Bkejwanong Territory (Walpole Island) expressed this clearly in November 2002. He states, “In my view, seeking to accommodate our interests is part and parcel of consulting us. Consultation is a two way street. Not only must we as aboriginal people be asked what our views and concerns are, but the party consulting with us must discuss how our views and concerns can be accommodated.”³²

Dr. Jacobs also outlined some of the benefits that come from a well defined and properly undertaken consultation³³. These include:

- The creation of a strong, positive working relationship between the parties.
- A constructive working environment.
- The incorporation of traditional ecological knowledge into studies and protocols.
- Better information flow to community members and less likelihood of misinformation within the First Nation.
- Opportunities for employment and business development, which may improve community relations.

Often government and industry only make minimal effort to consult and see little practical purpose in consulting with First Nations. Many times First Nations resist efforts to be consulted with as well seeing no practical benefit. Through the Anishinabek Ontario Resource Management Council, a guideline has been developed to assist First Nations and the Ontario government in facilitating consultation processes at the local level.

³¹ Delgamuukw v. B.C. (1997) 153 D.L.R. (4th) 193 at para 168 (S.C.C.) and other cases.

³² Dr. Dean M. Jacobs, “The Benefits of Environmental Impact Agreements and Consulting Meaningfully with First Nations in Canada,” 27 Nov. 2002, Walpole Island Heritage Centre, Bkejwanong Territory, 10 Apr. 2005 www.bkejwanong.com/benefits.html 2.

³³ Ibid, 4.

3.5 The Interim Enforcement Policy

Ontario's Interim Enforcement Policy is a clear example of the failure of the Ontario government to live up to its policy and legislative obligations to First Nations. Adopted on May 28, 1991 and amended pursuant to *R. vs. Perry* in 1996, the Interim Enforcement Policy is a study in contradictions. The title of the policy is a misnomer. This policy has been "interim" since 1991.

The first sentence of the policy states "The Ontario Government, in consultation with the Government of Canada, is committed to negotiating arrangements as soon as it is possible with Aboriginal people and to enacting appropriate legislation with respect to their harvest of wildlife and fish."³⁴ To be fair, prior to the election of the Harris government in 1995, there were resource management negotiations underway in Ontario and the UOI had reached an umbrella agreement regarding Fishing in 1993. However, upon the election of the Harris government, virtually all dialogue ceased that was related to resource management negotiations with First Nations. There have been few negotiated arrangements in Ontario related to the harvest of fish and wildlife since 1993. The most well known agreement is the agreement regarding the Saugeen fishery on the Bruce Peninsula, which followed the Jones-Nadjiwon decision in 1993 wherein the Saugeen Ojibway successfully defended their Aboriginal right to commercial fishing. This agreement was renewed on July 14, 2005³⁵. While this latest agreement is encouraging, it is one of the scarce success stories of a cooperative, negotiated approach to addressing Aboriginal rights in Ontario. The MNR has also committed to negotiating a harvesting agreement with the Métis Nation of Ontario. Many other First Nations are waiting for a similar opportunity.

The policy also states that "best efforts will be made to outline traditional harvest areas"³⁶, yet there remain many ambiguities about the boundaries of traditional harvest

³⁴ "Interim Enforcement Policy", Ontario Ministry of Natural Resources, May 28, 1991. Amended in 1996 1.

³⁵ "Ontario and Saugeen Ojibway Sign Commercial Fishery Agreement for Waters around Bruce Peninsula", Ontario Ministry of Natural Resources Website, 18 July 2005. www.mnr.gov.on.ca/mnr/csb/news/2005/jul14nr%5F05.html 1.

³⁶ "Interim Enforcement Policy", Ontario Ministry of Natural Resources, May 28, 1991. Amended in 1996

1.

areas and treaties. The policy further states that where Aboriginal people have a tradition of harvesting outside their treaty area, that the policy would apply. However, MNR has taken a very narrow view of this part of the policy, which was evident with the cancellation of the community harvest agreements of the Williams Treaty First Nations and the consistent laying of charges by MNR enforcement staff in the Robinson-Huron and Robinson-Superior treaty areas.

However, the most glaring exclusion in MNR's application of the Interim Enforcement Policy is the complete failure and unwillingness for the MNR to implement sections 3(d), 3(e) and 3(f)³⁷. MNR has not ever established a First Nations/Ontario Conservation Committee or Regional Committee as directed by the policy. Further, the UOI has not been contacted at any time in the last ten years to participate in any discussion related to the application of the Interim Enforcement Policy.

It is time for MNR to begin to fully implement the policy, or negotiate with First Nations and PTOs for an improved policy that First Nations can consent to. This might include defining the management role of First Nations as it relates to the harvest of fish and wildlife in Ontario.

3.6 Ontario's New Approach to Aboriginal Affairs

The McGuinty government has recently released its "New Approach to Aboriginal Affairs" which details the Ontario government's proposed policy approach "for a constructive, cooperative relationship with the Aboriginal peoples of Ontario"³⁸. This policy statement was developed through a consultation process led by ONAS in 2004³⁹.

While this policy statement is much more substantial than that of the Harris government and it is clear that the mandate of ONAS has been expanded, there are still a number of concerns that the Anishinabek has with the proposed approach. The new policy statement virtually ignores the concerns of First Nations leaders as they relate to natural

³⁷ Ibid, 1.

³⁸ "Ontario's New Approach to Aboriginal Affairs", Ontario Native Affairs Secretariat Website, 30 June 2005. www.nativeaffairs.jus.gov.on.ca/english/news/aboriginalaffairs.pdf 1.

³⁹ The Union of Ontario Indians was dissatisfied with the approach taken by ONAS to consult on this policy statement. The majority of First Nations in Ontario did not have an opportunity to comment or review the policy statement during the ONAS consultation process.

resources management and the exercise of treaty rights. While there is a commitment to negotiate with the Métis regarding their harvesting regimes, there is no commitment to undertake similar discussions with First Nation harvesters. The policy statement provides only a general reference to respecting Aboriginal and treaty rights protected by section 35 of the Constitution Act, 1982⁴⁰. This is a major disappointment as there is no mention of mechanisms to ensure that this recognition of Aboriginal and treaty rights is reflected at the policy development and field levels. To put this more plainly, the question becomes “how does “Ontario’s New Approach” change the way MNR and other ministries carry out their day to day work and communication with First Nations and Anishinabek people?” First Nations leaders and Anishinabek people keep asking the question “When will we see real results, not just words on paper?”

3.7 Next Steps

At a conference hosted by the Anishinabek Nation Justice Stephen O’Neill captured the essence of why it is important to improve public education about First Nations and deal with Aboriginal concerns and issues about land, treaties and natural resource issues. He states:

It is important that all Canadians learn about Aboriginal people, their history, their culture and their contemporary concerns. It is particularly important to understand the link between historical treaties and modern treaty making and their relation to Aboriginal self-government...To the Crown, the treaties were instrumental in acquiring what they saw as extensive and valuable assets. To the First Nations, the treaties were sacred living documents that affirmed their sovereignty and set down the basis to share existing natural resources in a peaceful and everlasting way. From their beginning, treaties have represented important events in Ontario history. While there is considerable debate about their meaning and interpretation, these special agreements have stood the test of time⁴¹.

⁴⁰ “Ontario’s New Approach to Aboriginal Affairs”, [Ontario Native Affairs Secretariat Website](http://www.nativeaffairs.jus.gov.on.ca/english/news/aboriginalaffairs.pdf), 30 June 2005. www.nativeaffairs.jus.gov.on.ca/english/news/aboriginalaffairs.pdf 4.

⁴¹ Justice Stephen O’Neill. [Report on the Conference Proceedings: Anishinabek Harvesting Rights and Responsibilities Conference](#). (Union of Ontario Indians: March 2002) 15.

Justice O'Neill's words reflect the need for more dialogue, better communication, and political will on the part of First Nations and governments. There is a need for local, regional and national discussions on issues of common concern and interest. There is an urgent requirement for all parties to be proactive wherever they can play a role and prepared to react whenever it is necessary. Most importantly, the consequences of failing to resolve rights based disputes is continued uncertainty for First Nations, industry and the general public.

Yet there is a substantial lack of human, technical, financial and other resources available to First Nations. It is incumbent on governments and First Nations to be creative to address these gaps. There is too much at stake to do otherwise.

4.0 Conclusion

There are substantial problems that the Anishinabek Nation, Ontario and Canada have to address in order to ensure a foundation for growth and sustainability within First Nations in the province. Treaty implementation and the recognition of aboriginal rights remain frustrating problems to define and address. Yet there is a desire and expectation by Anishinabek people that all parties will continue to work toward reaching new goals. This will be accomplished through serious dialogue, setting targets, measuring progress and achieving tangible results.

Resolving outstanding claims and rights issues provides First Nations leaders with additional resources to address social and economic pressures facing their communities. It provides resource based industries with certainty about the status of the land they will be operating in and greater confidence that their operations will be efficient. Surrounding municipalities, governments and the general public gain a better understanding of the issues facing their neighbouring communities and spin off benefits that result from settling these long standing grievances.

Steps have been taken to ensure that First Nation voices are heard and that Anishinabek perspectives are acknowledged in planning and policy processes. Yet it seems that the surface has only been scratched in a most superficial way. Improvements can be made in almost every policy and piece of legislation that affects the exercise of Aboriginal and treaty rights. First Nations can be more involved in policy development, consultation processes can be better resourced and communication can be made better. This will take the will and effort of all parties involved, from the local harvester, to First Nations governments to policy developers within government to the politicians.

5.0 Recommendations

5.1 Issue Resolution

- **The Ontario government and First Nation Provincial Treaty Organizations (PTO) should initiate a process to identify treaty issues that remain outstanding. Every PTO should be able to provide a preliminary list of issues for almost every First Nation member community within a three month period.**
- **Practical problems that can be resolved quickly by all parties should be prioritized in each treaty area and resources put forward to resolve them in an agreed upon timeframe. The PTOs have a strong grasp of the issues. The newly formed federal-provincial-First Nation roundtable is the most appropriate forum for this exercise.**
- **A critical examination of treaty obligations should be carried out by the Ontario government with the involvement of First Nations leadership in each treaty area. A review of relevant natural resource policies and legislation should be a part of this examination.**
- **A treaty implementation process should be initiated to ensure that gaps and omissions in policy and legislation are addressed. Further, the Ontario government should acknowledge that First Nations, by virtue of their rights and treaties, must be recognized as partners in the management of natural resources.**
- **Mechanisms to address long standing issues like the implementation of Condition #77 and Condition #34 of the Timber EA should be immediately instituted by the MNR. The focus must be on measurable targets that bring meaningful benefit to First Nation communities whose traditional territories are being directly affected by resource extraction.**
- **Land claim settlement processes should be strengthened and supported to provide certainty to all parties involved. Ontario must begin to view the**

settlement of land claims not only as settlement of historic grievances but as investments in the future development of First Nation communities and local economies, particularly in northern Ontario.

- **Diversion programs should be developed to prevent issues from going to expensive court processes. These issues include charges that relate to the exercise of Aboriginal and treaty rights, inter-treaty harvesting and land disputes. PTO's, the MNR and the Ministry of the Attorney General are positioned and currently discussing the development of such a program. This work must be completed within this political mandate of the Ontario government.**

5.2 Public Education

- **A joint public education program about treaties, First Nation history and contemporary issues should be developed. It should be relevant to the local communities and treaty areas that it will be delivered in. Each PTO should be provided with a level of resources to carry out this work within their respective treaty areas. This is particularly important in areas where there are contentious or complicated issues where the general public needs to stay informed.**
- **Teacher associations and First Nation organizations are well positioned to develop guidelines and teaching tools for the development of curriculum that reflect local First Nation customs, history and language.**
- **Support should be provided for existing processes (like the Nijii Circle in North Bay) that promote media awareness and opportunities for First Nations to tell their own stories.**

5.3 Policy Development

- **The Statement of Political Relationship (SPR) should be updated and renewed. The Premier and Minister Responsible for Native Affairs, as well as the PTO Grand Chiefs, must play a central role in accomplishing this task within this**

political mandate. The SPR should be incorporated into planning processes within relevant line ministries, not just ONAS.

- **The tripartite process in Ontario should be renewed and properly resourced by the governments of Canada and Ontario. There is a need for a formal process with a properly resourced work plan and budget.**
- **First Nation consultation guidelines should be adopted jointly by the Ontario government, the government of Canada and First Nations. This can alleviate delays in decision making, ensure that First Nations are properly consulted and enhance planning processes.**
- **The Ontario Government must consult and seek consent from First Nations in Ontario on a new enforcement policy related to the harvesting of fish and wildlife by Aboriginal people. Ontario must honour its 1991 obligation to develop proper agreements with First Nations on harvesting issues as outlined in the Interim Enforcement Policy of 1991.**

5.4 First Nation Involvement in Resource Management

- **First Nations must be provided access to natural resources in their traditional territories to build their economies. Wherever possible access to natural resources should be provided in suitable amounts for First Nations to plan and build their economies.**
- **At a minimum, First Nations and their representative organizations should be provided the opportunity to participate in all matters of resource management activities at a level that supercedes the involvement and access that third party interests are now provided. Minister Ramsay is in a position to ensure that Ontario's new approach to Aboriginal Affairs is interpreted liberally by policy staff within MNR and implemented at the field level by enforcement and technical staff.**
- **First Nation resource management activities should be facilitated and supported by the MNR at the field level. There must be recognition of First Nation**

traditional knowledge, particularly as it relates to natural resource management and land use planning. This may include the development of a First Nation conservation officer program, jointly developed by the MNR and First Nations in each large treaty area.

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