

## APPENDIX “D”



### *Anishinabek Perspectives on Roundtable Forums that Support Issue Resolution*

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## 1.0 Introduction

If you're a First Nation person in Ontario and if you rely to any degree on the harvesting of moose, deer or fish for your family's subsistence, you have probably been involved with the Ministry of Natural Resource's (MNR) enforcement process. Almost every fall, the telephone of Nipissing First Nation Band office rings with calls from Band members charged while exercising their inherent and/or treaty right to hunt or fish. Hunting and fishing has been one of the primary ways of life for the Nipissing people for many hundreds, if not thousands of years. Nipissing First Nation is a community of approximately 1,800 people. It is strategically located on Lake Nipissing just east of Lake Huron's Georgian Bay. Nipissing occupied an important portage between the Ottawa and the French Rivers which linked Lake Huron to the St. Lawrence.

Prior to European contact, the people of this community harvested fish and wildlife without disruption with only the balance of weather, need and supply, outside of their own inherent regulation, dictating success. Upon European contact and their steady encroachment into traditional territory, conflict and competition for resources began. The ancestors of these people saw fit to resolve this conflict through Treaty – a solemn agreement between two nations on how to share the land and its resources. For the Nipissing people part of this treaty was the exchange of vast amounts of land for recognition and protection of certain rights, including hunting and fishing, as they were accustomed to<sup>2</sup>. The Nipissing people continued to hunt, as they were accustomed to, but as Canada developed and prospered, the understanding of the treaties in the minds of non-Aboriginals faded. Nipissing hunters today are still charged with such harvesting offenses as hunting or fishing without a license, despite the fact that the Robinson Huron Treaty of 1850 guaranteed hunting and fishing to them as a treaty right and that these treaty rights were entrenched into the Canadian *Constitution* in 1982<sup>3</sup>.

<sup>2</sup> *Robinson Huron Treaty of 1850.*

<sup>3</sup> Section 35.

## 1.1 Options to Deal with Harvesting Charges

What options does a First Nation person have who is charged with harvesting offenses?

Before charges are laid, the MNR screening process<sup>4</sup>, outlined in the MNR's Interim Enforcement Policy<sup>5</sup>, directs that they must "consult" with the Chief of the community from which the harvester is a member. This is normally done by telephone call. Beyond sheer advocacy on the facts of the situation during the telephone call, there is little most First Nation's can do. First Nations deal with some of the most pressing issues that a community can have, including, lack of housing, health crisis, lack of employment, youth substance abuse, suicide, and violent crime. Given the scope of issues to contend with, there are few human and financial resources available to create an offensive base to prevent a First Nation person from being charged when exercising their harvesting treaty rights.

If charges are laid, the harvester has the option of defending the matter himself. However, with Nipissing First Nation incomes averaging \$24,047.00<sup>6</sup> there is little chance of personal resources being allocated to defend a case where the courts have ruled that treaty rights are situational and claims of a treaty right to hunt or fish must be assessed on a case-by-case basis<sup>7</sup>. This means that for each treaty right claim, such as the treaty right to hunt, must be defended on its individual merits. This includes proving that your community was part of the particular treaty, that the accused is an "Indian" from that community, the particular treaty protects the rights they claim and that the law in question infringed your rights. With significant onus on the harvester and the complexity of this area of law, it is difficult for individuals to defend themselves in court. Even if they can hire a lawyer, in addition to legal costs, supporting historical and other research costs can cost tens of thousands of dollars. Further, if you succeed at trial, there is the possibility that the MNR will appeal to the Court of Appeal or even the Supreme Court of

<sup>4</sup> "screening" refers to the process whereby the Ministry reviews the circumstances of the particular case to determine if there are grounds to lay a charge.

<sup>5</sup> May 28, 1991 (amended in 1996 further to *R. v. Perry*).<sup>6</sup> This figure is based on the 2001 census combined average for males and females. This income is among the highest of First Nations in Ontario. The same average for Ontario generally is \$35,185.00.

<sup>7</sup> *R. v. Powley* (2003) 2 S.C.R 207.

Canada. This is the alternative to pleading guilty and paying a fine of a few hundred dollars.

The harvester can also apply for legal aid to defend the charges. However, funds through Ontario Legal Aid are only available if the charges have the potential to involve incarceration or take away your source of livelihood<sup>8</sup>. Although First Nations people have a treaty right to hunt year round, traditional management principles dictate that they do not hunt throughout the year. As such, harvesters often rely on other means for livelihood in addition to harvesting. Given this criteria, many First Nation harvesters cannot access Legal Aid resources.

The harvester can also lobby the Chief and Council of their community, the Assembly of First Nations (AFN), Chiefs of Ontario (COO) or other political territorial organizations. While these organizations advocate on behalf of First Nation people on their collective concerns there is no services dedicated to supporting individual First Nation people exercising their treaty right to hunt or fish, despite constitutional protection of this right. Calls and messages to these organizations will only be addressed through assurances that these issues are part of the overall advocacy of the organization and through their sympathetic ears.

From these organizations lobbying efforts proceed. First, directed at the Minister of Indian and Northern Affairs who has a fiduciary duty and constitutional responsibility over Indians and lands reserved for Indians<sup>9</sup>. Secondly, lobbying efforts can be directed to the Ontario Native Affairs Secretariat. While you can be assured that a form letter will be received, there is little that can be done, given the current administrative structure of these governments, to support the individual's defense in hunting and fishing treaty rights charges.

The harvester and its First Nations in this situation may consider self help remedies. Self-help remedies can include continuing on in the same manner as when they were originally charged, protests, blockades and even violence<sup>10</sup>. These activities are often not

<sup>8</sup> Correspondence of January 20<sup>th</sup>, 2005 Legal Aid Ontario.

<sup>9</sup> Section 91(24) of the *Constitution Act*.<sup>10</sup> As in the fishing disputes of the 1990's concerning the Chippewas of Nawash.

a result of the direction of the leadership of a First Nation, but rather the result of actions of people that feel they have nothing left to lose.

History has shown us that the fundamental issues between First Nations and government will not be resolved by the courts. Despite success in litigation, narrow interpretations of rulings by government reduce the impact of these successes<sup>11</sup>. Further, legislation and regulation have failed to address the concerns of First Nation people<sup>12</sup>. Ultimately, discussion and negotiations with First Nations are the way to resolve long neglected issues and concerns. Round table forums, where First Nation priority issues can easily be brought forward and ways to address them jointly developed with Federal and Provincial governments, are key practical and effective processes to avoid conflict between First Nations and other governments. As such, round tables should be supported and nurtured by all governments.

<sup>11</sup> An example of this would be the recent the Supreme Court of Canada's *Haida Nation* and *Taku River* decisions concerning government's duty to consult. Despite these rulings and the high standard placed on governments, there are still regional and local government offices that are unilaterally trying to impose restrictions on core treaty rights such as hunting and fishing.<sup>12</sup> An example would include the Federal government's *First Nation Governance Act* that was strongly opposed by First Nations and eventually defeated as a draft bill.

## 2.0 Scope of the Paper

This paper will identify the core elements of Anishinabek round tables, highlight the experiences of the Anishinabek in the development of round tables and discuss their utility at resolving issues before they become more contentious. The paper will examine three round tables in particular. One between the Anishinabek and the Department of Indian and Northern Affairs; another between the Anishinabek and the Ministry of Natural Resources and finally one between the Anishinabek, the Ministry of Health (Ontario) and Health Canada. In particular their key purposes, components, functions and activities will be examined. Further, the paper will assess the strengths and weaknesses of these round tables and recommend ways to improve them. This paper does not set out a detailed evaluation of these round tables.

A term that requires definition in the context of this paper is “Anishinabek”. This term is plural for the collective of First Nations who, in 1949, incorporated the Union of Ontario Indians (UOI) as its political advocate and secretariat. The UOI current membership is comprised of 42 First Nations within Ontario<sup>13</sup>. It is the oldest political organization in Ontario and its roots can be traced to the Confederacy of Three Fires, which existed long before European contact<sup>14</sup>. The Anishinabek are highly organized groups of First Nations, who gather annually to form the Anishinabek Grand Council.

<sup>13</sup> See list attached as appendix “A”.

<sup>14</sup> Union of Ontario Indians communications material.

### 3.0 Role of Roundtable Forums

Form can be just as important as substance. In western culture, the round table of Arthurian legend was the forum for his Knights to strategize and discuss courses of action<sup>15</sup>. In more modern times a round table is considered to be a conference or discussion involving several participants or meeting of peers for discussion and exchange of views<sup>16</sup>. For First Nations people the principles that are the foundation of round tables have deep cultural and spiritual roots.

The principle or concept of round table forums is perhaps best linked to the talking circle. The talking circle is a highly organized and interactive communications method. Although there are various forms of talking circles amongst the various Aboriginal nations, the talking circle has four basic elements: respect, honesty, trust and open communications<sup>17</sup>. These are the basic building blocks one needs to have in any relationship.

The purpose of the talking circle is to allow for multiple perspectives and interpretations of issues to emerge in discussion. In the circle, views are respected. That is not to say that participants cannot be critical. Participants may critically evaluate views in the context of their own knowledge bases. Participants in the talking circle are encouraged to express their views. No comments are unwelcome allowing participants to feel “safe” to speak freely. The circle itself allows for communications in absence of hierarchy and institutional constraints.<sup>18</sup> In keeping with the tradition of the talking circle, the Anishinabek have used round table forums as an organized means for open communications between two or more parties. What follows is the examination of the strengths and weaknesses of three round table forums established by the Anishinabek.

<sup>15</sup> *The American Heritage® Dictionary of the English Language*, Fourth Edition 2000 Houghton Mifflin Company.

<sup>16</sup> As in "a roundtable on the future of computing" *WordNet 2.0*, 2003 Princeton University

<sup>17</sup> Battiste and Barman, *First Nation Education in Canada: The Circle Unfolds* (1995) UBC Press. <sup>18</sup> *R. v. Moses* (1992) 71 C.C.C. (3d) 347.

### 3.1 Indian and Northern Affairs Canada – Anishinabek Roundtable

Legislation has a significant impact on First Nations lives – most apparent is the *Indian Act*<sup>19</sup> (the Act). It is a sad fact that when First Nation people are asked, very few have ever read the Act, very few know what it says, and far less if any, have been involved in developing what it says<sup>20</sup>. This is so despite the fact that from the day a First Nation person is born, a federal public servant reviews the Act to determine if the individual can be registered as an “Indian” under the Act<sup>21</sup>. As time rolls on, the individual enters school, another public servant reviews and applies the Act to determine eligibility for education funding<sup>22</sup>. As life goes on and the individual builds a home, once again a public servant may review and apply the Act with respect to lands<sup>23</sup>. Finally, once the individual passes on, a public servant reviews and applies the Act in regards to its estates provisions and determines how their estate should be dealt with and even determines if an “on reserve” burial is available<sup>24</sup>.

Given the impact of the Act on First Nation lives, it is imperative that First Nation people have at least some means of influence on the Act’s interpretation and implementation. The primary Federal department responsible for the Act is the Department of Indian and Northern Affairs Canada (INAC). INAC’s primary means for obtaining direction for its activities in fulfillment of the *Indian Act* is parliament. First Nations have been relegated to what ever influence it can assert through lobbying the Minister and senior bureaucrats on an ad hoc basis on various issues.

Recognizing the inherent dysfunction of this type of relationship, the Anishinabek, through the UOI, have formed and entered into an agreement to create a roundtable forum with INAC (see attached Agreement). From the Federal perspective, the INAC – UOI roundtable was created in 1998 as a result of the policy statements in Gathering

<sup>19</sup> Revised Statutes of Canada

<sup>20</sup> This comment is based on the author’s personal experience while engaged in community consultations with Union of Ontario Indians member First Nations (43) during the period 1999 to 2005. Community consultations concerned opting out of the *Indian Act* and entering into self-government agreements.<sup>21</sup> Section 6 of the *Indian Act*.<sup>22</sup> Section 114 to 122 of the *Indian Act*.<sup>23</sup> Section 53 to 59 of the *Indian Act* R.S.C. 1970. Some First Nations such as Nipissing First Nation and Georgina Island First Nation are now under the *First Nation Lands Management Act*.<sup>24</sup> Section 45 to 50 of the *Indian Act*.

Strength in “renewing partnerships”, strengthening First Nations Governments, developing new fiscal relationships and supporting First Nation communities<sup>25</sup> .

This round table agreement outlines the purpose of the INAC – UOI round table: to discuss issues of concern to both parties and facilitate common understanding of those issues, while working towards their resolution. Further, the round table is a means to “expedite and accentuate priority issues” of the Anishinabek First Nations. This includes discussion of a broad range of issues, based on a jointly set agenda, that can include:

- Policy and Intergovernmental Affairs
- Treaty Research and Relationships
- Social Issues
- Health Issues
- Lands, Resources and Environment
- Education
- Fiscal Relations
- Planning
- First Nation - Federal Government Relations
- First Nation - Provincial Government Relations.

The parties agree that they may utilize mechanisms including political, administrative, financial, technical and judicial that may be required to resolve First Nation issues.

According to the round table agreement, the principles on which the issues are approached include: mutual respect, recognition, responsibility, and sharing. The Parties will recognize and respect the right of each First Nation or group of First Nations to pursue its own priorities as well as their right to enter into agreements with other parties. This agreement provides that the round table is part of the Crown’s fiduciary relationship and obligations to Anishinabek First Nations. The round table agreement is without prejudice to existing or future First Nation negotiations and is intended to facilitate such

<sup>25</sup> This is gathered from the preamble in the INAC – UOI Operational Agreement which provides that Gathering Strength -- Canada's Aboriginal Action Plan, Minister of Indian Affairs and Northern Development Ottawa, 1997 is the basis for its involvement.

negotiations and processes when appropriate. Further, the agreement will not abrogate or derogate from Aboriginal and treaty rights of the Anishinabek First Nations.

### ***3.1.1 INAC – Anishinabek Roundtable – Strengths & Weaknesses***

One of the strengths of this round table is in its simplicity. Community issues are communicated by Anishinabek First Nation leaders to the Anishinabek Grand Council Chief through various opportunities such as the annual Anishinabek Grand Council, assemblies, regional meetings or other avenues as deemed necessary. Issues that are within the mandate of INAC are placed on the agenda for the next quarterly round table meeting. Understanding that the agenda is jointly developed, issues are prioritized by the Anishinabek and a draft agenda is developed for submission to INAC for their comment. Seldom are issues removed from the agenda. If they are removed it is only on consent of the Anishinabek. This serves to ensure that issues the Anishinabek deem a priority are addressed, even if it is not to their complete satisfaction.

Another strength is the round table's composition. The round table has a mixture of administrative and political representatives. Anishinabek representation includes the Grand Chief, other community leaders and supporting administrative personnel, depending on the nature of issues on the agenda. Federal representation is primarily administrative including the Regional Director General and various supporting personnel, also depending on the nature of the issues on the agenda. The round table has a significant level of Federal administrative decision making authority and key implementers of existing policy that serve to create some maneuverability within existing policy and administrative frameworks.

Regular and frequent communications also serve to strengthen the relationship. Although the round table does not always meet quarterly as provided in the agreement, the table does meet on a regular basis, perhaps three times per year formally, in addition to several informal meetings. Issues are tracked by the UOI through an issues tracking chart. Progress in addressing these issues is also measured and tracked<sup>26</sup>. However, there have

<sup>26</sup> How progress is measured depends on the specific issue. Broad issues such as housing or 3<sup>rd</sup> party management are not tracked or measured. As indicated later in this paper, this is a subject that should be included in a form of long term joint strategic planning.

been occasions in the past where, because of problems with the relationship, the round table has not met regularly. There are no mechanisms within the round table agreement to force parties to meet if they do not want to.

Perhaps the greatest weakness of this round table is its lack of coordination in relation to strategic planning<sup>27</sup>. While it is understandable that a completely jointly developed strategic plan may be difficult if not impossible to formulate, there is little visible effort in linking the round table's concerns and activities into INAC's or the Anishinabek's strategic planning process<sup>28</sup>. Unfortunately, the table moves primarily on a crisis management basis as opposed to an overall strategic goal and objectives. The ability to measure progress towards larger goals and objectives is key to ensuring complicated issues are addressed and available resources are used in working towards common purpose.

Another significant weakness is the round table's lack of administrative focus<sup>29</sup>. While this serves to create maneuverability in terms of activities within current policy and administrative frameworks, it does little to support larger policy and legislative change. Therefore providing no direct linkage to federal political representation such as the Minister of Indians Affairs, where fundamental change can find purchase.

Internally, for both the Anishinabek and INAC, communications of the purpose, objectives and activities of the round table are a weakness. Frequent changes in INAC staff means there is a continuous need to orient staff to the round table's purpose. With the Anishinabek, communications internally and to First Nation communities also poses challenges in terms of understanding its purpose and managing expectations.

Another weakness of the round table is its lack of connection with other Federal departments that may have some responsibility for services to First Nations. Issues such as INAC support for Ojibwa language and outstanding Canada Pension Plan claims<sup>30</sup>

<sup>27</sup> "Strategic planning" is meant in terms of INAC and Anishinabek jointly developing a plan to address issues of common concern to its member First Nations.

<sup>28</sup> Strategic thinking is primarily done in isolation of each other.

<sup>29</sup> "Administrative focus" means working within safe parameters of existing policy and law.

<sup>30</sup> From 1965 to 1988 the *Canada Pension Plan Act* provided that Indians working for Bands could not contribute to the Canada Pension Plan. As a result, many long term Band employees are without one of the basic social support mechanisms afforded to other Canadians in their retirement years.

have remained unresolved and unaddressed through the round table. While these issues may not be a priority to INAC and are outside their mandate, it is of fundamental importance to the Anishinabek First Nations. Despite this, little serious discussion has occurred concerning inviting other Federal departments such as Heritage Canada and Human Resources Development Canada to attend round table meetings to try to address these issues.

### **3.2 Anishinabek/Ontario Resource Management Council**

It is often stated that First Nation people have a direct relationship with the land. The direct relationship between Anishinabek people, the land and its natural resources, has always dictated that Anishinabek make the management, consideration and respect for natural resources a priority – the level of priority people give to resources they depend upon for their survival.

The Anishinabek – Ontario Resource Management Council (A/ORMC) was formed as a result of the necessity for continued Anishinabek survival. Originally formed in 1998, the A/ORMC is a round table comprised of Anishinabek First Nation representatives and senior bureaucrats of the MNR<sup>31</sup>. The purpose of the A/ORMC is to provide an opportunity for Anishinabek First Nation representatives and MNR representatives to discuss resource management issues, exchange information, facilitate discussion and collaborate on resolution of issues. These issues can include those relating to hunting, fishing, trapping, land use planning and others as identified in the agreement forming the A/ORMC signed in 1998<sup>32</sup>. At the same time the agreement provides that the A/ORMC will not serve to abrogate nor derogate from Aboriginal or treaty rights.

The A/ORMC was formed during a period of time when the relationship between the MNR (and the Ontario government in general) and Anishinabek First Nations was at a low point. First Nations were extremely frustrated with the “Lands for Life” process and a number of Anishinabek members were being charged for exercising their rights, despite

<sup>31</sup> Personal Communications Jason Laronde, Union of Ontario Indians February 6, 2005.<sup>32</sup> RMC agreement page 3.

favorable Supreme Court of Canada harvesting rulings in the 1990's<sup>33</sup>. Anishinabek First Nations felt that they deserved a stand alone process to address issues and to include First Nations in policy development<sup>34</sup>.

In addition to the regular discussions and activities of the A/ORMC, there are five working groups that flow out of its structure. These five working groups are jointly represented and focus on the following issues: enforcement, lands, water management, fisheries and forestry.

### **3.2.1 A/ORMC – Strengths & Weaknesses**

The greatest strength of the A/ORMC is that it provides regular opportunity for discussion on some resource issues that are important to the Anishinabek. Regular discussion educates and even assists in changing of attitudes with respect to First Nation resource issues. Often these attitudes reflect the will of the non-Aboriginal majority and conflict with the rights of First Nation people. Education of MNR representatives involved in the A/ORMC serves to reduce the time necessary for them to understand First Nation views and positions on issues as they emerge. Further, regular opportunity to discuss resource issues increase First Nation capacity to address these issues in a way that considers the MNR's concerns.<sup>35</sup>

Another significant strength is the activities of the five working groups. As an example, the lands working group is involved in community based workshops leading to the development of a consultation process<sup>36</sup>, reviewing the incidental cabin communications plan, discussions on Ontario's Living Legacy and Great Lakes Heritage Coast. The forestry working group acted as a steering committee on a forestry study identifying and describing successful strategies and practical approaches to Aboriginal involvement in forest management. Further, this working group addressed access to crown forests and forest fire management information. The enforcement working group acts to educate the Aboriginal and non-Aboriginal community on Anishinabek harvesting rights and

<sup>33</sup> For more information on this please see *Anishinabek Perspectives Resolving Rights Based Issues and Land Claims* a paper for the Ipperwash inquiry by Dwayne Nashkawa. <sup>34</sup> Personal Communications Jason Laronde February 6, 2005. <sup>35</sup> Personal Communications Jason Laronde, Union of Ontario Indians February 6, 2005. <sup>36</sup> This lead to the document "Researching Effective Consultation - A Guide on how to Get there".

responsibilities. An example of this would be a thematic map of Anishinabek traditional territory that includes frequently asked questions concerning First Nation people's treaty right to hunt<sup>37</sup>. The water management working group is examining the provincial water management principles.

According to Jason Laronde, the Anishinabek coordinator for the A/ORMC, a major strength of the A/ORMC is that Anishinabek and MNR representatives bring valuable practical experience and background to this round table. Further, they are positive, supportive and are able to address the broad issues that the A/ORMC face. At the same time these individuals understand the need to evolve.

The greatest weakness of the A/ORMC is its administrative focus. MNR administrative representation allows for some progress and change within current policy structures. Anishinabek First Nation leadership desire major policy shifts and legislative change. Major issues such as access to and sharing of resources and gray areas in terms of harvesting rights cannot be effectively addressed at an administrative level. Nor are there linkages to political spheres so that major policy and legislative change can occur or at least be heard and perhaps supported.

Another weakness of the A/ORMC is its communications capacity. Communicating to First Nation community members and gathering input from them on issues that the A/ORMC address is a challenge. Problems of distance, lack of funds are compounded by a history of mistrust. Further, educating First Nation members on the scope of activities of the A/ORMC and managing expectations is also a challenge.<sup>38</sup>

### **3.3 Health Canada (FNIHB), Ontario Ministry of Health (Aboriginal Health) and Anishinabek Health Commission**

The health status of Aboriginal people in Canada is both a tragedy and a crisis. According to the Royal Commission on Aboriginal People, illness of almost every kind occurs more often in Aboriginal people than in other Canadians. Registered Indians die seven to eight years younger than other Canadians and infant mortality is twice the national average.

<sup>37</sup> This thematic map assists First Nation people understanding their rights and non-Native people in understanding First Nation peoples rights.

<sup>38</sup> Personal communications with Jason Laronde, Union of Ontario Indians RMC coordinator.

Chronic illness such as diabetes, tuberculosis and heart disease plague First Nation communities. This is so despite over twenty-five years of effort by all levels of government<sup>39</sup> .

The Anishinabek First Nations are not immune from these statistics. Recognizing the priority of health issues and the need for a more concerted effort, the Anishinabek, Ontario and the Federal Government formed the Health Canada (First Nation Inuit Health Branch), Ontario Ministry of Health (Aboriginal Health) Health Roundtable in 2004.

The goal of the Health roundtable is to improve the health of Anishinabek First Nation's people by developing coordinated and integrated approaches to address agreed upon health issues. The Health roundtable's objectives include identifying mutual health issues and identifying options for addressing them. The Health roundtable established a technical working group charged with creating a workplan with achievable and measurable goals. Further, the workplan must clearly articulate benefits to Anishinabek First Nations health outcomes.

The Health roundtable consists of administrative decision-making representation from the federal and provincial Governments and political and administrative representatives from the Anishinabek. This representation initially included the Grand Council Chief of Anishinabek Nation, the Regional Director of the FNIHB Ontario Region of Health Canada and the Aboriginal Health Coordinator of the Aboriginal Health Office, Ministry of Health and Long Term Care. The Health roundtable is also supported by a working group of technical representatives from each party.

The intention of the Health roundtable is to collaboratively work towards achieving its purpose within their respective authorities and mandates. Technical representatives will support the Health roundtable by working towards the completion of the tasks identified in the jointly developed workplan and by completing tasks identified by their principals. Workplans developed by the roundtable must include: sharing information about other coordinated/integrated approaches to health services; considering the fiscal impacts and

<sup>39</sup> Royal Commission on Aboriginal People, volume one, page 6.

potential associated with a more coordinated approach to health services; and developing a means of measuring the progress achieved by the Health roundtable process.

Health roundtable decision-making is based on an understanding of the importance of consultation. Representatives must discuss proposed decisions or recommendations with their leadership or authorities before the Health roundtable endeavours to reach a decision. Consensus is the basis for Health roundtable decisions.

Other miscellaneous aspects to the Health roundtable are that it meets quarterly. The hosting and coordination of meeting is shared. Agenda-setting as with other Anishinabek roundtables is jointly done. Participation in the Health roundtable is voluntary. At any time any party may withdraw from the table upon thirty days written notice to the other parties. Any jointly agreed upon workplan(s) flowing from the terms of reference for the Health roundtable must include agreed upon financial resources to undertake and accomplish any workplan.

### ***3.3.1 Health Roundtable – Strength & Weaknesses***

The Health round table has been in existence for less than one year. Already emerging as a major strength of the Health round table is its potential for coordination. The three parties have numerous projects and activities in progress. It is clear that all three parties are unanimous in the need to address any duplication and overlap of activities. This would then allow for greater coordination or reallocation of resources to other Anishinabek health related priority activities. Technical support from all three parties in identifying these issues is needed. Whether this strength can be capitalized on and sustained remains to be seen. There is considerable pressure on this round table to perform.

A potential weakness is meeting the need for a strong linkage between the Health round table and the Anishinabek Health Commission (AHC). The AHC is a body mandated by the Anishinabek First Nation Leadership, to address health related issues on behalf of the Anishinabek Nation communities. Funded as a health planning authority under the Aboriginal Healing and Wellness Strategy, the AHC is comprised of representatives from seven Area Health Boards. The representatives of the Area Health Boards are political

and technical individuals who are also members of First Nation communities. A linkage between the Health round table and the AHC is essential to maintaining a linkage to the Anishinabek First Nation communities. Having the linkage to First Nation communities ensures that the Health round table understands the impacts and outcomes of decisions made at the table.

The human and financial resources to operate the Health round table properly will also be a significant challenge or weakness. Funding to support the table is stated to be a shared responsibility with support for the Health round table provided. However, this will always be a challenge because both the federal and province health departments are generally searching for cost saving opportunities as opposed to health investments such as round table support. Human resources to support the Health round table are also a challenge for all parties. In particular, the Anishinabek representatives experience the same demands as front line First Nation health workers. As a result frequent changes in staff will likely result in difficulty addressing activities of the Health round table and ensuring continuity of purpose and intent of the table.

Another weakness that can be expected is the lack of significant policy change as a result of activities or recommendations of the Health round table. As with other Anishinabek round tables, this table is comprised of federal and provincial administrative representatives. As such, significant policy or legislative change will be difficult to achieve. However, clear adjustments within administrative discretionary authority will be possible through discussions at the Health round table. Again, as with other Anishinabek round tables, there is no direct linkage to the larger political and policy spheres of the Federal and Provincial government. A strategic linkage between the Health round table and the Federal and Provincial policy and political sphere may be as simple as an annual presentation to those Federal and Provincial political people on changes that the Health round table has recommended. This could assist in larger policy changes or legislative changes that First Nation people want.

## **4.0 Key Elements of the Three Anishinabek Roundtables**

### **4.1 Common Strengths**

The act of negotiating and developing a roundtable agreement in itself symbolizes a new relationship, a new way of doing things, a collaborative effort, best described in two words: creating hope. In addition, when a federal and/or provincial and First Nation representative signs the round table agreement there is a sense of equality. This is reflective of a core interest of First Nations in acknowledging the government-to-government and Nation-to-Nation relationship outlined in the Treaties. These simple acts culminate into respect.

Most of the agreements extend some protection to another core interest of First Nations – protection of treaty rights. Treaties are the basis of First Nation co-existence with non-Aboriginals and were negotiated by their ancestors. There is always a fear that discussion, information sharing and consultations with governments will be used against First Nations to infringe treaty rights. The protection of non-derogation clauses in these agreements provides some sense of comfort and fairness, in addition to setting out a foundation for trust to be formed.

All Anishinabek roundtable agreements have joint agenda setting as its framework. No single party has the final word on what the agenda will contain. Joint agenda setting supports the sense of equality. By addressing all matters in some form through the development of the agenda, open communications of issues are encouraged. Further, this ensures that issues First Nations want to be addressed are addressed, even if not to their satisfaction. In many ways the joint agenda setting creates an accountability tool for the benefit of First Nations to ensure that governments are at least aware of the existence of a particular issue. This feature promotes open communications and a sense of fairness.

The administrative nature of Anishinabek Round tables provides opportunity for change. The administrative nature of these round tables, through the participation of senior federal or provincial representatives, extends opportunity for a certain amount of maneuverability within existing policy frameworks. Further, the involvement of senior bureaucrats in frequent and regular roundtable forums offers an opportunity to educate

these individuals in understanding the prospective of the First Nations people involved. This equips them with knowledge that can be used when there are opportunities for larger policy changes and at the same time, chips away at the corporate culture of the government institutions that do not always understand First Nation perspective or priorities<sup>40</sup>.

## **4.2 Common Weaknesses**

As a result of the participation of federal and provincial government administrative representatives at Anishinabek Round tables, there is only a minimal chance of impact in terms of policy or legislative change. Adjustments can only occur within current policy structures and mandates. Many Anishinabek First Nation members feel that fundamental change is needed in order to address major issues such as health, natural resource matters and other issues in First Nation communities. Connection to the larger political framework, even in a consultative way, would be beneficial to the overall goals of the round tables.

Communications is a weakness for all Anishinabek round tables. This includes communications internally within Anishinabek First Nation communities and externally in the various levels of government. For Anishinabek First Nations, overcoming issues of trust, understand purposes and limitations of round tables are its greatest communication challenges. For the Federal and Provincial governments, maintaining an understanding of purpose and function is key.

Lack of strategic direction is also a significant weakness to Anishinabek round tables. While this was a highlight of the INAC - Anishinabek round table, strategic direction was not addressed in other Anishinabek round table processes. Consultative opportunities in support of government strategic direction are lost.

<sup>40</sup> This idea is also supported in the Royal Commission on Aboriginal People, Volume 2, Part 2, Page 544.

## 5.0 Conclusion

Anishinabek round tables have significant potential to address issues between First Nations and Government before issues have a chance to erupt into civil disobedience or violence.

However, until these round tables address fundamental issues such as:

- greater linkages to political spheres for larger policy and legislative change
- improvements in strategic planning to address more complicated issues that requires longer term multiple step approaches and
- ncreased communications internally within government institutions and at First Nation grass roots level, issues that can spark civil disobedience and violence, such as harvesting issues, similar to the one described in the opening of this paper, will not be addressed.

In the mean time, Anishinabek round tables will continue to beneficially address administrative issues within current policy and work to make government department action more reflective of Anishinabek First Nation priorities.

## 6.0 Recommendations

- To assist in addressing fundamental and larger policy and legislative issues that are not part of the existing framework, there is a need to create a linkage between roundtables and federal and provincial political or policy spheres. This may be as simple as annual presentations on the activities and recommendations of the round tables to Federal and Provincial political people in their respective departments.
- To assist in a more strategic approach to addressing larger more complicated goals that require multiple steps to achieve, there must be movement towards incorporating roundtable processes into strategic planning process and movement away from crisis management. This includes incorporation of direction from roundtables into strategic planning processes of Federal and Provincial departments. This could be as simple as requiring the submission of a year-end round table report into the respective government strategic planning processes.
- Better promotion and communications on the role, opportunity and limitations of roundtables must be done internally in Federal and Provincial government departments and First Nation communities.

## **The Author**

Fred Bellefeuille is a member of Nipissing First Nation and has been actively involved in his community on various community development initiatives. He is a graduate of Nipissing University with an Honours degree in Geography and Osgoode Hall Law School at York University focusing on Aboriginal and Treaty Rights. He is called to the Bar of Ontario as a Barrister and Solicitor. Presently working as a Barrister & Solicitor and in house Legal Counsel with the Union of Ontario Indians, Fred formerly worked on the Union of Ontario Indians self government project as a manager for the initiative. Fred Bellefeuille can be contacted at [belfre@anishinabek.ca](mailto:belfre@anishinabek.ca)

## Appendix “A”

### Membership of the Union of Ontario Indians

Chippewas of Aamjiwnaag  
Alderville First Nation  
Beausoleil First Nation  
Chippewas of Georgina Island  
Curve Lake First Nation  
Algonquins of Pikwakanagan  
Mississaugas of Scugog First Nation  
Moose Deer Point First Nation  
Biinjitiwaabik Zaaging Anishinaabek  
Chippewas of the Thames  
Chippewas of Kettle & Stony Point  
Munsee-Delaware Nation  
Dokis First Nation  
Ojibways of Garden First Nation  
Anishinabek of Zhiibaahaashing First Nation  
Henvey Inlet First Nation  
Magnetawan First Nation  
Mississauga #8 First Nation  
Nipissing First Nation  
Serpent River First Nation  
Sheguiandah First Nation  
Sheshegwaning First Nation  
Sagamok Anishnawbek  
Aundeck Omni Kaning  
Thessalon First Nation  
Wasauksing First Nation  
M’Chigeeng First Nation  
Whitefish Lake First Nation  
Whitefish River First Nation  
Wikwemikong Unceded Indian Reserve  
Fort William First Nation  
Lake Helen First Nation  
Long Lake #58 First Nation  
Michipicoten First Nation  
Ojibways of Pic River First Nation  
Gull Bay First Nation  
Pays Plat First Nation  
Pic Moberg First Nation  
Sand Point First Nation  
Namaygoosisagagun First Nation  
Poplar Point First Nation

**ROUND TABLE AGREEMENT**  
**BETWEEN**  
**THE UNION OF ONTARIO INDIAN (UOI)**  
**AND**  
**INDIAN NORTHERN AFFAIRS CANADA**  
**AS REPRESENTED BY THE**  
**THE ONTARIO REGIONAL DIRECTOR GENERAL**

**1.0 PREAMBLE:**

- 1.1 WHEREAS, the Minister, as a representative of the Federal Crown, has made major policy statements in Gathering Strength within the context of renewing partnerships, strengthening First Nations Governments, developing new fiscal relations and supporting First Nation communities; and
- 1.2 WHEREAS, the Parties to this agreement recognize that regular and open communication in an appropriate forum is essential to ensure that issues of interests to the Anishinabek Nation can be addressed effectively; and
- 1.3 WHEREAS, the Parties recognize that, in order to maximize the effectiveness of communications and, to ascertain practical and manageable means of partnership in resolving issues, regular discussion processes are required; and
- 1.4 WHEREAS, the Parties to this agreement are the Anishinabek First Nations as represented by the Grand Council Chief of the Anishinabek Nation/President of the Union of Ontario Indians and Her Majesty in Right of Canada as represented by the Ontario Regional Director General, Department of Indian and Northern Affairs Canada ("DIAND"); and
- 1.5 WHEREAS, nothing in this agreement, however, precludes any individual First Nation or group of First Nations from choosing to development separate relations with DIAND or other jurisdictions; and

- 1.6 WHEREAS, it is in this context, that the Parties enter into this agreement with the aim of working closely to address the development of First Nations within the Gathering Strength framework to:
- a) Fostering good governance, effective institutions and effective negotiations;
  - b) Strengthening individual and family well being;
  - c) Develop Equitable and Sustainable Fiscal Relationships.

## **2.0 DEFINITIONS:**

- 2.1 Anishinabek Nation means the member First Nations of the Union of Ontario Indians ("UOI").
- 2.2 DIAND means the Department of Indian and Northern Development.

## **3.0 SCOPE:**

- 3.1 The area encompassed by this agreement are the member First Nations of the UOI territory.
- 3.2 The purpose of this Roundtable is to outline the process for constructive discussion between UOI and DIAND.
- 3.3 The discussion forum for the Roundtable will be a common table to discuss issues of mutual concern and to facilitate common understanding and initiate expedient resolution to UOI First Nation issues within their territory.
- 3.4 The discussions will identify mechanisms including political, administrative, financial, technical and judicial processes required to resolve First Nation issues.
- 3.5 The intention of the Parties in creating the Roundtable is to provide this formal, common table through which priority matters within the following broad themes may be facilitated:
- a) Communication
  - b) Policy and Intergovernmental Affairs
  - c) Treaty Research and Relationships
  - d) Social Issues
  - e) Health Issues
  - f) Lands, Resources and Environment
  - g) Education
  - h) Fiscal Relations
  - I) Planning
  - j) First Nation - Federal Government Relations

k) First Nation - Provincial Government Relations

3.6 Both Parties agree to the following:

- a) the sharing of information and discussion of issues;
- b) collaboration on the resolution of issues of regional and mutual concern which are specific to UOI First Nations which may be related to hand have impact on National issues;
- c) meeting on a quarterly basis.

**4.0 PRINCIPLES:**

- 4.1 The parties affirm the basic principles of mutual respect, recognition, responsibility and sharing, and will aim for a relationship founded on mutual trust.
- 4.2 The Parties recognize and respect the right of each First Nation or group of First Nations to pursue its own agenda and priorities, and to enter into Agreements with DIAND or other parties.
- 4.3 This Round Table Agreement is part of the Crown's fiduciary relationship and obligations to UOI First Nations.
- 4.4 The Roundtable Agreement is without prejudice to existing or future First Nation negotiations and is intended to facilitate such negotiations and processes when appropriate.

**5.0 MANDATES and AUTHORITIES:**

- 5.1 The Grand Council Chief or his/her designate of the UOI is mandated to speak for its member First Nations on broad, regional and on specific issues as mutually agreed in advance by the parties to the Round Table Agreement.
- 5.2 The Regional Director General will participate in the Round Table meetings, will designate the Associate Regional Director General to speak on behalf of DIAND in his/her absence.
- 5.3 The Minister continues to retain responsibility for matters with DIAND's mandate as set out in the Indian Act.
- 5.4 DIAND may facilitate meetings with other federal departments as appropriate upon request, for certain agenda items.

**12.0 NOTICE:**

12.1 Any notice or other communication under or related to the Agreement shall be in writing and shall be delivered personally, by facsimile, by prepaid courier service, or prepaid registered mail, addressed in the case of the UOI as follows:

Office of the Grand Chief, Anishinabek Nation  
Union of Ontario Indians  
Head Office, Nipissing First Nation  
P.O. Box 711  
North Bay, Ontario  
P1B 8J8

And in the case of Canada as follows:

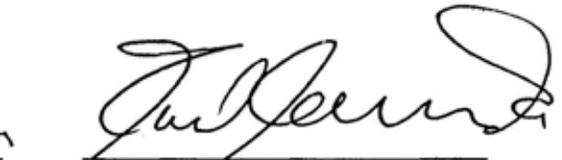
Regional Director General  
Ontario Region  
Indian and Northern Affairs Canada  
25 St. Clair Avenue East, 8<sup>th</sup> Floor  
Toronto, Ontario  
M4T 1M2

**SIGNATURES:**

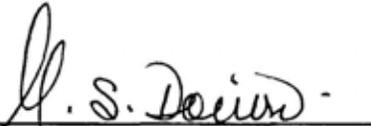
**The Parties have executed this Round Table Agreement on  
this 8<sup>th</sup> day of June 2004.**



**Robert Howsam  
Regional Director General  
Ontario Region**



**Earl Commanda  
Grand Chief Anishinabek Nation  
Union of Ontario Indians**



**Witness**



**Witness**