

SUBMISSION TO THE IPPERWASH INQUIRY
By Grand Council Treaty #3

Introduction

1. When the document known as Treaty No. 3 was signed October 3, 1873, our ancestors signed an agreement with the Crown on behalf of the Queen to share our land and resources, and ensure peace with the new settlers coming into our territory.
2. We, the people of Treaty #3 nation, maintain that that relationship with the Crown has not been changed with our consent. Meaning that we have yet to define how the relationship with the federal government on behalf of the Crown, and the province and its own 'Crown' fits in. You will have to understand we are a sovereign nation, we have never given up our sovereignty and never will, and it is the federal and provincial government's responsibility to respect and learn how to deal with us as a nation.

Grand Council Treaty #3

3. Grand Council Treaty #3 is a political organization representing the 28 signatories to the document known as Treaty No. 3 signed on October 3, 1873.
4. The Treaty #3 Ogichidaa, the leader chosen by the people, is the spokesperson for the people of the Treaty #3 nation that encompasses a geographical area of 55,000 square miles located from west of Thunder Bay to north of Sioux Lookout, along the international border, to the province of Manitoba, with a population of approximately 25,000 members. I have attached a copy of the Treaty #3 nation map.

St. Catherine's Milling Case

5. The 1888 *St. Catherine's Milling* decision continues to fester within our blood. The land involved in this monumental decision, that affected the rights of all First Nation people across Canada, was the land of the Ojibways of Treaty No. 3. The case was concerned with who 'owned' the timber rights of the land, the province of Ontario or government of Canada. The rights of the Ojibways of Treaty No. 3 were not even considered, nor was there any consultation with the Ojibway people regarding their land. Thus, the court decided that once the treaty was signed, the province had the exclusive rights over the First Nations' traditional lands.
6. While we acknowledge recent court decisions have determined the governments have the legal duty to consult with the First Nations people where their lands are concerned, experiences with our own land claims and our ongoing struggle with having our Aboriginal and Treaty rights recognized and honoured shows that the governments are not abiding by their own laws.
7. The approach of the federal and provincial governments when dealing with our lands and land bases prove to us that their mentality towards the First Nation people has changed since the *St. Catherine's Milling* case. When the governments and businesses want to exploit our land, the Treaty #3 people are only an 'after-thought'.
8. Our relationship with the land is who we are! And, until governments recognize this, conflicts such as Ipperwash will continue to happen all over again.
9. Our treaty acknowledges our rights to hunt, fish, and trap, but these rights continue to be breached and violated. Come to our area and listen to our people. They will tell you how they saw their parents fishing nets cut, fish caught by the white man just to

deplete our source of food and livelihood, how their own fishing nets were cut. How we continue to be charged for fishing, hunting, or trapping on our traditional lands. How we continue to be labeled as criminals for exercising our Treaty rights. How the land we agreed to share continues to be exploited, the resources depleted, the environment polluted - but who knows, maybe then when no one wants the land, the governments may then talk to us.

Anicinaabe Park Occupation

10. The Anishinaabe of the Treaty #3 nation are no strangers to publicly standing up for our rights
11. In 1965 a demonstration was held by our people who marched into the Kenora town council to ask the town to work with them to petition the federal and provincial governments for basic services on the First Nations, lengthen the trapping season, establish alcoholism programs, and establish a mayor's committee to address grievances the First Nation people had with the town. While this process worked for attaining their requests, the problems of the First Nation people, particularly in the town of Kenora continued to exist, and actually got worse.
12. A 1973 report copyrighted to Grand Council Treaty #3 "*White People Sleep*" highlighted the shocking conditions of the Indian people, focusing on the disproportionately high number of sudden deaths of the Indian people in the Kenora area. In this report, Peter Kelly, then-president of Grand Council Treaty #3, calls upon the people of Kenora to act on the failures of society to change the suffering of the Indian people saying "*It is time the citizens of Kenora realized that Indian people*

Kenora their home too and will always continue to do so... We should learn to live together and to respect each other. Neither the drunk on the street nor the racist landlord who refuses housing and adds his insults are the people we want Kenora known for. We must act to change both these behaviors.”

13. By the summer of 1974, young Anishinaabe men and women had had enough. They were frustrated by the lack of changes with how they were treated. Racism and violence towards the Indians was rampant in Kenora, and nobody was doing anything about it. Not the governments, not the town leaders, and they believed their own leaders were not doing enough. Following a conference at the Anicinaabe Park, located adjacent to Kenora, members of the Ojibway Warrior Society occupied the park.
14. Why at Anicinaabe Park? The land of the Anicinaabe Park remains a disputed parcel of land. The land had significance for the Anishinaabe people. It was purchased by Indian Affairs to provide a gathering place for the First Nation people coming into Kenora. Then it was sold to the town but our people maintain that it was from our funds that this land was originally purchased with then sold to Kenora without our permission. So, today, this dispute lingers.
15. Back to the occupation. The occupation gained national attention because the occupiers were armed. These young men and women wanted to send a message to the white community that they meant business. They were tired of the violence they experienced in the streets of Kenora by the town people, and the discrimination they experienced by the businesses. They maintained that guns were only used because it was the ‘weapon of last resort’ to get the public to listen - for action to make changes

to how they were treated. In the end, there were no shootings, no deaths. But the violence and harassment towards the Anishinaabe people did not end there, it got worse.

16. One Treaty #3 Chief who participated in the Occupation of Anishinaabe Park when he was 15 years old, tells how when he left the park, he was picked up by the Kenora Police Service and held for two days in custody. He was interrogated and beaten by the police. He was 15 years old.
17. A complaint brought to the office of Grand Council Treaty #3 just last summer. One of our people, who many may call a street person, reported that he and his female friend had been intentionally shot with a pellet gun by laughing young white kids driving down the street in Kenora. He recorded the licence plate, but chose not to file a complaint because he knew darn well, the police would do nothing.
18. This is our reality.

Assabaska Land Claim

19. Now, I wish to share with you an example of one of the very few settled land claims in the Treaty #3 area, land located in the Lake of the Woods area. The leaders of the two First Nations in this case saw this as a test case for the land claims policy in action because it involved a situation where there was a *prima facie* case of illegally relinquished lands.
20. This case showed the blatant unwillingness or inability of the governmental representatives to recognize the importance of the land to the Assabaska peoples' existence. For over 22 years, there were ongoing disagreements over value of land

and loss of use of land was unrecognizable in the governments' eyes, their main objective was to give back as little as possible to the Assabaska people. The statement of claim was filed in 1977, and an agreement was reached in 1999.

21. The time wasted 'negotiating' in this case clearly dictates the need for both the federal and provincial governments to review how they work together to resolve outstanding land claim issues, and had the governments chosen to settle the claim back in 1980, the costs to negotiate would have been cut drastically for all involved parties.
22. The attempt to heal the wounds of the wrongful taking of this land in the first place would have had a better opportunity to be 'set in place' in the earlier stages of negotiations but, instead, the community members had to encounter long-standing mistrust and hatred by their neighboring non-native communities for over 20 years.
23. The longer such an issue remains unresolved, the more the anger and resentment is allowed to brew – a recipe for another Ipperwash-type incident.

Grassy Narrows Blockade

24. Today, the people of our Grassy Narrows First Nation have manned a blockade to stop the logging trucks from going through their traditional territory. Grassroots people decided in December 2002 that no more was the land they were promised in the treaty to continue their traditional way of life was going to be destroyed. Their blockade was not the first option, but their last and final option, to stand up for their traditional land - based on the innate sovereignty of our Anishinaabe nation. For this, we are proud of these people.

25. You will recall that Grassy Narrows First Nation was headline news in the 1970s when it was learned that a local paper mill had been found to be dumping chemicals into the water systems of the Grassy Narrows and Wabaseamong First Nations since the 1950s. These communities still suffer the effects from the mercury poisoning to their water systems.
26. The people of Grassy Narrows made every effort to address with the multi-national paper companies that the clear-cutting that was happening on their traditional territory. All the processes set up by the Ministry of Natural Resources and Abitibi are just that – processes. The processes did nothing to attain any changes to the clear-cutting, the only process that has worked has been the blockade.
27. Fortunately, there have been no confrontations with the police. Today we have the Treaty Three Police Service policing our community and we do not anticipate them to come and arrest us.
28. There have been no incidents of violence and the members of the blockade have made it clear there will be no violence, there will be no weapons allowed at the blockade. That is why the Christian Peacemaker Team has been involved, to help us keep the peace and protect the people.
29. The federal government, Department of Indian Affairs, maintains they have no jurisdiction over lands and resources, because the logging involves our traditional land and not the reserve land. The provincial government, Ministry of Natural Resources, states they have no mandate to discuss Aboriginal and Treaty rights. Therefore, it is left to the members of the blockade to continue standing up for their inherent right to maintain their ways of life, and protect their traditional land for

themselves and our future generations. The people of Grassy Narrows do not wish another 'Ipperwash' incident at their blockade and are continuing to make it clear to the public that what they are doing is protecting their treaty right for their traditional ways of life and this is done in peace, and that the blockade will remain a 'no violence zone'. When and if this will ever be resolved remains to be seen!

30. The people of Grassy Narrows have experienced violence, death, and confrontation with the Ontario Provincial Police in the past, and the 'realness' of an "Ipperwash" type incident is very real in their minds. When I speak tomorrow on the Justice panel, I will speak to an incident that continues to cause grief and mistrust with the police within this community.

Justice Initiatives:

31. I have been asked to speak about the innovative justice initiatives Grand Council Treaty #3 has only recently been involved in. Before I speak to what we are doing, I need to set the stage of our current situation, as it relates to the justice system.
32. First, I must reiterate that as a sovereign nation, we continue to struggle with how we are to work with the federal and provincial governments in the area of justice. Only because we acknowledge under your system, the legislative authority under s. 92(14) for the administration of justice lies in the hands of the provinces and for the sake of needing to take immediate action to reduce the number of our people involved in the justice system, can we agree to work with the province.
33. While it may appear Treaty #3 is progressing ahead with improving the situation of our people, reality is our women and youth comprise of 95% of those incarcerated in

the Treaty #3 area, and 85-90% of our men make up the jail population. Yet, our people comprise of about 12% of the local population. And, more importantly, these numbers have remained consistent over the last 40 years, and it is only very recently that the federal and provincial governments have acknowledged there is a need for Grand Council Treaty #3 to be funded with various initiatives to make changes to these alarming statistics.

Treaty Three Police Service

34. After years of fielding complaints from both the First Nation constables under the tri-partite Ontario First Nations Policing Agreement and the complaints of our people on the communities for lack of response and disrespectful service, and too many complaints of use of excessive force used by the O.P.P. officers, the Treaty #3 First Nations sought their own police service.
35. In April 2003 the Treaty Three Police Service was officially established. Currently, there are 23 Treaty #3 First Nations policed by the TTPS and we acknowledge that the TTPS has only assumed the administrative responsibility for providing policing services to our First Nations. What we are learning is that we have no real control with this police service because the funding provided by the federal and provincial governments remains totally inadequate, and the lack of legislative recognition for First Nation police services allows the governments to continue recognizing the First Nation policing services 'just a program'.
36. While we desire our own police service to be able to enforce our own laws, we can immediately acknowledge that there has been a clear reduction of police harassment

and use of excessive force during the arrests process involving our police service.

And, more specifically, in one community the rampant use of pepper spray by officers when responding to calls for service has been eliminated.

Treaty #3 Justice Initiatives

Systemic Racism in the Justice System

37. This initiative funded by Canadian Heritage involves working in partnership with the local justice administrators to make changes to the way current justice system is impacting the First Nation people in the Treaty #3 area. The focus is looking at where changes need to be made where policy, procedures, and practices of the justice-related services impact the First Nation people.

38. Key to the success of this initiative is the team approach of the Project Management Team, comprised of local justice administrative and First Nation community leaders, with their personal commitment to acknowledging and implementing the reports and recommendations made by the project's review of the police services, jail, probation/parole services, and courtroom defense and prosecutorial systems. A copy of the Institutional Analysis Report has been completed and is attached for the inquiry's review. The project is currently in the Phase 2 stage of the project so we have yet to determine the level of success or failure this project will have on making real changes to the current justice system and the relationship with the Treaty #3 people, but we would be pleased to share the results in the future.

Cultural Competency Training

39. We currently have a Cultural Competency Workshop training package in the works.

This initiative is funded by the National Crime Prevention Centre whereby a working group comprised of mainstream victim services agency representatives and First Nation community and agency representatives are designing a cultural competency workshop curriculum to be delivered to domestic violence victim services. There is the demand by our people that there are gaps in programs and services for victims and offenders alike, and that although these needed programs and services are offered in the mainstream system, our people are choosing to not use these services because there is the real fear that there will be re-victimization or insensitive service by a people have historically discriminated against them. We hope this training package will make even a small change to have the area services acknowledge the need for more intensive culturally-appropriate and culturally-sensitive services to be developed by their own employers in partnership with the local First Nation people to better meet the high number of potential First Nation clients.

Safety in Kenora

40. The Safety in Kenora initiative funded by Ontario Ministry of Attorney General – Victim Services Secretariat aims to address the long-standing mistrust that exists between the First Nation people and the Kenora Police Service, and we acknowledge this is going to be a bigger challenge than originally anticipated. This project will also look at what ‘hate crimes’ are being committed toward the First Nation people in the

Treaty #3 area, and develop a community-based strategy to eradicate the indifference and inaction by both the non-native and First Nation communities.

Restorative Justice Initiative

41. This Treaty #3 initiative is currently funded by Ontario Ministry of Attorney General and Canada Department of Justice. What we envision as a nation-wide restorative justice strategy, due to funding constraints of the two governments, there are currently four Treaty #3 First Nations involved at this time, those being:

- Onegaming First Nation
- Lac Seul First Nation
- Grassy Narrows First Nation
- Naicatchewenin First Nation

42. The long-term goal of this diversion and restorative justice initiative is to reduce the number of Treaty #3 members involved in the criminal justice system and address the root causes of the social ills plaguing our communities, and we remain focused on the need to concurrently develop community-based systems to assist in our healing processes - ideally, a Treaty #3 family healing centre.

Comments

43. While we acknowledge the need to work in partnership with the federal, provincial, and municipal governments and mainstream justice system in the Treaty #3 area to reduce the number of our people from being caught in the justice system, we know the real change is not going to occur until **1)** the governments recognize that their justice system is not working for the First Nation people, **2)** the First Nation people need to be directly involved in decision-making positions to determine where changes

need to be made in the administration of justice, **3)** the governments provide adequate funding to the mainstream institutions to implement intensive training and intervention strategies to combat the racism that exists within the justice system, and **4)** the governments work in partnership with the First Nations to increase the number of First Nation people employed in the justice system. Currently, we know of one First Nation lawyer who has only recently begun working in the city of Kenora.

44. BUT, even before there can be a building of a real working relationship between the First Nation people and the non-native community in the Kenora area, there needs to be a formal acknowledgement by the governments that the justice system is failing us. And with this, I bring attention to two recent deaths that symbolize to us that the mistrust and conflict with the justice system and the city of Kenora will be impossible to overcome until there are answers to why these deaths occurred and no one has been held responsible.

Max Kakegamic

45. On October 4, 2000, Max Kakegamic was found dead on a street corner in Kenora. The suspect, a non-native citizen in Kenora, obtained bail almost immediately to the anger of the local First Nation people, who organized a demonstration a couple of days later to protest the perception of injustice with the suspect's bail release and its conditions. At the preliminary hearing in 2001, the charge against the suspect was reduced to manslaughter. A mistrial was declared on January 30, 2004, and on February 18, 2004, after two days of pre-trial motions, the judge issued a judicial stay citing the investigating officers (Kenora Police Service) as dishonest and conducting

a deficient investigation. There was no finding by an O.P.P. investigation for the K.P.S. officers to be charged criminally but they had since been charged with counts of misconduct under the *Police Services Act*. One officer was demoted; the other officer's case has yet to be heard.

Geronimo Fobister

46. On August 27, 2003, a 17 year old Grassy Narrows First Nation member named Geronimo Fobister was killed during a stand-off with the Ontario Provincial Police on the Grassy Narrows community. The Special Investigations Unit found no wrongdoing on the part of the O.P.P. officer who shot Geronimo, yet upon the conclusion of an inquest, the five-member inquest jury ruled the death a homicide.

Historical Mistrust

47. What I hope to effectively convey to this Commission is that too much has happened in the Treaty #3 area – the racism, the injustice, the deaths of our people, the wrongful taking of our land and the resulting loss of our ability to continue make a livelihood from our traditional ways – for any ‘projects’ to make a dent in the historical mistrust between the First Nation people and the non-native community, particularly in the Kenora area.

48. I had hoped to be able to bring with me a photo album that had been compiled by our people about 15 years ago, as a way to reach our hearts for the call for action to end the beatings of our people in the streets of Kenora. There is much anguish and anger one feels when looking at real people who have been beaten and disfigured by groups

of white young men, just because they were 'Indians'. What do we tell these people who had been beaten, 'sorry but that is the way things are'? No one listens to us when we say change is needed.

49. Our relatives tell us how they were forced to drink toilet water in the K.P.S. jail cells because they were so thirsty and the guards refused to give them water when they had been picked up for intoxication, or how one woman lost a finger because the jail guard closed the jail cell on her finger and refused to open the cell, or stories of seeing intoxicated females having consensual sex with officers in these police cells, or numerous stories of the beatings that have happened at the hands of police officers.
50. And even today, we still hear about those intoxicated being beaten and our youth being chased by groups of white youth. For a few years now, there has been a group of non-native youth who call themselves the KIB (Kenora Indian Bashers) who go seek out and beat up our people who are too drunk to defend themselves.
51. When we have brought up this issue of the KIB with the city of Kenora leaders and Kenora Police Service say this is only an 'alleged' group. Our people know otherwise. We still wonder why it is only the First Nation people demanding to know why there is no investigation into the death of Max Kakegamic?
52. In 1995, one Kenora judge in his decision cited that the incident where a young First Nations woman had been acquitted with assaulting an officer that the whole incident could have been prevented had the Kenora Police Service officers not responded in such a confrontational approach. I don't need to go into the details of the case because the incident from our perspective is typical with the way the police respond

to incidents where our people are involved. The uniqueness of this case was that the family was able to afford a lawyer to stand up for the young woman's rights.

Summation

53. Racism is alive and thriving in the Treaty #3 area. Why, because the governments continue to condone such attitudes and behaviors of its own institutions' personnel by doing nothing about the problem of racism. Just recently, the Winnipeg Free Press ran a story of how the mayors and town leaders of Kenora, Fort Frances, and Rainy River area were reported that they felt ignored by southern Ontario and talked about becoming part of Manitoba. If the white leaders feel ignored by their own governments, how can the First Nation people expect to be heard?
54. The deaths of Max Kakegamic and Geronimo Fobister are clear examples of why an inquiry into the justice system needs to occur, not only to examine why these deaths occurred but how such future deaths will be prevented, the truth of what is and is not happening in our area needs to be told. Max's killer is still out there, why does no one care?
55. How do a people move forward when there are too many unanswered questions, no apologies for the appalling treatment they have experienced at the hands of the justice system and the city of Kenora? It is one thing to forgive and move forward but when unnecessary deaths of our people continue to happen in this day and age, there is never any moving forward, just the recurring memories of seeing our parents humiliated and our sense of helplessness as children of how society views the 'original people of this land'. But, we are the survivors of our nation, and while we

still have many struggles to overcome, we are prepared to work together with you to make the changes that are necessary so we can all live together in peace and harmony.

Recommendations

1. An inquiry into the justice system and its relationship with the First Nation people in the Treaty #3 area with a focus on the deaths of Max Kakegamic and Geronimo Fobister.
2. Set up an independent special investigating body to investigate complaints involving the First Nation people and the police (similar to Saskatchewan's SIU).
3. Transfer the responsibilities for administering probation to the First Nation people (similar to what Manitoba is considering).
4. Adequate funding for the First Nations policing services.
5. Ministry of Attorney General needs to actively recruit and retain Aboriginal persons to work within the justice system particularly in the Treaty #3 area.
6. Set up a *Gladue* court in Kenora.
7. The Government of Ontario must resolve the Grassy Narrows blockade in good faith.
8. The Government of Ontario must commit to resolve the outstanding land claims within the Treaty #3 area in a timely manner.
9. The Government of Ontario must commit to funding their own justice institutions with sufficient funds to provide intensive training with working with First Nation people that is sensitive to the unique needs of this clientele group.