



**THE NEW AGENDA:
BUILDING
UPON THE HISTORY
OF
FIRST NATIONS EDUCATION IN ONTARIO**

**Author: Richard Powless
2004**

THE NEW AGENDA: BUILDING UPON THE HISTORY OF FIRST NATIONS EDUCATION IN ONTARIO

The First Nations in Ontario

There are 134 First Nations communities in Ontario. These communities comprise thirteen distinct nations of people, each with their own languages, customs and territories. These nations are the Algonquin, Mississauga, Ojibway, Mohawk, Onoyota'a:ka, Tuscarora, Cree, Cayuga, Seneca, Onondaga, Odawa, Pottowatomi and Delaware. Although the focus of political activity by First Nations communities is primarily centred within provincial boundaries, the traditional territories and activities of the nations extend beyond provincial and international boundaries.

First Nations Jurisdiction

First Nations in Ontario are seeking a return to the full recognition and respect for the jurisdiction of their governments over education. First Nations require the capacity to protect and advance their societies values, traditions and cultures. Education is generally recognized as a fundamental means to pass on cultural norms and values and the continuation of a society. The Royal Commission on Aboriginal Peoples noted that the destiny of a people is intricately bound to how its children are educated. Education is the transmission of cultural DNA from one generation to the next. It shapes the language and pathways of thinking, the contours of character and values and the social skills and creative potential of the individual.¹ The retention and use of Indigenous languages is fundamental to this goal. Prominent First Nations educator, Dr. Marie Battiste states that one of the primary purposes of education is to transmit culture to new generations and that Aboriginal languages are the basic media for the transmission and survival of Aboriginal consciousness, cultures, literatures, histories, religions, political institutions and values.²

First Nations Traditional Education Practices

In order to understand First Nations education in the twenty-first century, it is important to understand First Nations education in a historical context. Prior to the establishment of modern day nation-states in North America, First Nations were fully functioning healthy and vibrant societies with their own systems of education and teaching. Miller referred to the First Nations style of learning as the "3 -Ls" Looking, Listening and Learning³. The common elements of First Nations education were the shaping of behaviour by positive example in the home, the provision of subtle guidance towards desired forms of behaviour through the use of games, a heavy reliance on the use of stories and as the child neared early adulthood the use of more formal and ritualized ceremonies. Instruction was often infused with their deeply ingrained First Nations spirituality.⁴

Traditional First Nations life provided the conditions for a solid foundation for childhood. Babies and toddlers spent their first years within the extended family where parents, grandparents, aunts and uncles, brothers and sisters all shared responsibility for protecting and nurturing them. Traditional First Nations

¹ RCAP. Vol.3 Gathering Strength, Chpt.5 Education, pp.433

² Battiste, Marie, Reclaiming Indigenous Voice and Vision, 15:199

³ Miller, J.R. Shingwauks Vision: A History of Native Residential Schools, 1996, Uof Toronto Press, p. 16

⁴ *ibid.* p. 116

child-rearing practices permitted children to exert their will with little interference from adults. In this environment, children were encouraged to develop as thinking, autonomous beings. At the same time, they acquired language and were integrated into the rhythms of daily life in the family and community.

In this early stage of development, children learned how to interpret and respond to the world. They learned how to walk on the land, establishing a relationship with the seen and the unseen; they were conditioned to see the primacy of relationships over material possessions; they discovered that they had special gifts that would define their place in and contributions to the family and community.

From an early age, playing at the edge of adult work and social activities children learned that dreams, visions and legends were as important to learning as instruction in how to build a boat, tan a hide, collect medicine, or plant a garden. For First Nations education is a process of socialization that integrates an understanding of the individual in relation to the natural world.

First Nations speak about language and culture as being intertwined. Fluent speakers, particularly elders, note that unique concepts are expressed through the language and that it is impossible to translate the deeper meanings of words and concepts into the languages of other cultures. Linguists agree that language shapes the way people perceive the world and how they relate to the world around them, as well as how they describe it. The intimate relationships between language, culture and thought underlie the insistence of First Nations peoples that language education must be a priority.

First Nations view life as occurring in a cycle, from conception to the time of returning to the spirit world. The medicine wheel is often used in many First Nations cultures to describe the life cycle and to represent inter-connectedness as it occurs throughout a lifetime. The medicine wheel also provides a conceptual framework for understanding a First Nations view of education. The Sacred Circle or medicine wheel is divided into four directions (north, south, east, and west) representing, among other matters, the winds; the different kinds of peoples on the earth; the four aspects of humanness (emotional, physical, mental, and spiritual); the four stages of life (newborn, childhood, adulthood, and elder); the four elements (fire, water, wind, and earth); and, the four seasons (spring, summer, fall, and winter).

The role of elders is critical in First Nations societies. Elders have always played a central role in First Nations education, which is fundamentally an inter-generational process. Elders are keepers of tradition, guardians of culture, the wise people, the teachers. In First Nations societies, elders are known to safeguard knowledge that constitutes the unique inheritance of the nation. They are revered and respected. While most of those who are wise in traditional ways are old, not all old people are elders, and not all elders are old.

To interpret the perspectives of elders, it is critical to understand the meaning and significance of traditional knowledge. Traditional or indigenous knowledge is a discrete system of knowledge with its own philosophical and value base. First Nations peoples hold the belief that traditional knowledge derives from the Creator and is spiritual in essence. It includes ecological teachings, medical knowledge, common attitudes toward Mother Earth and the Circle of Life, and a sense of kinship with all of creation.

Forging the Covenant Chain Treaty Relationship

When First Nations first encountered European peoples in North America, the visitors needed help to survive. Various First Nations made treaties of peace and friendship with European nations. One of the earliest treaties or agreements with Europeans has been handed down in oral traditions and memorialized with a wampum belt known in the Mohawk language as the “Kaswentha” or Two-Row wampum. In essence, the Two-Row treaty and its successors recognized that First Nations and Europeans have different societies, laws, and customs. It is a commitment that neither party will

unduly interfere in the internal affairs of the other, yet they will be joined in friendship, peace and respect. The Two Row Wampum was later reinforced by the metaphor of the Silver Covenant Chain, confirming that the relationship between First Nations and Europeans should be linked by friendship, peace and respect. It was understood that the chain should be polished from time to time to keep from tarnishing, meaning that the relationship should be renewed or nurtured.

The Silver Covenant Chain became the method by which the alliances were struck with between the British and most of the First Nations in the eastern half of North America, ultimately allowing the British to become the dominant European nation on the continent. It was such a dominant symbol of life in North America that the newly formed American Government used it on their new currency from 1776 to 1787.⁵

The practice of Treaty making in North America is an ancient First Nations practice which was later adopted by European governments after contact.⁶ First Nations had many treaties among and between their nations for generations prior to contact. Treaties were made for reasons of trade, peace, neutrality, alliance, protection and for the sharing of territories and resources. First Nations formed alliances and confederacies that continue to this day, for example the Haudenosaunee Iroquois Confederacy, and the Three Fires Confederacy.

When settler governments arrived, First Nations in North America had all the attributes and capacities recognized under international law as nations and governments, to enter into treaties with foreign governments.⁷ First Nations had their own territories and resources, their own governments and existed as distinct and unique peoples with sophisticated societies, languages and cultures.⁸

The First Nation treaties with the British Crown allowed for the creation of Canada. The conclusion and ratification of treaties are exclusively a matter for the Crown, as part of the Royal Prerogative. The Crown treaties were part of the foreign affairs of the British kingdom and the international Treaty order, and were not subject to domestic Canadian law.⁹

The 1996 Royal Commission on Aboriginal Affairs (RCAP) states when New France fell to British forces and was ceded to the Crown in 1763 Great Britain was confronted with the twin problems of winning the friendship and trust of France's former First Nations allies and dealing with the mounting dissatisfaction of some of its own indigenous allies over incursion by American colonists on First Nations lands.

During the summer of 1763 a widespread war – led by the Odawa Chief Pontiac – erupted over unresolved grievances, engulfing the American interior. This underscored the need for a sound, comprehensive and enforceable Indian policy. In response the British government adopted the somewhat unusual measure of issuing a royal Proclamation declaring in resounding terms the basic tenets of British policy toward the Indian nations.¹⁰

⁵ Howard Berman, *Exiled in the Land of the Free: Perspectives on American Indian Sovereignty and International Law, 1600-1776*. Clear Light, 1992

⁶ Lyons, O., Mohawk, J. etc. *Exiled in the Land of the Free, Democracy, Indian Nations and the U.S. Constitution*, Clearlight Publications, 1992 p. 149

⁷ RCAP, 1:5:114, 1996

⁸ Howard Berman, *Exiled in the Land of the Free: Perspectives on American Indian Sovereignty and International Law, 1600-1776*. Clear Light, 1992 p.131

⁹ *Treaties and Indian Education* James Sakej Youngblood Henderson, *The Sacred Circle: First Nations Education in Canada; The Circle Unfolds*, Edited by Marie Battiste and Jean Barman, 1995, UBC Press

¹⁰ RCAP, 1:5:115

The 1763 *Royal Proclamation* recognized Aboriginal title and Rights to the land. Mr. Justice Emmett Hall stated:

“This Proclamation was an Executive Order having the force and effect of an Act of Parliament and was described as “the Indian Bill of Rights”. Its force as a statute is analogous to the status of Magna Carta which has always been regarded to be the law throughout the Empire. . . The Proclamation must be regarded as a fundamental document upon which any just determination of original Rights rests.”¹¹

Borrows states that the *Royal Proclamation* together with the 1764 *Treaty of Niagara* forms a Treaty between First Nations and the Crown that stands as a positive guarantee of First Nations self-government. In the deliberations which led to the Treaty of Niagara, the Covenant Chain was renewed by 24 First Nations and 2000 chiefs and headmen. The Two Row Wampum belt and Presents were exchanged to solemnize the historic event.¹²

Holding the *Belt of 1764* in his hand he said:

Father, This my ancestors received from our Father, Sir W. Johnson. You sent word to all your red children to assemble at the crooked place (Niagara). They heard your voice - obeyed the message - and the next summer met you at the place. You then laid this belt on a mat, and said -'Children, you must all touch this Belt of Peace. I touch it myself, that we may all be brethren united, and hope our friendship will never cease. I will call you my children; will send warmth (presents) to your country; and your families shall never be in want. Look towards the rising sun. My Nation is as brilliant as it is, and its word cannot be violated. Father, Your words were true - all you promised came to pass. On giving us the Belt of peace, you said - 'If you should ever require my assistance, send this Belt, and my hand will be immediately stretched forth to assist you.(Orcarta: Anishinabe Speaker)

Here the speaker laid down the Belt."13

Borrows states, “This speech is significant because it reveals that some fifty-four years after the Treaty of Niagara, First Nations of northern Lake Huron maintained their recollection of the promises made there. In particular, the speaker made specific mention of the mutual obligations of peace and friendship, as found in the wampum belt. When considering these events from a First Nations perspective, it is remarkable to understand that these peoples viewed the Royal Proclamation as a “Treaty of Peace and Friendship”. When one considers, in addition, that this Treaty also contained an obligation for the Crown to sustain the welfare of First Nations, as found in the words 'If you should ever require my assistance, send this Belt, and my hand will be immediately stretched forth to assist you.”

The Royal Proclamation is a Canadian Constitutional document and forms part of the rule of law in Canada. Some 241 years later it is still the basis for federal Treaty making in Canada. The promises given and recorded at Niagara in 1764, that “your families shall never be in want” and 'If you should ever require my assistance, send this Belt, and my hand will be immediately stretched forth to assist you,” are still valid today.

¹¹ *Calder v. Attorney General of British Columbia (1973)*

¹² Borrows, John, *Wampum at Niagara: The Royal Proclamation, Canadian Legal History and Self Government*, 2002. 161

¹³ *ibid.* p. 166

Treaty Promises to Education

First Nations leaders understood the value of education and later negotiated it explicitly in their post-confederation treaties. The promise of education is therefore a Treaty right. It appears in Treaties #1 through 11, including Treaty #9, the traditional territory of the Nishnawbe-Aski Nation in Ontario. Treaty #9 was signed in 1905 by the Canadian Government, the Ontario Government and the Cree-Ojibway nations of what is now known as Northern Ontario. Adhesions were made in 1929 and 1930.

“Further, His Majesty agrees to pay such salaries of teachers to instruct the children of said Indians, and also to provide such school buildings and educational equipment as may seem advisable to His Majesty's government of Canada.”...excerpt from Treaty 9

Grand Council Treaty # 3 maintains that the promises made during Treaty negotiations and those that ended up in the treaties were not the same.

“And further, Her Majesty the Queen agrees to maintain schools for instruction in such reserves hereby made as to her Government of her Dominion of Canada may seem advisable, whenever the Indians of the reserve shall desire it.”

...The Document published by Canada as Treaty #3.

“...I will also establish schools whenever any band asks for them, so that your children may have the learnings of the White man.”

...Shorthand reporters note of oral promise as spoken by Gov. Morris.

“...I am glad to learn that some of you wish your children to learn the cunning of the White man and upon an application of a band, a school will be established...”

...Notes of Simon J. Dawson, Treaty commissioner.

Before the signing of Treaty #3, Anishinabe Chiefs rejected the attempt by Christian missionaries to secure a foothold in the traditional territory in exchange for establishing religious schools. In 1873 the Chiefs secured oral promises of education assistance during negotiations for Treaty #3. Canada would establish a school whenever a First Nation desired it, and that school would assist training in farming and construction. There was no mention during the negotiations that these schools would be established and taught by Christian missionaries.

Dickason states that when Amerindians asked for schools during the Treaty negotiations they had envisioned them as a means of preparing their children for the new way of life that lay ahead. They had in mind a partnership with Euro-Canadians as they worked out their own adaptations, and saw educational facilities as a right guaranteed by Treaty.¹⁴

The area of Nishnawbe-Aski Nation runs from the Manitoba border to the Quebec border within the Hudson Bay's and James Bay's watersheds. The forty-nine communities represented by Nishnawbe Aski Nation are scattered throughout this area. The Treaty area includes the districts of Cochrane, Temiscaming, Sudbury, Algoma, Thunder Bay and Kenora. It occupies between one-half and two-thirds of the whole of Ontario, spanning a land mass 700 miles by 400 miles across the north of the province.

¹⁴ Dickason, Olive, Canada's First Nations: A History of the Founding Peoples from Earliest Times, 26:333

The Anishinabe Nation in Treaty # 3 has the inherent right to exercise jurisdiction over lands and resources in the 55,000 square miles of Treaty # 3 Territory. Grand Council Treaty #3 is the political organization for 28 First Nations in the treaty area. This area includes twenty-six First Nations in Northwestern Ontario and two First Nations in Manitoba.

The Covenant Chain

Treaties with the Crown created a fiduciary relationship and obligations on all sides. First Nations have their own understanding of the fiduciary obligation that was created with the negotiation and signing of the treaties and establishment of a Covenant Chain relationship with Euro-Canadians. As stated, the First Nations Treaty making process in North America was an ancient First Nations practice adopted by Europeans upon arrival, starting with the Dutch in 1644.¹⁵

Making a Treaty represented the forging of a relationship which First Nations viewed as a family relationship. The “Treaty” was not simply the document that ended up on paper, but included the ceremonies leading up to and during Treaty negotiations, the exchange of gifts, the burning of tobacco and the official record of the Treaty, which was often a Wampum Belt. For First Nations it served as an oral tradition memory device and a First Nations version of a notarized or official document. The Treaty also included all of the actions of all parties that followed the Treaty signing including up to present day. The Treaty was viewed by First Nations parties as establishing a kinship relationship, with obligations flowing both ways.

Treaty agreements were not momentary handshakes to be immediately frozen in time. The relationship was expected evolve over time in the same way that our relations with our families change as we both grow older. In times of need family members would help each other out. For this reason the provisions in the Treaties for “medicine chests” and “schools” are understood by First Nations as commitments to provide medicine and education.

To use a familiar analogy it resembles a marriage. The marriage is not just the record of an event on a certain day, but the changing nature of the relationship over a lifetime. “They were intended to grow and flourish as broad, dynamic relationships, changing and growing with the parties in a context of mutual respect and shared responsibility.”¹⁶

As a result of the Covenant Treaty relationship First Nations expected that the Crown would help them in their times of need. As an example, in 1836 Chief Shinguaconse of Garden River was so concerned about the welfare of his people that he walked to Toronto (some 700 kilometres) to ask the Governor for teachers.¹⁷

Saskatoon Law Professor Sakej Henderson states that no parliamentary sanction is required to bring a Treaty into legal existence. Sovereignty or prerogative treaties are considered to be directly incorporated into domestic law. Included in this category are peace treaties, treaties establishing boundaries, treaties ceding or acquiring territory. First Nations treaties qualify as sovereignty or prerogative treaties. The Crown negotiated, signed, and ratified all treaties.¹⁸

¹⁵ Howard Berman, *Exiled in the Land of the Free: Perspectives on American Indian Sovereignty and International Law, 1600-1776*. Clear Light, 1992

¹⁶ *RCAP, Volume 1, Ch. 5. 129*

¹⁷ Penny Petrone, *First People First Voices*, UofT Press, 1991

¹⁸ *Treaties and Indian Education James Sakej Youngblood Henderson, The Sacred Circle: First Nations Education in Canada; The Circle Unfolds, Edited by Marie Battiste and Jean Barman, 1995, UBC Press*

The Chain Becomes Tarnished

The failure by the federal government to live up to its Treaty promises and its imposition of the colonial *Indian Act* legislation was a clear indication that the Covenant Chain had become tarnished. What became apparent is that First Nations and European governments hold totally different world views. First Nations view was that if the First Nations did not give up something in the Treaty then it was still held by the First Nation. Canada on the other hand held that the treaties were an empty box and if a right was not granted to a First Nation in a Treaty it did not exist.

First Nations have consistently pressed for the recognition of their Treaty And Aboriginal Rights both domestically and internationally. In 1913 Nisga'a Chiefs went to England to press for the recognition of their rights and Aboriginal title. A decade later in the 1920s Iroquois Chief Deskaheh also went to England to press for Six Nations rights only to be exiled upon his return.¹⁹

RCAP observed that the nation-to-nation relationship became unbalanced when alliances with First Nations were no longer needed and the European population became numerically dominant (largely due to the combination of European immigration and disease among First Nations). The federal government abandoned the Covenant Chain principles of non-interference and respectful coexistence in favour of policies of confinement and assimilation — in short, the relationship became a colonial one. First Nations economies declined because of the loss of land, the scarcity of game and the continuing ravages of disease. Relief payments to alleviate the threat of starvation became a regular feature of colonial financial administration.²⁰

Many First Nations were also physically displaced and denied access to their traditional lands and dispossessed through the passage of the various *Indian Acts*. In the view of First Nations, the passage of successive *Indian Act* legislation is a gross misinterpretation of federal authority. Instead of continuing to enter into agreements with First Nations, the federal government chose a duplicitous path of legislating over them.

RCAP notes that after the War of 1812 colonial powers no longer felt the need to maintain treaties and alliances and instead turned their attention to obtaining First Nations lands for settlers. Typically the Crown paid for these lands in cash and goods delivered at the time the agreement was made, in the form of presents and annuities. In some instances, the federal government actually used First Nations own revenues from the surrender and sale of First Nations lands to pay for education, health, housing and other services received by Indian nations, as well as making a substantial contribution to general government revenues.²¹

History Of Federal Education Policy

The introduction of European-style education to First Nations people varied by geographical location, by the timing of contact, and by the specific history of relations between various peoples and Europeans. In some regions, schools operated by religious missions were introduced in the mid-1600s. In other locations, formal education came much later. A single pattern dominated the education of First Nations peoples, whatever their territorial and cultural origins. Formal education was assimilationist. The primary purpose of formal education by agents of the Canadian government was to indoctrinate First Nations peoples into a Christian, European world view, thereby 'civilizing' them. Missionaries of various denominations played a key role in this process supported by the federal government.²²

¹⁹ Smith, Dan, *The Seventh Fire: The Struggle for Aboriginal Government*, Key Porter, 1993, p.84

²⁰ RCAP, Volume 1:6.138

²¹ *ibid.* 1:6. 156

²² RCAP, Volume 3:5; 1996

Educator Dr. Marie Battiste refers to this as “cognitive imperialism” or “cultural racism.” It is the imposition of other worldviews based on a false notion of cultural superiority.²³ She states that no force has been more oppressive of First Nations culture than the Canadian education system. “It did not empower Aboriginal identity by promoting an understanding of Aboriginal world views, language knowledge.” (p.192)

The most tragic and devastating federal policy initiative was the joint government - church run Residential School Program. Beginning in 1849, the program developed to include boarding schools, built close to the reserves for children between the ages of 8 and 14, and industrial schools, placed near non-First Nations urban centres to train older children in a range of trades. The schools, some 60 of them at the high point, were the centrepiece of the assimilation strategy. In 1918 there were 878 First Nations students in church run schools and by 1932 some 17,163 were forced to attend.²⁴ By 1931 there were some 13 residential schools in Ontario.²⁵ In 1988 the last of the Residential schools closed.

RCAP observed that with the *Indian Acts* of 1876 and 1880 and the *Indian Advancement Act* of 1884 the federal government undertook a grand social experiment to mould, unilaterally, every aspect of life on reserves and to create whatever infrastructure it deemed necessary to achieve the desired end — assimilation and, through enfranchisement, the eventual disappearance of First Nations as distinct peoples. It could, and did, for example, control elections and the conduct of band councils, the management of reserve resources and the expenditure of revenues, impose individual land holding through a ‘certificate of possession’ system, and determine the education of Indian children.

McPherson states that by 1950 the federal government radically changed its approach and abandoned its policy of segregation and moved to integration of First Nations students with provincial school systems. By 1979 two thirds of students were being educated in provincial schools.²⁶

In 1969 White Paper – The Links of the Covenant Chain Are Separated

In 1969 the federal “White Paper,” proposed eliminating Indian Reserves and special status for Indians and the complete integration of Indian education into existing provincial and territorial systems. The 1969 white paper was a wake up call for First Nations. They quickly realized that Canada had again forgotten the promises in the treaties and Rights and relationship protected by the Covenant Chain.

RCAP stated the White Paper resulted in the forging of First Nations alliances across the country. The response to the White Paper, which came to be supported by all First Nations groups, was the “Citizens Plus” or Red Paper presented by the Indian Association of Alberta. It advocated special status as defined by the treaties.²⁷

Ontario First Nations leaders such the late Omer Peters, Delaware Nation, were involved in the development of the Red Paper and the establishment of the National Indian Brotherhood. Mr. Peters was one also of the founders of the Union of Ontario Indians and from 1970 to 1974, Omer served as vice-president of the National Indian Brotherhood. Other Ontario First Nations leaders included Lorenzo Big Canoe, Georgina Island; Burton Jacobs, Walpole Island; Telford Adams, Sarnia; Wilmer Nadjiwon, Chippewas of Nawash, and Flora Tabobondung of Wauksausking.²⁸

²³ Battiste, Marie, *Reclaiming Indigenous Voice and Vision*, 15:193

²⁴ Dickason, Olive, *Canada’s First Nations: A History of the Founding Peoples from Earliest Times*, 22:335

²⁵ RCAP, Vol.1 10:336, 1996

²⁶ MacPherson, James C. *Report on Tradition and Education: Towards a Vision of the Future*, Published report, 1991

²⁷ Dickason, Olive, *Canada’s First Nations: A History of the Founding Peoples from Earliest Times*, 26:387

²⁸ Recounted by Gordon Peters, son of the late Omer Peters and former Grand Chief of Ontario.

The Red Paper made two key points on education - that education was a right of First Nations people guaranteed through the treaties with the Crown and federal government, not with the provincial government, and that if the educational equality they would receive from the provincial government was simple integration, they were not prepared to accept it. RCAP noted that out of the First Nations opposition to the White Paper, a united First Nations approach to education emerged.

Education became the lightning rod for political action and the refinement of an ideology of self-determination based on concepts of independence and strength enshrined in the treaties. During this time a national First Nations organization, the National Indian Brotherhood (the forerunner of the Assembly of First Nations), was also being formed. The response by First Nations forced the federal government to withdraw the White Paper in March 1971 and Prime Minister Trudeau went on to promise “we won’t force any solution on you...”²⁹

The local First Nations control of education policy began in the early 1970’s with the development of the policy paper Indian Control of Indian Education by the National Indian Brotherhood in 1972, which marked a watershed in First Nations education. Ontario First Nations leaders played a key role in the development of Indian Control of Indian Education, which contained a comprehensive philosophy of education. It explained the First Nations desire to have education in a setting in which the fundamental First Nations attitudes and values would be reinforced. It asserted the right of First Nations to direct education by parental responsibility and local control. It advocated the transfer of responsibility for education from the federal government to the local community. It also emphasized the need for special curriculum and curriculum materials, language programmes, teacher and counsellor preparation and cultural education centres and adult education.

The federal government’s response to “Indian Control of Indian Education” in 1973 was a policy that offered some hope. The two goals of the new policy were to reinforce First Nations identity in students and to provide First Nations children with the education and training necessary for making a good living in modern society.³⁰ MacPherson observed that this ‘devolution’ approach transferred the management of education to First Nations education authorities in reserve communities but still offered very little control.³¹

In 1973 the Supreme Court ruled in the *Calder* decision that Aboriginal title existed. This decision, along with pressure from First Nations and the formation of the National Indian Brotherhood, caused the federal government to rethink its White Paper approach and shortly thereafter a new federal land claims policy was established. This was both a blessing and a curse because although it established a process where First Nations could take their land claims it also introduced an extinguishment policy, whereby the federal government could extinguish the rights of First Nations. This was further evidence that the federal government did not understand the nature of First Nations title and rights and became another violation of the Covenant Chain treaty relationship.

Failure of the Federal Education Policy

What became clear in the 1970’s is the dismal failure of federal education policy for First Nations. Some progress had been made such as the opening of the first community controlled school in 1970 at Blue Quills First Nations in Alberta, the training and hiring of more First Nations teachers, enhanced curriculum to include cultural elements and the introduction of First Nations language classes. Yet First

²⁹ *ibid.* 26:388

³⁰ MacPherson, James C. Report on Tradition and Education: Towards a Vision of the Future, Published report, 1991 p.3

³¹ *ibid*

Nations education bodies reported that their authority over education was still limited to administration and management of DIAND designed education programs.³²

The federal government continued to insist that First Nations schools conform to provincial regulations with respect to curriculum, teacher credentials, school year and so on, thereby restricting schools' ability to include innovative, culture-based curriculum. Funding was inadequate, with little money for First Nations curriculum development and few resources to address special needs. The federal model had changed from individual assimilation through residential schools, to institutional assimilation of First Nations schools. The 1988 Assembly of First Nations study *Tradition and Education: Towards a Vision of Our Future* found that there was widespread dissatisfaction with the quality of education with, for example, only 20% of students completed grade 12 compared to a national average of 70%. By 2001 this number had grown to 30%.³³ In 2000 the Auditor General of Canada reported that it would take twenty-seven years to address the education gap for First Nations peoples; by 2004 the Auditor General reported that this gap had grown to twenty-eight years.³⁴

Self Government – Polishing The Silver Covenant Chain

From 1979 to 1992 First Nations opportunities arose to “polish the silver” and renew or update the relationship with the Crown in Canada. First Nations consistently pushed the federal and provincial governments to recognize their sovereignty, their rights of self determination and to live up to the treaties, and the just settlement of land grievances (claims).

In 1979 then Prime Minister Trudeau announced his intentions to “patriate” the Canadian Constitution. First Nations realized this was an opportunity to remind Canada of its outstanding treaty obligations and to push for a clear recognition of their Rights to self governance and self determination. In 1980 First Nations sent representatives to England to lobby British Parliamentarians against the patriation of the Constitution. They wanted to ensure that their ancient and sacred treaties were respected. In 1982 Lord Denning of the British high court ruled on a case brought by Alberta First Nations that Canada had an obligation to fulfill the treaties made in the name of the Crown.³⁵

Constitutional Recognition

In 1982 the Constitution was brought to Canada and amended. It provided in Section 35 a recognition and affirmation of the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada, who were defined as Indian (First Nations), Inuit and Métis. It also provided in Section 25 of the Charter of Rights and Freedoms a non-derogation clause to protect Aboriginal and treaty rights. Section 37 provided for a Constitutional Conference on Aboriginal Rights in 1983 which resulted in the only amendment to the new Constitution and three additional First Ministers Conferences. Section 35 was viewed by First Nations as a full recognition of First Nations jurisdiction over education but it has yet to be fully recognized and implemented by the federal or provincial governments.

Constitutional Attempts to Polish the Silver – Round 1

From 1983 –1987 First Ministers conferences on the constitution were held to discuss amendments to the Constitution. Nishga'a Chief Joe Gosnell explained the nature of Aboriginal title as “lock stock and barrel.”³⁶ This meant that First Nations have full ownership and control over unceded lands and resources. No consensus or agreement with the federal and the provincial governments was achieved on the crucial matter of defining and entrenching the concept of the inherent right of self-government. First

³² Ibid, pp. 3

³³ Source: DIAND nominal roll - Basic Departmental Data 2001

³⁴ 2004 Report of the Auditor General of Canada, Chapter 5, pp. 7

³⁵ RCAP, Vol.1: Chpt.7: pp. 207

³⁶ Smith, Dan, *The Seventh Fire: The Struggle for Aboriginal Government*, Key Porter, 1993 p. 86

Nations leaders were key participants in all constitutional meetings attempting to entrench Aboriginal and treaty rights including the recognition of education as a matter of First Nations jurisdiction.

During the 1987 First Ministers Conference National Chief Georges Erasmus stated that First Nations were seeking a constitutional amendment that recognizes and affirms the First Nations inherent right to self government including full jurisdiction over First Nations education. Chief Erasmus said First Nations were also seeking a commitment to a process to clarify, rectify, renovate and implement existing treaties and an acknowledgement that the rights and jurisdictions in the treaties must not be subject to unilateral change by the federal or provincial governments. He said First Nations were seeking the amendment to the constitution because of the way First Nations have been treated by successive governments in Canada and Canadian courts and for greater certainty of the right.³⁷

National Chief Erasmus went on to say that First Nations hold our treaties with the Crown as a “reaffirmation of our sovereignty and of our Rights...at the same time, successive governments have failed to honour their obligations with respect to those treaties...and from the beginning of European contact...there is a long trail littered with broken promises. There must be no more broken promises. No Treaty must be altered without our consent. If Canada can bring our treaties to an end without our approval, then surely the original deal is broken and all of the lands resources revert back to us”.³⁸

Constitution Round 2

In 1992 another multi-party attempt was made to amend the Constitution resulting in the Charlottetown Accord. This was another opportunity to renew the Covenant Chain relationship. First Nations participated in the entire process which resulted in a document that recognized the inherent right of self government of First Nations. The Accord recognized First Nations as a third order of government in Canada. It called for the details of self government for First Nations to be negotiated through agreements, with a commitment to negotiate by all parties.

The Accord recognized the right of First Nations to promote their languages and cultures and called for a treaty implementation process according to the original spirit and intent of the treaties, as understood by the First Nations. It recognized that First Nations laws would displace federal and provincial laws and provided for a Political Accord to negotiate self government agreements and a commitment to funding for the operation of First Nations governments. Again Ontario First Nations leaders played a key role in these negotiations and process which envisioned the full recognition of First Nations jurisdictions over key subject matters including education. Many First Nations had concerns with limitations in the final wording of the Accord which was ultimately short-lived after being defeated in a national referendum.

Court Decisions

The Supreme Court of Canada has set out several principles in dealing with Treaty and Aboriginal Rights. In 1972 the Calder decision recognized Aboriginal title for the first time; In 1985 the Guerin Decision set out a legal trust or fiduciary duty of the Crown to First Nations; In the 1990 Sparrow Decision, the Supreme Court established that First Nations rights were not frozen in time and that the honour of the Crown was always at stake in dealing with aboriginal peoples; In the Sparrow, Simon and Sioui Supreme Court decisions the Court held that Treaty and Aboriginal Rights should be interpreted liberally in favour of First Nations. Delgamuukw (1997) recognized that Aboriginal title conferred exclusive use and occupancy to First Nations and placed the oral tradition of the laws of evidence on the same footing as other historical documents. In spite of many favourable decisions the federal government has failed to act to recognize First Nations rights of self determination including jurisdiction over education.

³⁷ Long, J.A., and Boldt, M. Governments in Conflict: Provinces and Indian Nations in Canada, Appendix G:257

³⁸ *ibid.* G: 259

Attempts To Recognize Or Advance Self Government

Special Parliamentary Committee on Indian Self Government

In 1983 a Special Parliamentary Committee on Indian Self Government chaired by Keith Penner completed its report. Participating with the Committee was Roberta Jamieson of Six Nations. Among a full range of issues, three areas of critical concern were studied - education, child welfare, and health. On education the Penner Committee supported the principle is that it is the First Nation that should have jurisdiction over and responsibility for education.

The Committee recommended that the federal government establish a new relationship with First Nations, and that an essential element of this relationship be recognition of self-government. It recommended that the right of First Nations peoples to self-government be explicitly stated and entrenched in the Constitution of Canada and that a new federal Ministry of First Nations Relations be created. It also pushed the federal government to use its Section 91-24 Constitutional authority to occupy all areas of competence necessary to permit First Nations to govern themselves effectively and to ensure that provincial laws would not apply on First Nations lands except by agreement of the First Nations government – in other words, to “occupy the field.” Testimony from Ontario First Nations leaders during the Committee hearings bolstered the strong findings of the Committee.

Ontario Statement of Political Intent

In 1985, under the leadership of Bob Rae, Ontario became the first government in Canada to recognize the inherent right of self government based on First Nations original sovereignty. For that time this set a bold precedent. He signed a Statement of Political Intent with the Chiefs of Ontario. This established a standard from which governments in Canada should not retreat. This recognition of First Nations jurisdiction included the recognition of jurisdiction over education.

UN Draft Declaration On Rights Of Indigenous Peoples

The *UN Draft Declaration Rights of Indigenous Peoples* was introduced in 1994 and is still being negotiated. It recognizes the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children. The international community made a commitment to have it adopted by the UN general Assembly before the end of the International Decade of the World's Indigenous People in December 2004. In a joint statement Human Rights groups asked Canada to accept that the Declaration must build on existing international laws and standards, that Indigenous peoples must not be arbitrarily denied any of the Human Rights that the international community has already accepted as the Rights of all peoples, and that none of the articles of the Declaration should be subject to loop-hole language that condones lower or non-existent national standards.

DIAND Federal Inherent Right Policy

In 1995 the federal government produced its policy on negotiating self-government on matters “internal” and “integral” to Aboriginal cultures and “essential” to its operation as a government, as determined by the federal government alone. Three groups of First Nations in Ontario are pursuing sectoral specific negotiations under the policy in education. Grand Council Treaty #3, the Union of Ontario Indians (UOI), and Nishnawbe-Aski Nation (NAN) are seeking recognition of their authority to govern all aspects of their education system. For example NAN is involved in education negotiations in Ontario on issues of schools and other education facilities; governing structures, (who will control education and how will the system be administered); funding; cross-cultural and traditional education; education and native languages; curriculum; programs and services; and service population.

Nishnawbe Aski Nation identified several reasons for entering negotiations on education³⁹ including having little control over our education system now; having no contribution to the province-wide existing curriculum; and, very little First Nations content. They felt that the current structure does not value their unique views or philosophy; and the need to provide high quality education for their youth that supports their needs and values their life experience, history, culture, traditions and languages; and the fact that the Royal Commission on Aboriginal Peoples (RCAP) recognized that education is the core element of jurisdiction in First Nations self-government and that the current system is flawed and does not meet the needs of our students. The NAN education model was created with input from First Nations people including Elders, women, youth and leaders. It follows the Governance Model that incorporates three levels of governments

A stated on their website: “We have now come to a time when we as First Nations people must take our stand in expressing what we want in education. Firstly, we must determine how we will exercise jurisdiction in education: how will our education systems be set up in our NAN territory? Where will jurisdiction lie? Who will make decisions? Who will make laws on education?”⁴⁰

James Bay and Northern Quebec Agreement

The James Bay and Northern Quebec Agreement (1975) established the Cree School Board. With this event, the Crees seized control of their education and the protection of their language, culture and pursuits. They could decide the language of instruction, choose the curriculum, select suitable textbooks, hire appropriate teachers and adopt a distinctly Cree school calendar. Young Crees could now follow a traditional way of life and participate in the modern world. (website: www.gcc.ca) Ontario leaders noted that the creation of the Cree School Board was an important watershed in the evolution toward First Nations control over education.

MacPherson Report on Tradition and Education: Towards a Vision of the Future

Released in September 1991, James MacPherson conducted a national review of the progress in implementing the recommendations of the Assembly of First Nations document Tradition and Education. The *MacPherson Report* made several recommendations:

- that the process set in motion by *Tradition and Education* should continue;
- a process for major reform be started based First Nations jurisdiction over education;
- preference for a Constitutional amendment dealing with the fundamental relationship;
- First Nations education framework legislation which recognizes First Nations jurisdiction and provides for curriculum, First Nations languages, a national Indian education institute and resourcing.⁴¹

Royal Commission on Aboriginal Peoples (RCAP)⁴²

In 1996 RCAP released the most comprehensive study ever done in Canada on Aboriginal issues. It cost \$58 million, produced over 400 recommendations and heard from thousands of witnesses and held meetings and roundtable discussion in hundreds of Aboriginal communities. Some of its key recommendations included:

- a recognition that First Nations are Nations and have core areas of jurisdiction that they can exercise immediately, including education;

³⁹ ...from the NAN Website

⁴⁰ www.nan.ca/selfgovernanceprocess

⁴¹ James C. MacPherson, *MacPherson Report on Tradition and Education: Towards a Vision of our Future*, 1991

⁴² Report of the Royal Commission on Aboriginal Peoples, Volumes 1-5, Canada Communications Group, 1996

- a recognition that the inherent right to self government and self determination exists and is based on First Nations sovereignty
- the need to return to Treaty based relationship and
- RCAP called for resource revenue sharing and
- a major redistribution of land and resources;
- Treaty implementation and lands tribunal legislation;
- it called for the negotiation of self government agreements with the 80 First Nations rather than the 633 First Nations local band governments.
- RCAP recommended the end of the Indian Affairs bureaucracy and a First Ministers Conference to discuss how to implement its recommendations.

On education RCAP had 44 recommendations including the following key areas: that the government of Canada fulfill its promises to Treaty nations by supporting a full range of education services including post secondary education; education as a core jurisdiction, the support for Aboriginally controlled education systems; curriculum development, early childhood education programs; the priority of Aboriginal language programs; parental involvement in decision making; youth empowerment; expanded teacher education programs; Aboriginal delivery of adult training; federal funding support for post-secondary students; funding for Aboriginal post secondary institutions; a recognition of the role of elders; the recognition of Aboriginal knowledge; support for distance learning and a Canada wide human resources inventory.

First Nations Self Government Jurisdiction

First Nations see themselves as sovereign peoples and governments. The most basic definition of sovereignty is the natural right of all human beings to define, sustain and perpetuate their identities as individuals, communities and nations. The Royal Commission on First Nations Peoples (RCAP)⁴³ states “As an inherent human quality, sovereignty finds its natural expression in the principle of self-determination. Self-determining peoples have the freedom to choose the pathways that best express their identity, their sense of themselves and the character of their relations with others. Self-determination is the power of choice in action.”

The First Nations right to self government was not surrendered in the treaties and continues intact in its fullest expression to this day. Education, in all its forms, is a First Nations right that has never been extinguished, surrendered or passed on to any other government, jurisdiction or authority. It is an inherent First Nations and Treaty right and part of a right to self-determination that is recognized by international and human Rights documents and conventions.

First Nation’s Visions of Education

The Anishnabek Nation in Ontario asserts that education is a life long learning process and that it is integral to the survival of First Nations. The Anishnabek Nation takes the position that Canada has authority to negotiate jurisdiction over every aspect of Indian education. This is the basis for their education negotiations. In their Agreement in Principle on Governance with Canada the Anishnabek state that they have a duty to ensure the well being of their people to the seventh generation ahead.

The Nishnawbe-Aski Nation (NAN) education position paper states: ”Education is the key to our success and it is our way to contribute to our people. When we become educated, we are self-reliant individuals. As more of our people realize their goals, whole communities become self-sufficient. By attaining an

⁴³ RCAP conducted the most comprehensive study of First Nations issues in Canada over 5 years, costing over \$50 million and resulting in 5 volumes and over 400 recommendations. It heard from thousands of witnesses and visited hundreds of First Nations communities as well as contracting its own research. It tabled its final report in November 1996.

education we can work for, and with, our own people, working towards becoming self-governing nations once again." ⁴⁴

The Association of Iroquois and Allied Indians (AIAI) pursues the education goals of the eight member nations according to the following principles:

- Aboriginal control of education is an Aboriginal and treaty right;
- Education encompasses all stages of learning during a lifetime;
- Aboriginal people must participate in all education initiatives designed to meet the needs of Aboriginal people at the local, regional, and national levels;
- Aboriginal people must be full and equal partners in all government initiatives to meet the needs of Aboriginal communities and students.

AIAI's position on education generally was that education is an inherent right of First Nations and includes life-long learning, which the federal government has a fiduciary responsibility to finance. AIAI will continue to assert that education as a lifelong learning process remains the fiduciary responsibility of the federal government.

Grand Council Treaty 3

Education from the Treaty #3 perspective is a life long learning process. In January 2001, an education meeting was held in Kenora, Ontario whereby educators from the Treaty #3 area identified visions and philosophy for Anishinabe education. It is also understood this will evolve and change as required. The Treaty #3 goal is... "To provide equitable, quality education for the First Nation Learner that is needs based with sufficient funding to provide all necessary resources." The Visions includes: Accessibility, Equality, Teachers who are First Nation, and who understand our culture and speak the language, adequate infrastructure, community input and information sharing. Treaty #3's philosophy is: The acceptance of all students, regardless of their abilities; a holistic approach to education curriculum based on Anishinabe traditions, culture and language; cooperation instead of competition, remove labelling from classroom settings, i.e. equality and non – judgemental teaching.⁴⁵

Ministers Working Group on Education

In December 2002, the Minister of Indian Affairs's Working Group on Education submitted its final report entitled *Our Children - Keepers of the Sacred Knowledge*. The report contains a total of 27 recommendations that, in keeping with the holistic First Nation philosophy of lifelong learning, span early childhood to post secondary education. The Working Group noted that realizing the vision requires three immediate actions: transferring the jurisdiction for education to First Nations; creating a First Nations education infrastructure with supporting mechanisms that enable First Nations to exercise education jurisdiction; and a revised education budget that reflects the actual costs of a comprehensive First Nations education renewal and reform.

On September 5, 2002, Chiefs Gary Standing and Nathan Matthew presented the views of AFN, CCOE, and NIEC to the Working Group. They conveyed the message that this Working Group should in no way impede First Nations communities in their progress towards self-determination and control over their educational systems. In essence, the Chiefs' told the Working Group that there is a need for:

- a government to government relationship
- a fiscal relationship comparable, at a minimum, to educational funding levels of the provinces

⁴⁴ Dr. Emily Faries, Chief Negotiator, NAN.

⁴⁵ www.treaty3.ca

- transparency
- better mechanisms of communication with First Nations Education stakeholders
- direct input from the grassroots community people
- increased institutional funding
- adequate funding for capacity development
- or action

First Nations support the principles of local control. Local control means the local development of standards that reflect First Nations vision for education – life long learning, the inclusion of language and culture, and a system that is holistic in nature.

Resources

The federal government has denied that post-secondary education funding is a treaty right. It has applied the *Indian Act* provisions and its post-secondary education funding policy to treaty nations on the same basis as First Nations that did not sign the numbered treaties. Students who do not live on a reserve often do not receive post-secondary education funding. Treaty nations argue that every Treaty member should be entitled to the benefits, regardless of residence — in other words, that the right to education is guaranteed and portable.

First Nations view that the federal government has fiduciary responsibility to provide adequate funding for education based on need and that the First Nations structures and institutions for education are protected and affirmed under Section 35 of the *Constitution Act, 1982*, First Nations have called for national education legislation, developed by First Nations, be enacted by the Federal government to facilitate the resourcing of First Nations constitutionally affirmed right to education consistent with the spirit and intent of treaties.

Sakej Henderson states the First Nations treaties with the Imperial Crown created an educational right in the First Nations families and a corresponding duty or obligation on the Crown to finance educational facilities and opportunities. In the legal history of colonial Canada, Crown obligations have been ignored by federal and provincial governments. Since 1982, however, these Rights have been firmly entrenched in the constitution of Canada.

First Nations can only operate successful effective education systems with adequate resources. The federal government has consistently been unwilling to adequately fund First Nations education systems based on need. One possible source of resources is the just settlement of land claims of First Nations. First Nations have consistently pressed the federal and provincial governments to settle their land grievances, mistakenly called land claims, for past misuse of First Nations lands and resources. In current day figures billions of dollars are owed First Nations across Canada. Nishnawbe-Aski Grand Chief Stan Beardy has proposed another source of funding for First Nations. He advocates resource revenue sharing noting that currently some \$13 billion dollars are taken from the traditional territories of NAN First Nations from northern Ontario alone.⁴⁶

First Nation education financing must be derived from community based needs identification processes. A new fiscal framework for the financing of First Nations education must be negotiated with the federal government immediately. A comprehensive review and evaluation of First Nations financing needs must be conducted.

⁴⁶ Thunder Bay News Report, March 5, 2004

In November 2002, the AFN Education Sector made an \$880.3M funding submission for Post Secondary Education based on real costs being: \$614 million for student support, \$74 million for Indian Studies Support, \$111 million for First Nations Post Secondary Educational Institutes, \$80 million for administration and delivery, and \$2 million to create an educational database. The federal response through successive budget announcements has virtually ignored the identified need.

Summary

Renewing the Silver Covenant Chain Treaty Relationship

First Nations have been consistent in their vision. The full recognition and respect of their governments and peoples as equals to Canada as set out in the original treaty relationship.

Fundamentally what First Nations seek is the recognition of their jurisdiction as governments. Jurisdiction means law making authority. Education jurisdiction means the inherent right of each sovereign First Nation to exercise its authority, develop its policies and laws, and control financial and other resources for its citizens.

In spite of overwhelming odds and pressures to assimilate, First Nations have consistently fought for the preservation and survival of their languages, cultures and traditions. First Nations are now running their schools and education systems from kindergarten to universities. First Nations graduates now enter every field of endeavour and are succeeding around the world. Yet much work has yet to be done. First Nations languages are in danger of dying if progress is not made in preserving and protecting them. Language is the key to transmitting the culture to the next generation.

First Nations rightfully seek adequate resources to be able to operate effective education systems which will meet the dual goals stated in *Indian Control of Indian Education* of preserving their identities while preparing their citizens to live and work in a modern world. Resources can and must come from the just settlement of First Nations land and resources grievances for the past use and theft of First Nations lands and resources as well as from future resource revenue sharing agreements with Canadian governments including the provincial governments. RCAP called for a fundamental redistribution of the lands and resources in Canada as a starting point.

It called for a fundamental new relationship based on the treaties and a nation to nation, government to government partnership. Canada has been able to share its resources and revenues between three levels of government and it is now time to include First Nations as founding peoples and governments of Canada. First Nations expect no less. First Nations meet all the attributes of nation states recognized under international law with their own distinct language, cultures and societies, as indigenous peoples, governments and territories. What is needed now is a process to begin to put this in place.

The key is to give life to the recognition and protection currently in s.35 Canadian constitution. It is possible to use elements of Charlottetown Accord together with recommendations of the RCAP report to implement the First Nations vision. RCAP called for a fundamentally new relationship which renews the relationship envisioned in the Covenant Chain. First Nations seek a clear recognition of inherent right of self government, not contingent on other governments, as under current policy and a process to update, renew, renovate the treaties which will clarify the promises made to First Nations on education and enable First Nations to put in place their own systems for the cultural survival of their peoples.