

The First Nations, the Churches, and Canada
How can we walk together towards justice?

Governing Board Meeting, November 2000

Introduction

Aboriginal rights and aspirations present a profound challenge to all Canadians at this time in the history of this country and, in particular to the Christian churches who have has a long-time relationship with the First Nations people. To understand more clearly what this challenge means at this moment of our national life and what it means for Christians capable of repenting of past collective acts of domination and empire, the Canadian Council of Churches invited six resource people to enter into dialogue with the members of its Governing Board:

- Ed Bianchi, Coordinator of the inter-church Aboriginal Rights Coalition;
- Donna Bomberry, Indigenous Ministries Coordinator for the Anglican Church of Canada;
- Laverne Jacobs, an Ojibway and an Anglican priest from the Diocese of Huron;
- Gerry Kelly, Director of the Office of Reconciliation, Solidarity and Communion of the Canadian Conference of Catholic Bishops;
- Rolland Pangowish, the Director of Land Rights for the Assembly of First Nations
- Michael Stogre, sj, pastor on Manitoulin Island and resident at Anishnabe Spiritual Centre, Anderson Lake.

What follows are the edited transcripts of the presentations given by four of these guests.

Laverne Jacobs

My sisters and brothers, it is good to be with you.

First, some context to the story of the Anglican Church: Native Anglicans make up about three or four percent of the Anglican population of Canada. We have 225 Native congregations and about 150 clergy.

I want to begin with this story. In 1988, a gathering called the Native convocation was held in Fort Qu'Appelle, Saskatchewan. At that gathering, a woman from Norway House in Manitoba shared a dream. In this dream, she saw a beautiful feather coming down from heaven. It was

just dangling there. She saw her people gathered together, trying to reach this feather, grasping for it, longing for it, yet the feather seemed to be controlled by somebody else. They would reach for it and the feather would move away. She didn't say who or what was controlling the feather. She also heard people laughing as the feather was being pulled away from the Native people. What she saw in her dream was the struggle of a people to really be themselves, to have some kind of control over who they are, to be the people God intended them to be.

A second convocation was held in 1993 in Minaki, Ontario. On the third day, people began to talk about their residential school experiences and we listened to stories for two-and-a-half days. On the fifth day, the Primate asked permission to speak. The words of his speech that I will always remember are these: "I am sorry, more than I can say, that we tried to remake you in our image." When I think of the relationship between the Anglican Church and the First Nations peoples, I see it in terms of this struggle a people to be themselves in the face of pressure from the outside to conform to something they weren't intended to be.

I was in Chisasibi, a community in Northern Quebec, in 1990. A new church had been built and the people were very proud of it. I was there as the staff person from the National Office. It was a strange experience. I went into the church and discovered a beautiful reredos patterned after an English cathedral. Then the service began with plain chant in Cree, men and women in surpluses. It was very English. Nothing of who these people were was a part of that picture.

I thought it was really sad because there had been the opportunity to build something different; the opportunity to create a building which somehow could have represented who the people are. It could have been in the round; it could have been igloo-shaped, or whatever. There was the potential to do something different and they didn't. Now I'm not sure if it was because they didn't know anything else or if it was because they were encouraged to build an English cathedral. I just don't know. But that is one of the struggles we as First Peoples have always faced within the church.

Now I must say that in many ways the church has been very good for First Peoples. It has done a lot of advocacy work—around the James Bay project, around the Lubicon, the Old Man River dam, around the First Ministers conference. In the decade or so between 1969 and 1980, a lot of energy went into making Canada a better and a more just society.

By 1980, however, what was known as the Council for Native Affairs began to say to the church: we appreciate all the justice work and the advocacy work that you are doing, but it is now time to look at the justice issues within our own church. The Council changed its name to the Council for Native Ministries. The Indigenous people began to push the church a little bit. I think this new confidence was a result of some of the national gatherings such as the First, Second and Third Convocations. Those gatherings were really instruments of the Holy Spirit to say to the Native people, "This is who I called you to be. Own it. Be that."

Of course, when the Native people began consistently to take on that ownership, it brought a bit of conflict. I can remember a gathering in 1991. The year before, Phil Fontaine had disclosed

his own abuse in a residential school. The Primate then received a letter from the Chipewyan Tribal Council asking what the church was going to do about this. I give the Primate a lot of credit. He gathered together an ad hoc group, called the Residential Schools Taskforce, to look at the issue. The Taskforce members realized that what the church, especially the Executive Council and the National Office, needed first was education.

The Executive Council was scheduled to meet in Winnipeg and it was thought it would be a good idea to have some kind of exposure to Aboriginal issues and Aboriginal people. So a planning committee hastily scheduled a visit to some Native place in Winnipeg, where the group would have bannock and tea and then there was going to be some other things. The intention was good, but the problem was that no Native person was involved in that planning. The ideas didn't come from the Native people. So the Council for Native Ministries took exception to that and raised questions. As a result, the committee was disbanded and a new one was formed with Native people taking the leadership. That's been hard for the church to do.

On another occasion, some funding was needed to start a Native youth group called Living Waters. The church's way of doing that was to take some funding from the Council for Native Ministries and designate it to Living Waters. Again, the Council said, "No. We need new money for new work and you're not going to take money from our budget to do that." So this was hard, but the church stepped back and rescinded the motion and Living Waters got their money.

It's been a kind of dance where a people are trying to be themselves and the dominant power says, "No," but then thinks about it and says, "Well, maybe that's the way it should be." But it's such a hard lesson to learn. When I think of those words of the Primate, there are times when I say: "You're still doing it. You're still haven't got the idea that there needs to be consultation; there needs to be dialogue."

A recent occurrence happened in my own diocese. We have a \$2.5 billion lawsuit and the diocese is scared, paralyzed. How does it handle this? It established a lawsuit coordinator with four teams. It's all very good planning: you have one team for communications; you have a team to look after research; you have a team to look after the pastoral and theological needs that may arise; and you have an administrative team. That's fine. The problem is, the Native people had no input into that process. We were not part of it at all.

I was asked (along with another Native person) to be on one of the teams—the theological reflection group. I did not accept right away because I said I need to go back to my people to see if this is something they would agree to. What the church forgets is that Native people work out of community. Most of the time, we don't react or interact with each other as individuals. When you are dealing with Native people, you are not dealing with an individual. The bishop isn't dealing with me, Laverne; he's dealing with those I represent and that's something the government and the church don't understand.

This is a major challenge for the church and for the government. It's this business of dialogue. It's this business of consultation. It is so very important and I think it is a real cultural difference. In your Canadian society, you get an idea and you do it right away. In the Native society, you get an idea, you talk about it; you think about it; and you find out what the community thinks. It takes a long time, but in the end everybody is on board and you don't have to try to win people over. It's just a different way of doing things, but the church hasn't understood that; it hasn't accepted that.

Partly as a result of this challenge to be ourselves and the difficulty this relationship has presented, a statement was produced in 1994. The Anglican church was in the process of assessing itself, looking at what it was doing well, what it was not doing well and asking where to go from here. It was called Preparing the Way. Information was gathered by a team called the Beginners who went to different dioceses to gather information and meet with different committees.

The first report of that group said the Native people were being heard and the Native people were more involved in the church. The Council on Native Affairs looked at the report and said, "This isn't true. They just didn't face it. They haven't heard us. They haven't been listening."

So in order to make sure there was a Native voice, we gathered together all the Native people who were members of Standing Committees of General Synod to go through this process. The Beginners had designed a tool to help gather information and we had one of its members with us, who happened to be a Native person. We took this instrument and began to use it but, in a very short time, we put it aside. It just wasn't going to work.

We sat in a circle and we talked about our experience of church. One of those present was a white person from New Zealand. We were very interested in the Maori story because we knew that they were on to something. We wanted to know about their story and their experience to see if it was something that we would like to do. But he said to us, "I can't tell you that story. That's not mine to tell. But I can tell you what the Maori experience has meant to me and to my people." So he did.

Then we asked ourselves in the circle, "Is God calling us to this kind of self-determination? To some kind of entity within the Anglican church?" We went around the circle and each one said, "Yes, this is the direction that God is calling us." It was an amazing and incredible experience. After that there was a really powerful silence, and you knew that God was present and that the Spirit was speaking.

After that happened, a team got together. They produced a statement and they produced a covenant. I will read that statement:

We, the Indigenous partners in Canada of the Anglican Communion respectfully affirm our place in God's creation and in God's love, manifested through the grace of Jesus Christ. In specific, we address the Anglican Canadians with whom we are in direct communion.

We have shared a journey of close to three centuries in which we have been denied our place in God's creation, denied our right as children of God, treated as less than equal and subjected to abuse culturally, physically, emotionally, sexually and spiritually. The result in our communities, homes and daily lives has been, and continues to be, broken homes and lives, sexual and family violence, high recidivism and incarceration rates, high chemical abuse, loss of spiritual fulfillment, loss of cultures, languages and traditions and poor stewardship of Mother Earth.

Because the national church's canons, structure and policies have not always responded to our needs, nor heard our voice, we now claim our place and responsibility as equal partners in a new and shared journey of healing, moving towards wholeness and justice. We acknowledge that God is calling us to a prayerful dialogue towards self-determination for us, the Indigenous people, within the Anglican Communion in Canada. Through this new relationship, we can better respond to the challenges facing us in a relevant and meaningful way. As the faithful people of God, guided by the Holy Spirit, we invite you, the Anglican Communion of Canada to covenant with us, the Indigenous Anglicans of Canada, in our vision of a new and enriched journey.

From that gathering in Winnipeg, the following covenant emerged:

We representatives of the Indigenous people of the Anglican Church of Canada, meeting in Winnipeg from the 23rd to the 26th of April, 1994, pledge ourselves to this Covenant for the sake of our people and in trust of our Lord and Saviour Jesus Christ. Under the guidance of God's Spirit, we agree to do all we can to call our people into unity in a new, self-determining community within the Anglican Church of Canada. To this end, we extend the hand of partnership to all those who will help us build a truly Anglican Indigenous Church in Canada. May God bless this new vision and give us grace to accomplish it. Amen

Gerry Kelly

My assignment today is to reflect on the Roman Catholic church in this particular moment with respect to its relationship with Aboriginal peoples—which is heavily influenced, although not defined, by the historical legacy of Indian Residential Schools. Many of you here recognize that that is an issue which faces the Roman Catholic church in particular, but also the other historic mission churches, as well as the whole body of the Christian community. But I will speak to it from the particular experience of the Canadian Conference of Catholic Bishops and therefore of the Catholic community.

In May 1999, the Office of the Commission for the Evangelization of Peoples issued a Pastoral Letter entitled, *Rediscovering, Recognizing and Celebrating the Spiritual Heritage of Canada's Aboriginal Peoples*. There is a long story behind that text that I can't get into, but I wanted to emphasize two elements of it. First, the text itself has a tone of celebration specifically for the resurgence and the rediscovery of the full expression of Aboriginal spiritual heritage as it exists within the Christian faith communities, but also as it exists within the Aboriginal community. It made a commitment to dialogue in that context.

There is a celebrative tone, but there is also a lament which is expressed most clearly in this one line: "We remember as well with profound regret those dimensions of Catholic mission history that were too closely identified with the European forces of expansion and assimilation and so contributed to your suffering." Over the past 10 years, one institution—the Indian Residential School—has come to symbolize the damage expressed in that statement.

We need to reflect on the power of this symbol. In the 120-year history of the schools, one in 10 Aboriginal people attended a residential school. You have often heard that number cited. I want to be clear, though, that in the 1940s, the peak period for the schools, one in three children were in a residential school. So the one in 10 average actually minimizes the impact of the schools during that time in our history.

I would like to ask two questions in the light of that: First, how is it that it is in this past decade that the residential school institution emerged so dramatically to define, or at least significantly shape, the relationship between the government, the church and the Aboriginal people in Canada? How does the church, which acknowledges with profound regret that it was a part of this marginalizing process in a very significant way, now stand as a agent and a witness to reconciliation?

The first question has two answers and we should be aware of both. In the first place, we have to recognize that the issue of residential schools and abuse in residential schools emerged as a particular instance of the broad question of child abuse in institutional settings in Canada. Placed in an historical context, it grew out of the background of Mount Cashel (in Newfoundland) and the experience of the institutions in Alfred and Uxbridge (in Ontario). Also

in the background was the Shelborne situation in Nova Scotia and the Jericho Hills situation in British Columbia.

When the reconciliation agreement for the former students at the reform school in Alfred was announced in the press, with \$16 million established as a reconciliation fund for those students, J. R. Millar, the historian from Saskatoon asked the question: "If \$16 million can be set aside to meet the needs of predominantly non-Aboriginal children in Alfred and Uxbridge, and nothing has been set aside to meet the needs of those who attended residential schools, is there anything behind that but racism?"

In 1994, when the Assembly of First Nations began its Working Group on Indian Residential Schools, a member of the Alfred reconciliation committee was part of the group. When Senator Doug Roche gave a presentation in Nova Scotia on the resolution of issues arising from the Indian residential schools, he drew specifically on the conflict resolution process being used in the Alfred reconciliation effort. So clearly, one answer to that first question is that it emerged as an instance of the whole issue of child abuse in institutional settings in Canada.

But to leave it there misses much of the import of why this question has emerged over the last decade. I think the most consistent grievance from the Aboriginal community and the former students of residential schools has been that, quite apart from the specific issues of abuse that surfaced in criminal and civil proceedings, the school system itself focused on these children all that was inherently poisonous in the European myth of expansion and assimilation.

Historian John Webster Grant in his book, *The Moon of Wintertime*, referred to the residential schools as institutions "where the concern was not merely to impart instruction, but the concern was to change habits and personality patterns. The residential school was geared for a total impact on the child." Here you have an understanding of the issue in its totally institutional character.

Today, we have come to a much more profound understanding about the vulnerability of those in a totally institutional setting. Children in such institutions have a number of forces upon them that make them vulnerable to those who would exploit them in physical or sexual ways. But the point of John Webster Grant's commentary is that the institution itself had a focus that was infused with the assumptions of European expansion and assimilation.

Rupert Ross is a lawyer in Northern Ontario who has written a number of insightful works on Aboriginal communities, particularly Aboriginal justice. Reflecting on the residential schools issue, he says, "It's not the case of isolated individuals sustaining losses and then returning to a healthy social context, but it's a case of almost everyone sustaining almost identical losses and having only strategically disrupted social contexts to return to. It's a wholesale disruption that has spawned the degree of family and community brokenness that now plagues so many communities."

The late Art Solomon, an Ojibway elder, said that residential schools have to be seen as an

instance of a larger reality. He said that if you want to understand residential schools, you have to see them in light of what happened after the schools. He reflects on the 1960s "scoop." As the residential schools reduced their presence in Aboriginal communities, social workers in record numbers were scooping children out of these communities. Furthermore, it was at this time that you begin to see the increasing presence of Aboriginal people in incarceration. He said what is going on here is a "reflex of wardship."

If we look at residential schools in isolation without looking at them in terms of this whole womb to tomb wardship of Aboriginal people, we miss what is almost a pathology within our system. Judge Murray Sinclair, an Ojibway judge in Manitoba, has expressed it well. He invites us to look at Aboriginal over-representation in incarceration not as a reality with a long history, but a reality that emerged in the 1960s. The people who are being over incarcerated now are the same people who were in residential schools. When you recognize this, you can understand the present emphasis on residential schools and why it has such a high profile in our consciousness as a Canadian people.

If we go into the history of Indian Residential Schools, the first question to ask is where do we begin? We would be wrong to begin the story in 1867 with Confederation. We need to go back to the Bagot Commission in 1844 to find the genesis of the Indian residential schools. By that time, the military alliances that had formed during the War of 1812, and which had dragged on, had ended. The relationship with Aboriginal peoples had shifted from a military relationship into one with the civil authority. A policy of land under Francis Bond Head was being enforced and there is now talk of "the Indian problem" where there had been talk of Indian alliances. The Bagot Commission was formed to deal with this problem.

The Bagot Commission is the first instance in Canadian policy where the Aboriginal family and the Aboriginal community is viewed as the problem. The Bagot Commission uses the term "the civilization process" and, on at least one level, it meant a "citizenizing process." Aboriginal children had to be separated from their family and community context for this process to happen. Residential schools are recommended as the instrument of civilization which was to focus on Aboriginal children since there was an assumption that the Aboriginal community and the Aboriginal nations were disappearing. Aboriginal children would come through the corridors of residential schools into Canadian society.

The history of legislation from the Bagot Commission on which was designed to achieve this "civilization process" is too long to get into, but my point is this: in addressing the residential schools issue, physical and sexual abuse is not the only problem. I'm not talking here about litigation, but about reconciliation. We have to recognize that for the Aboriginal people, the issue of physical or sexual or any particular abuse is felt as an instance of the overall reality, not just an isolated event. Reconciliation is going to have to address that overall reality.

Within the Catholic community, we are struggling with what that history means and what reconciliation means. It is very important not to separate a response to residential schools from the broader issues of culture, of language, of relationship, of the many internal questions in

terms of justice within our own church community. The church is in fact a network of communities and its almost impossible to talk in a systematic way about how a network of communities responds to a crisis. In the courts, the federal government keeps struggling to understand that the Catholic church is not a monolith.

There are four important themes that are part of the current process of witnessing and being an agent of reconciliation. The first is to seek truth in dialogue. We have all kinds of efforts to find the truth of the residential schools: the work of historians, of lawyers, of researchers in archives, or what have you. In Jurgen Habermas' work on dialogue, he asks the question, "What kind of truth serves reconciliation?" His reply is that it has to deal with the facts, it has to be presented in a way that I understand, and with someone I trust. Reconciliation has to happen in a dialogue where a relationship is being built even as the truth is being discussed.

It is a tremendous struggle to seek truth in dialogue in a context of litigation, which seeks truth in an adversarial system. We need to find a way to seek truth in dialogue.

That's why when the justice department proposed a pilot project for reconciliation, there was such readiness to enter into it. Could this be a way where we could actually seek truth in dialogue? However, as it has turned out, when you take the dialogue of reconciliation and you try to place it within the dialogue of compensation, you end up with a tremendous number of silences. These are not profound silences, but silences of avoidance where you don't want to say something because you don't want to put yourself in a situation where you are going to make a mistake and create a liability for someone.

So we need to find ways to seek truth in dialogue even though this current moment, which is so laden with litigation, mitigates against that. The experience of South Africa has helped us to understand that the truth and reconciliation dialogue has to be free of the other dialogues that are around which deal with the question of compensation or punishment. It has to be free. We need to create a much superior space than the federal government's pilot processes. I'd like to say that the dialogue with the Assembly of First Nations is looking in that direction. I think it is.

A second point that needs to be emphasized, even though it may seem to be self-evident, is the need actually to seek reconciliation. I think it was Gregory Baum who said that the churches who speak so often of reconciliation can very seldom get the energy to seek it. Two years ago, the Aboriginal Rights Coalition was asked to facilitate some dialogues through the churches to alleviate the tension around the Caldwell Decision. Lorraine Land undertook to bring together groups of Aboriginal and non-Aboriginal people who could meet and express their fears and their concerns. Not a taker. Not a congregation. Not a parish would take that. It was too risky because the unity of the parish was at stake.

It is very difficult and people know, as we talk about this Year III Jubilee Initiative, that this is a risky venture because if we want to seek reconciliation it does mean that some element of unity is going to be challenged and its going to be shaken. So the challenge from the CCCB to promote and to be a part of the Jubilee Initiative is part of a decision, an option to seek

reconciliation. And it moves against a whole lot of preservation issues. The Jubilee Initiative is clearly one good example of that and it is an example before the whole Christian church at this time. It is really an initiative where we will define ourselves early in this century as to whether we will seek reconciliation or we will avoid the challenge of reconciliation.

The third element is: Expect, accept and acknowledge graciousness. I say that because in the midst of tension last year at the Assembly of First Nations, the then National Chief Phil Fontaine contacted the Conference of Catholic Bishops. It was Phil Fontaine who had raised the lid on the residential schools issue so it wasn't without trepidation that we approached the conversation. He said: "We're going to move through this together; there are forces that have hold of this question that are not in any of our control. But we want to establish clearly a commitment to work with you." He asked the Conference of Catholic Bishops to enter into a Memorandum of Understanding that after this stage of affairs was over, we would continue to work together to build peaceful relations in Aboriginal communities. Out of nowhere, graciousness happened.

I remember clearly being in a dialogue around reconciliation where a person who was particularly angry at me as a Catholic representative came forward at the end of that conversation with a true and honest expression of grace and appreciation and commitment to move through this together. It will happen. Expecting and acknowledging graciousness is an important stance because in this situation there is a lot of grace that we do not welcome, that we don't recognize.

And the fourth element I would express as going into the darkness. All of us recognize that this is a very dark part of our legacy and the tendency is to skirt around it. The Council for Reconciliation which I coordinate, an Aboriginal Council within the Conference of Catholic Bishops is an advisory council to give us leadership on the question of reconciliation. The guiding metaphor of this group is the story of Nicodemus meeting in the dark with the One whom we now know as the victim, asking the question, "Is it possible to be born again?" And the reality of our moment in history is that in this darkness we are asking the question of the church, "Is it possible to be born again in Aboriginal communities? Is it possible that we will be a post-colonial church in Aboriginal communities?"

And who are we asking? Like it or not, we are asking this of the victims. We are asking not the victims of residential schools abuse but the people who have been the inheritance of that history together. Our experience at this point is that within the faith community of the Catholic church this is a very painful, very difficult time. It's very difficult to seek reconciliation; it's also very difficult to find locations, places of dialogue. There have been profound moments of grace, but we are in the darkness in dialogue with the people who can tell us the next step to take. In another conversation, I could perhaps talk about the structural elements of that but at this point we are talking primarily about the conditions under which we can actually be present as an agent and as a witness of reconciliation. As Father Michael Stogre said to me once, reconciliation is, after all, a gift. It's not a product of anything that we do. We stand there as agents. Most often we stand there as witnesses.

Rolland Pangowich

I would like to thank the Canadian Council of Churches and the Aboriginal Rights Coalition for inviting me here and for initiating the work of the Jubilee on lands and resources. It is a very important and fundamental subject.

I come from Wikwemikong on Manitoulan Island which is on Lake Huron. Both my parents were in residential school in Spanish, Ontario, and I was raised with the stories of their experiences. Although I was not in residential school myself, I inherited its legacy. My parents had not been allowed to use their language when they were in school, although they maintained it secretly throughout their lives. They did not see any need to teach it to me as a child since they wanted to ensure that I was educated because they believed that was a key to the future. So many of us in later generations continue to feel the effects of residential school. There are many aspects of that but I'm not going to go into that here.

But on the lands and resources issues, I think this theme of reconciliation is key because this is what we all seek. One of the most significant recent Supreme Court decisions, the Delgamuuk'w decision on Aboriginal land title referred to the need for reconciliation in its closing remarks. The judges pointed to reconciliation as a key issue to be resolved and stated that there is a moral, if not legal, obligation on the part of the Crown, the government of Canada, to negotiate with Aboriginal people in good faith.

I know morality doesn't mean much with governments but the fact is that, despite a history of misunderstanding, our people, the Indigenous people, lived holistic values and connected their spiritual values to their daily lives and their daily activities. That's why I felt such an honour to address you here today because I believe this is an important connection for our people. An important part of reconciliation is to acknowledge the spiritual base of such a process.

It struck me as I was coming up the road here today—the Credit river is near here—the people who were originally from this beautiful area were the Mississauga people. They were displaced and they now live on a small reservation near the Six Nations Reserve. They had a number of claims related to this area. But as you can see, there are many big homes here now and the streets have been named after tribes. When it comes to reconciliation, an important dimension is to seek understanding between the two parties. Clearly in Canada, among the general population, there is very little understanding of where land rights issues come from.

I hate referring simply to land "rights" because for our people when we say rights, it includes the concept of the responsibilities that are attached to those rights. One of the responsibilities our Nations feel across this land is that we have a responsibility to protect and maintain our relationship with the earth which the Creator has provided us with for sustenance and the ability to live.

One of the important points that emerged from the Delgamuuk'w case was not only is Aboriginal title a legal concept in Canada's common law but it is based on the fact that the Indigenous people were here first. It recognizes that Canadian law incorporates pre-existing law, which is the Aboriginal law. The legal concept of Aboriginal land-holding is not derived strictly from Aboriginal law and it is not derived strictly from English Common Law. It is a melding of the two. Aboriginal treaty rights are not created out of good will; they are legal concepts and fundamental parts of Canadian law.

I usually begin presentations on this by referring to the Proclamation Act of 1763 which is a fundamental basis of the constitutional structure of Canada. It articulated the kind of relationship First Nations have with Canada where the Crown was the manifestation of the authority at the time, but which is now administered by the federal government. But the Crown concept goes beyond a federal bureaucracy and parliament and so forth. It embodies the concept of sovereignty on the part of the Crown so what was really acknowledged in the Proclamation Act of 1763 was that the Crown entered into treaty relationships with the First Nations. We were different nations, different peoples and we acknowledged each other and sought to establish a peaceful basis for co-existence.

The First Nations have stood by their treaty relationships with the Crown because their agreement in those treaties is of a sacred nature. The treaties were pieces of paper for the government but the way First Nations people acknowledged those treaties in almost all cases was through spiritual ceremonies that are a part of their ongoing living culture. In the East, the wampum belts symbolized and represented agreements reached and maintained through our oral tradition. In the West, the pipe ceremonies were a part of the treaty-making process.

Those were the mechanisms by which First Nations recorded their understandings and maintained them. We come from an oral culture, which in the past was considered pagan and full of mythology. But it needs to be understood that in an oral culture there are different reference points. It is no less legitimate than a written culture. It is different. And because it was holistic, it combined spirituality with a relationship with the land. That is why our spirituality makes reference to the four directions and to different plants and animals that we learn from and even think of as our brothers and sisters. Canadian law has had different interpretations on the part of Crown officials of the treaties which recognized the rights of our people, but I believe the First Nations understanding has been maintained in a very consistent manner.

Today, when court decisions acknowledge the land rights of First Nations people, opposition to Aboriginal rights is often expressed in terms of these being special rights, race-based rights; or that somehow these rights are being created by the courts or that they are being given by governments. This is clearly not the case. These rights are part of the very foundations of Canada. In the early 1700s, through the 1750s and 1760s, treaties were made with the Mi'kmaq people on the East coast. This was the beginning of the treaty-making relationship and in those treaties (as recently acknowledged in the courts through the Marshall decision which led to the recent misunderstandings at Burnt Church), there was no concept of surrendering lands. What

was agreed to was that peace and friendship would be maintained between nations and we would respect each other's nationhood and livelihoods.

That led later on to the treaties around the Great Lakes following the wars in 1760 after the British acquired the French possessions on this continent. Pontiac, one of the chiefs of the Ottawas—which happens to be the people I come from—led a resistance against the British because the Ottawa and Ojibway Nations had been allied with the French. They burned all the British forts throughout the territory, except for Fort Detroit which they put under siege for a couple of years. This was very distressing to the British and led to seeking peaceful relations with the nations around this area. The Proclamation Act of 1763 was established to keep that peace.

To solidify this relationship and make it known to other Nations, the Niagara Treaty of 1764 was signed at Niagara Falls. This was a treaty council, led by Sir William Johnson representing the British, involving 24 different nations: the two alliances—the Iroquois Confederacy and what was called the Western Confederacy, which was Pontiac's Confederacy of formerly French allies. The First Nations were told that this relationship was one of protection and ensuring our livelihood and that lands would not be taken without our consent. Furthermore, we should make known to the other Nations to the West that this relationship would be made available to them.

I believe this needs to be understood today because there are those who claim that the later written treaties and written agreements and the numbered treaties, and so on, were surrender documents. But that was not at all the understanding of the Western people when the treaty commissions arrived with pre-written documents which they solidified through their treaty councils. What the First Nations of the West understood is that they would share the land in exchange for ensuring their livelihoods and maintaining peaceful relations and protection.

These things need to be understood by Canadians since these treaties were a fundamental part of the establishment of this country. The history of this country would be very different without these treaties. We know the history south of us in the United States was very different. The wars and violence and so on there were avoided in Canada through these treaty processes adopted by the British Crown. This policy and process of reconciliation through treaty-making and treaty relationships secured peace.

Canadians also need to understand that these treaties recognized the fact that we have collective rights and that the collective rights of our Nations are recognized in Canadian law. People from the Alliance and other such groups who are opposed to the recognition of Aboriginal rights call them "special rights," but the fact is that this country was established through these treaties. For our people they are sacred agreements that were solemnly reached and witnessed by the Creator. Therefore, our people believe that we have an obligation to keep these agreements; we cannot abandon those agreements.

I haven't gone into a great deal of legal detail but I think this is a very important background to

resolving the land and resource issues. Aboriginal title and rights to land and resources are fundamental rights recognized in Canadian law and arising out of Canada's history with First Nations. Since confederation and the establishment of the Indian Act and the reservation system and so forth, there are a whole series of other grievances related to lands on the reservations and the administration of trust accounts and other assets on behalf of First Nations. Today federal policy calls these specific claims and they relate to government administration of Indian lands and assets. Since this is a whole other category of claims with fundamentally different types of issues, it is even more confusing to Canadians.

A further important point to understand in the issue of the administration of Indian lands is one that has been clarified in many of the court cases in recent years, and that is that the Crown has a fiduciary relationship and a fiduciary obligation to First Nations. The courts have pointed out that this trust-like or trustee-like responsibility places a serious burden on the Crown to ensure the best interests of the Aboriginal people.

This fiduciary responsibility applies to two main areas: first, administrative matters relating to Indian reserves and assets and, second, to Section 35 of the Constitution which deals with Aboriginal and treaty rights. In the first instance, a fiduciary responsibility by the Crown requires that all administrative actions must be in the best interests of the beneficiary, namely the First Nations people. In the second case, it is clear that there is a fiduciary obligation on the Crown such that it cannot undertake any action that will derogate from existing or treaty rights.

There is a dispute between the First Nations people and the federal government which administers these Crown obligations over the nature of this fiduciary obligation. In the First Nations view, it is a positive obligation. That means the best interests of the First Nations should be pursued by the Crown. The federal government and the justice department's interpretation is that it is merely a benign obligation, meaning that their only obligation is not to infringe upon those rights. They do not accept that there is a positive duty that they should be actively and pro-actively promoting the good interests of the Aboriginal people as these relate to lands and resources, the very basis by which people secure their livelihoods and on which all other issues arise—education, health, social development.

Consequently, when there is a grievance about lands and resources, the government of Canada is immediately placed in a conflict of interest in carrying out its fiduciary responsibilities towards First Nations people. It cannot deal with claims against itself; its courts are not adequate mechanisms. We could plug up the courts. There are already literally thousands of cases across the country in the provincial and federal courts on lands and resources, hunting and fishing, etc.

What is needed is an alternative dispute resolution and independent mechanisms. The Royal Commission on Aboriginal Peoples recommended an independent mechanism because Canada is in a conflict of interest. It has a responsibility to the people of Canada; it also has fiduciary obligations to the peoples of the First Nations. It can't reconcile the two within itself. There has to be an independent mechanism either to facilitate the parties negotiating by bringing them

together or adjudicating between them, making final resolution if that's the only course to be taken in order to resolve these things. The Year III theme of the Jubilee Initiative supports this critically important development. A reconciliation process can take place through facilitated dialogue but it can't be allowed to only rest in the hands of the perpetrators which is the government.

Resolving Aboriginal land and resource rights will benefit not only First Nations people, but all Canadians. First Nations people aren't going to take the revenues from the development of resources, and whatever else is generated, out of the country. There will be a benefit to local economies, some of them among the most Northern and rural areas of Canada. Furthermore, First Nations management of those resources will result in a more balanced and a more sustainable approach than the raping and exploitation of the land. I think that is a very important point and it contrasts with what our politicians do in working with international corporations to extract those resources and take the profits out of the country for a pittance. Canadians are not benefitting from that. What is necessary is to maintain a balance to that we can benefit from the employment which the corporations create.

The Aboriginal peoples are not going to go away. That's what the court acknowledged in *Delgamuuk'w*. We're all here to stay. We must reconcile. The fact is we are peoples and nations and we can co-exist together but we have to find ways to do that. The other important fact is that these rights are not just legal rights in Canada. These are fundamental human rights that are recognized by international instruments including the United Nations. Canada has been criticized by the United Nations which has expressed concerns about the fact that Canada is denying one of the most fundamental human rights, the right of a people not to be deprived of their means of subsistence. For the last 150 years in Canada, the First Nations peoples have been systematically deprived of their means of subsistence.

In 1998, the UN Committee on Economic, Social and Cultural Rights expressed its concern in these words: "The Committee views with concern the direct connection between Aboriginal economic marginalization and the ongoing dispossession of Aboriginal people from their lands, as recognized by the Royal Commission on Aboriginal Peoples, and endorses the recommendations of RCAP that policies which violate Aboriginal treaty obligations and the extinguishment, conversion or giving up of Aboriginal rights to title should on no account be pursued by the State Party. The Committee is greatly concerned that the recommendation of RCAP have not yet been implemented, in spite of the urgency of the situation."

In 1999, the UN's Human Rights Committee made a similar assessment of the Canadian government's failure to live up to its obligations under the International Covenant on Civil and Political Rights both with regard First Nations rights to land and resources and to the practice of extinguishing inherent Aboriginal rights.

This serves to illustrate how Canada says it intends to address issues of Aboriginal rights and title through its comprehensive claims policy but in fact does the opposite. It seeks to extinguish those rights. The word "extinguish" is not used, but rather a clause that refers to

"cede, release and surrender." The First Nations people had no comprehension of what that meant. If you look at a historical numbered treaty you will see the expression "cede, release and surrender forever." Now if you look at some of the land claim agreements 100 years later the words are still there: "cede, release and surrender forever".

In the Nisga'a agreement, there is new language. Instead of "cede, release and surrender," there is a more sophisticated, and even more insidious, approach to extinguishment: the Aboriginal and treaty rights of the Nisga'a will be limited to what is defined in the agreement.

I'm not criticizing the Nisga'a. The Nisga'a are entitled to whatever they want. But other First Nations are saying that they don't want models imposed on them from other Nations. They have a concern that general provisions such as that in the Nisga'a treaty removes Aboriginal rights from Section 35 of the Canadian constitution, which recognizes and affirms existing Aboriginal treaty rights, and places them under a sub-clause which is about the protection of agreements. Any future definition of Aboriginal or treaty rights will not be allowed, according to the wording in the Nisga'a agreement, since these rights are already defined in the agreement. So we are very concerned about that kind of trickery.

The recent events in Burnt Church relate to the 1760 to 1762 Peace and Friendship treaties with the Mi'kmaq and other peoples in the Atlantic. In the Marshall decision, the Supreme Court clearly ruled that these treaties granted the right to maintain a livelihood, in this case by fishing, but it applies to other resources as well. The court explicitly said that the fisheries regulations are inoperative because they do not accommodate these treaty rights. Then a minister of the government, Herb Dhaliwal, Minister of Fisheries and Oceans, goes to Burnt Church and imposes those very same regulations. He says he is offering to negotiate but what he's trying to negotiate is to force these people into operating under the very regulations that the court declared inoperative. We find that a great injustice and worthy of international condemnation. Even though the Court pointed out that the honour of the Crown is at stake when these treaties are being interpreted, we can't seem to explain to Canadians what is really happening.

I would like to conclude on a personal note. I come from Manitoulin Island. It was my people who signed the treaty with Sir Francis Bond Head in 1836. In it, we agreed that Manitoulin Island would be reserved for our own use and that we would allow other Indians who wanted to do so to come and live there. That was our understanding, but the Crown's intent was to apply a policy of removal of Indians such as the Mississaugas and the Hurons here in the Credit valley, sending them to Manitoulin Island so they would get them out of the way and have free access to these lands.

A second intention of that 1836 treaty was to civilize the Indians. Sir Francis Bond Head's concept was to remove the Indigenous people, concentrate them on this island where they would be separated from bad influences such as the whiskey traders, and then work on assimilating them. This was an early form of apartheid and you may recall that Sir Francis Bond Head was in South Africa, although during a much earlier time than the era of formal apartheid

in that country. However, the policy failed because other Indians didn't want to move to Manitoulin Island. So in 1862, a treaty commission was sent to Manitoulin with the task of reclaiming the island in order to benefit from its farm land and simply to get back control of the island. Well, my people today live on the Wikwemikong Unceded Indian Reserve because they refused to sign that treaty in 1862 and as a consequence our side of the island was not surveyed out as part of the implementation of that treaty.

Michael Stogre

Recently, I read a column by Jeffrey Simpson titled, "Where is a politician when you need one?" He ends by saying, "Aboriginal policy ... is stuck. Along with the challenges of continental integration, Aboriginal issues will be the most difficult for Canada in the next decade. Our politicians, busy calling each other liars and extremists, have nothing constructive to offer." That's not very encouraging but at least it's a kind of prophetic statement that these issues are important. They aren't going to go off the face of the earth and for us in Canada these will be formidable issues which we can't avoid.

As the Royal Commission on Aboriginal Peoples pointed out, even to stay with the status quo is going to be tremendously costly. Although you really can't put a monetary value on it, some have tried to do so: "Right now we're spending \$4.2 billion more on the percentage of the Canadian population that is Aboriginal than a comparable population of Canadians and the projection is that if nothing changes that will more than double." And that's apart from just basic treaty entitlements and other things that come to all of us by virtue of being Canadians. And this doesn't even consider the great loss of human creativity and productivity that could exist if the Aboriginal peoples revitalize, if healing took place and a lot of these issues were dealt with. So the status quo is not a solution and yet we seem to be stuck there.

After some 20 years of association with Project North and the Aboriginal Rights Coalition, I have been working in and around Manitoulin Island for the last 10 years. I live just a little north of there, at Anderson Lake, the site of a ministries training program for Ojibway Catholics, and others, in the diocese. My main work is as a pastor on the Island where I have a "four-point pastoral charge," of which two are Aboriginal and the other two mostly non-Aboriginal.

There are so many ironies, so much complexity. When the Jubilee Initiative circulated the petition about Third World debt a couple of years ago, there was no problem and no questions. Everybody was behind it. Now I'm really dreading bringing the Year III petition on Aboriginal land rights to the same congregations. The Catholic diocese of Sault Ste. Marie and the Anglican Algoma diocese may lose some churches due to the current lawsuits. Yet the little church at West Bay may be protected because it is on Aboriginal land and I don't think anybody can seize it. So the large number of non-Natives going to that church right now (it is overwhelmingly non-Native during the tourist season), may have a church to attend after all.

Years ago, I was sitting in the Project North office one day with Carmel McCollum from the United Church and we got a letter from Bruce Clark. As soon as I say Bruce Clark some people are going to wonder what this is all about, but in those days he was the solicitor for the Bear Island Band. He has written some important works apart from getting into trouble along the way. He wrote, asking, "What's a papal Bull?" And what was this papal Bull *Sublimis Deus* which some pope way back when had written? At that point, nobody had heard of it and we didn't know quite what he was getting at, but apparently in a court case the Crown was using pretty

much the same arguments as those used against Bartolomeo de las Casas concerning the rights of Aboriginal people some centuries earlier. Las Casas was bishop in Chiapas, Mexico—notice the issues don't go away—and he was railing against the colonists who believed that since the Indians weren't Christian they had no rights. The colonists were so angry at las Casas that he eventually left his diocese and went back to Europe and became one of the great lobbyists and prophetic figures of that era.

Before he did so, however, some documentation was sent to Europe with a monk who presented it to Pope Paul III. This resulted in the issuing of this papal Bull which was the first declaration that Aboriginal peoples had rights. If you read Indian Rights in Canada which the old Indian-Eskimo Association put out, this papal Bull is the first document that is mentioned in this long-standing debate about Aboriginal rights.

A little later, when I had a chance to study, I tried to find out more about that document. It led me back to the Middle Ages when the church was dealing with non-Christian peoples within Europe—Jewish people, Muslims, and heretics. What are the rights of these people? These are not new questions. Some of the Europeans at the time were arguing much like as at Bear Island: these peoples have no rights. Perhaps they are not even human. That was one of the arguments that Las Casas had to argue against in one of the great councils of the Indies.

As the years went by, the church continued to confront these situations and was developing its thinking. But it didn't change that much. A lot of the original canonical thinking that grew up in the Middle Ages under Innocent IV kept being applied. However the rights were a bit watered down because they didn't include what we call political rights; it was more property rights. They used the term dominions, which included political sovereignty rights and then land rights or property rights. It took many generations and centuries for us to come back to a full understanding of dominion as it applied to Aboriginal people.

It's interesting a lot of this got worked out through the Spanish history and not so much French and English. Eventually this world history came together and church teaching was disseminated, especially post-Second World War with decolonization and post-Vatican II. We really went back to early Roman law: Aboriginal title is based on first use and occupancy. However, people started saying, "There's nobody here." And we had the doctrine of terra nullius. Next they began to say, "Well there are people here but they're not using the land properly or productively."

I think when you're talking about Indigenous peoples, Aboriginal peoples we've come to a deeper understanding of the link between the people and land. Let me just quote from a text from the World Day of Peace statement a few years ago. This is in the era of John Paul II: "Certain peoples, especially those identified as Native or Indigenous, have always maintained a special relationship to the land, a relationship connected to the group's very identity as a people having their own tribal, cultural or religious traditions. When such Indigenous peoples are deprived of their land, they lose a vital element of their way of life and actually run the risk of disappearing as a people." That is what we've been seeing all over the Americas and around

the world.

You may remember the McKenzie Valley pipeline inquiry. It is one of the few times that we actually listened to the testimony of the people. A woman from Fort Good Hope testified: "Every time the white people come to the North, or come to our land and start tearing up the land, I feel as if they are cutting our own flesh because that is the way we feel about our land. It is our flesh." That's a quite different view of the relationship to land and it does have implications, because Aboriginal title comes down to a fundamental right to exist and to life, not only in the sense that all peoples have a right to an economic base, land sufficient to sustain your way of life, but that to lose that land is tantamount to a death sentence. I think sociologists and anthropologists have studied that when they talk about a kind of ennui that sets in. People give up hope and they literally die.

When John Paul II was in Canada he very much supported land rights: "This is truly the hour for Canadians to heal all the divisions they have developed over the centuries between the original peoples and the newcomers to this continent. The challenge touches all churches and ecclesial communities throughout Canada."

I think we need to do that, not just because we are in solidarity with Aboriginal people who have these rights, but for our own sake. I'll finish by quoting a text by Thomas Berry: "The destinies of the First Nations are inseparable from the destinies of the American earth. As we deal with one, so will we deal with the other, and in the end, so will we deal with ourselves. The fate of the continent, the fate of the First Nations and our own fate are finally identical. None can be saved except in and through the others."

We have a profound theology of reconciliation in the Pauline doctrine that has been given to us: "God was in Christ reconciling the world to himself" and passing on that ministry to us.

Last year, I had an extra-ordinary experience. Most people think the Huron Nation disappeared completely. Well that's not true. One group is still in Quebec, at Ancienne Lorette, there are branches in the United States in Kansas, Oklahoma and Michigan. Because it was the 350th anniversary of their dispersal, they wanted to come back to their ancestral homeland. To prepare for that we had a reconciliation circle. Interesting things came out of that and towards the end of the summer, we all came together in Midland where we had the first Feast of the Dead to take place in Ontario since 1634, or thereabouts. Very few Europeans ever got to see this celebration and I was privileged to be there and to take part in that. It is a work of grace—unbelievable things can happen; unexpected things if we are willing to listen and if we are willing to cooperate.