

JANUARY 30, 2017
BOARD OF TRUSTEES MEETING
OCSTA COMMUNICATIONS ADDENDUM



Ontario Catholic School
Trustees' Association

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January 20, 2017

TO: Chairpersons and Directors of Education
- All Catholic District School Boards

FROM: Patrick Daly, President

SUBJECT: Resolutions Presented from the Floor

Please forward this communication to all of your Trustees so that they may be fully informed of the changes outlined in the memo.

Further to enquiries raised during a workshop at our recent Catholic Trustees' Seminar regarding *Resolutions Presented from the Floor* at the Annual General Meeting (AGM), the following overview is provided for clarification.

OCSTA's By-Law was revised to comply with the Not for Profit Corporations Act and approved by the membership at the AGM in April 2014. Under the current By-Law, **it is no longer possible for motions to be brought forward at the Annual Meeting without any prior notice.**

However, under Article 5.11 (*Members Discussion Rights*), a member may raise a matter for discussion at the AGM, and in that case it is not necessary to provide any advance notice of the intention to do so. Subject to the provisions in Articles 5.10.1 to 5.10.5, and 5.11, the item may be addressed, and may be referred to a committee of OCSTA for further consideration, but it shall not be put to a vote at the meeting at which it has been raised.

A Member may therefore choose to bring a proposed resolution on at least 60 days' advance notice, or raise a matter for discussion only, without the need for notice. This process varies from OCSTA's previous By-law which permitted a Member to bring forward a motion from the floor during the annual meeting, without any prior notice.

Unfortunately, in a previous communication to boards from OCSTA, the document entitled Explanation of Committee Recommendations & Resolution Session Procedures, made reference to *Resolutions Presented from the Floor*. Attached is a revised copy of the document to replace the previous version. A copy of the current OCSTA By-Law is also attached for your reference.

Explanation of Committee Recommendations & Resolution Session Procedures

Resolution sessions will be conducted using “**Robert’s Rules of Order**” and the provisions of the OCSTA Constitution. The chairperson of the session will ensure compliance with their rules.

Explanation of Committee Recommendations

The **Resolutions** Committee will study the resolutions and offer recommendations on the best way to meet their intent. The recommendations and their implications are:

- i. **Approve**
The direction given in the “therefore be it resolved” section of the resolution will be carried out.
- ii. **Approve and refer to the committee for appropriate implementation.**
The resolution will be forwarded to the designated committee for implementation.
- iii. **Receive and refer to the committee for study.**
The resolution will be forwarded to the designated committee for study. Following the study and receipt of the committee’s recommendation, the Board of Directors will determine whether or not the resolution will be implemented.
- iv. **Not approve**
No action will be taken.
- v. **No recommendation**
The committee is not making any recommendation with respect to the resolution.
- vi. **No action required**
The intent of the resolution has been met. No further action will be taken.

Resolution Session Procedures

Delegates wishing to speak to a resolution must go to one of the floor microphones and state their name and the name of the board they represent.

The mover of a resolution will have the opportunity to be the first and last to speak to that resolution. Other trustees may speak **once** to a resolution.

The chairperson may declare a motion out of order giving the reasons for doing so. The chairperson’s decision may be challenged by a majority vote of those voting delegates present **at the session** when the vote is called.

Voting will be by a show of hands. Delegates carrying proxies must have and show proper identification - i.e. proxy badge. Ballots will be provided in the event that a vote by ballot is called for.

Note Re Quorum: *Quorum for the transaction of business at any meeting of the Members shall require the presence in person or by proxy of not less than a total of forty (40) current Members.*

Grouped Resolutions

- a. the chair of the session will ask for a mover and seconder to approve the **grouping** of various related resolutions.
- b. the chair of the session will ask for movers and seconders for the committee recommendation for each group.
- c. delegates will vote on the committee recommendation for each group.

Delegates may request that any resolution(s) be removed from a “group” to be handled individually. These will be addressed when the group from which they have been removed has been dealt with.

Resolutions Handled Individually

These will include resolutions removed from the groups, resolutions for which the committee has not made any recommendation and resolutions from the floor.

A. Resolutions with committee recommendations

1. The chair of the session will announce the resolution number and the name of the sponsoring board:
 - the chair will call for the sponsoring board to move and second **the committee recommendation;**
 - delegates will speak to the committee recommendation;
 - delegates will vote on the committee recommendation.
2. If the sponsoring board does not move the committee recommendation from the floor:
 - the chair will call for the sponsoring board to move their **original resolution;**
 - delegates will speak to the resolution;
 - delegates will vote on the resolution.
3. If the original resolution is not moved by the sponsoring board, the resolution will be withdrawn.

B. Resolutions without committee recommendations

1. These resolutions will be handled as follows:
 - the chair will call for the sponsoring board to move their **original resolution;**
 - delegates will speak to the resolution;
 - delegates will vote on the resolution.
2. If the original resolution is not moved by the sponsoring board, the resolution will be withdrawn.

C. Amendments from the Floor

Amendments made on the floor relate to the “therefore be it resolved” section of the resolution and **must be written out** and handed to the chairperson. The chairperson will consider the amendment and, if necessary, discuss it with the parliamentarian or others to ensure that it is clearly understood.

- the chair will **read** the amendment;
- delegates will speak to the amendment;
- delegates will vote on the amendment;
- delegates will vote on the resolution as amended.

If the amendment is defeated:

- delegates will be asked to speak to the original resolution;
- delegates will vote on the original resolution.

D. Members’ Discussion Rights

Under Article 5.11 (*Members Discussion Rights*), a Member may raise a matter for discussion at the Annual General Meeting. Subject to the provisions in Articles 5.10.1 to 5.10.5, and 5.11, the item may be addressed, and may be referred to a committee of OCSTA for further consideration, but it shall not be put to a vote at the meeting at which it has been raised.

If the Member continues such discussion for three minutes or more, the Chair of the meeting may interrupt the Member and permit others to speak and/or make any subsidiary motion related thereto.

Revised January 20, 2017



Ontario Catholic School
Trustees' Association

Amended and Restated

By-law Number 2016-01

**A By-law Relating Generally to
the Conduct of Its Affairs**

ONTARIO CATHOLIC SCHOOL TRUSTEES' ASSOCIATION

AMENDED AND RESTATED BY-LAW NUMBER 2016- 1

A By-law relating generally
to the conduct of the affairs of
the
ONTARIO CATHOLIC SCHOOL TRUSTEES' ASSOCIATION

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ONTARIO CATHOLIC SCHOOL TRUSTEES' ASSOCIATION

WHEREAS the Ontario Catholic School Trustees' Association (hereinafter the "**Corporation**") was incorporated by Letters Patent issued under the Act and dated the 30th day of July, 1969, as amended by Supplementary Letters Patent dated July 11, 1979, June 18, 1997 and January 24, 2002;

AND WHEREAS it is considered expedient to enact a new General By-law relating generally to the conduct of the affairs of the Corporation, which complies with the requirements of the Ontario *Corporations Act* and will comply with the *Not-for-Profit Corporations Act* when the latter comes into force, and repeals all former By-laws of the Corporation;

BE IT THEREFORE ENACTED as By-law 2014-1 of the Corporation as follows:

0. INTRODUCTION

0.1 PREAMBLE

The wisdom, sacrifices and strivings of dedicated Canadians have created and preserved for us a school system that offers a God-centred vision of life, shaped by Jesus and his gospel, and open to the signs of the times under the guidance of the Holy Spirit.

The Corporation dedicates itself to the preservation of a school system in this province conceived in this belief and dedicated to this truth. To achieve these ends the following shall be the objectives of the Corporation.

0.2 OBJECTS

Whereas the Objects of the Corporation are:

1. TO maintain the constitutional rights of Roman Catholic School Boards and their supporters;
2. TO recommend improvements in the legislation and regulations affecting the Roman Catholic Schools of Ontario;
3. TO assist Catholic boards in attaining the highest standards in the operation of such schools by offering a medium for the exchange of information and the development of consensus among them;
4. TO promote knowledge of and appreciation for the aims and objectives of Catholic schools through conferences, meetings, exhibitions, research, publication of studies and the presentation of statements;
5. TO participate with organizations and authorities including the Catholic Bishops of Ontario, in elaborating and advancing mutually agreeable policies in favour of Catholic education;
6. TO cooperate in other relationships established to pursue progress in education;

7. TO encourage local, regional, diocesan, provincial and national initiatives and support and/or sponsor programs apt to strengthen the competence and commitment of Catholic school trustees;
8. TO accept donations, gifts, legacies, bequests and grants in support of the aforesaid objects;
9. TO engage, or participate, in provincial labour negotiations on behalf of its Member Boards, or pursuant to legislation.

1. **INTERPRETATION**

1.1 Meaning of Words

In this By-law and in all other By-laws and resolutions of the Corporation unless the context otherwise requires:

- 1.1.1 the singular includes the plural;
- 1.1.2 the masculine gender includes the feminine;
- 1.1.3 “**Act**”, unless qualified by the word “Education”, means the *Corporations Act*, R.S.O. 1990, c.C.38, as amended from time to time;
- 1.1.4 “**Annual Meeting**” shall mean a meeting of the Members, as defined in Section 5.6 herein;
- 1.1.5 “**Articles**” means any document or instrument that modifies the letters patent of the Corporation, including supplementary letters patent, restated articles of incorporation, articles of amendment, articles of amalgamation, articles of arrangement, articles of continuance, articles of dissolution, articles of reorganization, or articles of revival;
- 1.1.6 “**Board**” shall mean the Board of Directors for the Corporation;
- 1.1.7 “**CCSTA**” means the Canadian Catholic School Trustees’ Association;
- 1.1.8 “**CDSB**” means a Catholic District School Board in the Province of Ontario;
- 1.1.9 “**Committee**” means any committee of the Board established pursuant to this By-law but does not include the First Nation Trustees’ Advisory Council;
- 1.1.10 “**Corporation**” means Ontario Catholic School Trustees’ Association;
- 1.1.11 “**Director**” includes Elected and Regional Directors;
- 1.1.12 “**FTE**” means full time equivalent number of students calculated in accordance with Ontario Ministry of Education formulae;
- 1.1.13 “**Government Regulations**” means the regulations made under the Act or the ONCA, as applicable, as amended, restated or in effect from time to time;

- 1.1.14 **“Member”** means an individual who is a Member of the Corporation, as defined in Section 4.2 of this By-law;
- 1.1.15 **“ONCA”** means the *Not-for-Profit Corporations Act*, S.O. 2010, c.15, as amended from time to time;
- 1.1.16 **“Ordinary Resolution”** means a resolution submitted to a meeting of Members and passed at the meeting, with or without amendment, by at least a majority of the votes cast, or consented to by a Written Resolution of the Members;;
- 1.1.17 **“Past President”** means the person who is qualified as a Director, whose term of office as President has most recently expired, and who is willing to serve as such;
- 1.1.18 **“President”**, following the coming into force of the ONCA, means the Chair of the Board within the meaning of the ONCA;
- 1.1.19 **“Poll”** includes a vote in any written form;
- 1.1.20 **“Record Date”** means the date as of which the current membership of the Corporation is determined, which shall be fifty (50) days prior to the event or action to which the Record Date relates¹;
- 1.1.21 **“Region”** means a CDSB or group of CDSB’s so designated for the purpose of selecting Regional Directors;
- 1.1.22 **“Regional Director”** means a Regional Director described in Section 6.1;
- 1.1.23 **“Resolution”** shall mean an Ordinary Resolution unless this By-law or the *Act* specifies otherwise;
- 1.1.24 **“Special Meeting”** shall mean a meeting of the Members as defined by Section 5.12 herein;
- 1.1.25 **“Special Resolution”** means:
- 1.1.25.1 while the Act is in force, a resolution approved by the Board and confirmed, with or without variation by two-thirds (2/3) of the vote cast at a meeting of Members called to consider the Special Resolution, or by the consent in writing of all of the Members; and
 - 1.1.25.2 following the coming into force of the ONCA, a resolution submitted to a Special Meeting duly called for the purpose of considering the resolution and passed at the meeting, with or without amendment, by at least two-thirds (2/3rds) of the votes cast, or consented to in writing by each Member of the Corporation entitled to vote at a meeting of the Members or by the Member’s attorney;.

¹ Under S.54(1) of the ONCA, the record date must be less than 50 days prior to the event or action to which it relates.

1.2 Severability

Each of the provisions of this By-law shall be independent and severable, and the invalidity or unenforceability in whole or in part of any one or more of such provisions shall not be deemed to impair or affect in any manner the validity, enforceability or affect the remainder of the By-law, and in such event all the other provisions of this By-law shall continue in full force and effect as if such invalid provision had never been included herein.

2. HEAD OFFICE

2.1 Location of Head Office

The head office of the Corporation shall be in the City of Toronto in the Province of Ontario, and at such place therein as the Board may from time to time determine.

2.2 Directors Establish Provincial Office

The Board shall provide for a provincial office and staff to be named, remunerated and in all things supervised by the duly elected Officers of the Corporation and in accordance with the requirements of this By-law.

3. COAT OF ARMS AND CORPORATE SEAL

3.1 Coat of Arms

The official Coat of Arms of the Corporation shall be that approved by the Executive in 1955 - a facsimile whereof is appended hereto, and the motto of the Corporation shall be "Primo Prima" - "First Things First".

3.2 Seal

The seal, an impression whereof is stamped in the margin hereof, shall be the corporate seal of the Corporation.

4. MEMBERSHIP

4.1 Class of Membership

The Corporation shall have one class of Members.

4.2 Membership Eligibility

Subject to Section 4.4 of this By-law, all individuals who are currently elected Trustees of a CDSB shall be *Ex Officio* Members of the Corporation².

² Allowable under S.48(2) of ONCA.

4.3 Membership Fee

The Board shall, from time to time, fix the annual membership fee and any additional assessment fees, which shall be payable by the CDSB's of which the Members are, respectively, Trustees.

4.4 Termination of Membership

A membership ceases to exist when:

- 4.4.1 the Member ceases to be eligible under a provision of the Act or this By-law;
- 4.4.2 the CDSB for which the Member is a Trustee fails to submit the annual membership fee and any assessment fees within ninety (90) days of receiving notice of the amount due;
 - 4.4.2.1 Provided that the Board in its discretion may by resolution extend such time limit;
- 4.4.3 the Corporation is liquidated or dissolved.³

The termination of a membership for any reason does not affect the responsibility or the liability of their CDSB for payment on the Trustee's behalf of any membership fees or other assessment outstanding at the time of termination.

The rights of a Member, including any rights in the property of the Corporation, cease to exist on termination of the membership⁴.

4.5 Reinstatement of Membership

Any Member whose membership has been terminated due to the non-payment of a fee or assessment shall be reinstated without further formality upon receipt by the Corporation of the amount due.

4.6 Transferral of Membership

Membership is not transferrable.

5. MEETINGS OF MEMBERS

5.1 Minimum Requirement

The Corporation will hold at least one (1) meeting per year of the Members, and that shall be the Annual Meeting. Special Meetings shall be held as provided in Section 5.12 of this By-law.

³ These subsections are included to make applicable the operation of S.50(1) of the ONCA.

⁴ This sentence is included to make applicable the operation of S.50(2) of the ONCA.

5.2 Date, Time and Place of Meetings

The Annual and any Special Meetings of the Members shall be held at such time and on such day as the Board shall appoint, at the Head Office of the Corporation or elsewhere in Ontario as the Board may determine.

5.3 Admission to Meetings

Meetings of the Members shall be open only to:

- 5.3.1 Members eligible to vote, as defined by Section 5.4 herein;
- 5.3.2 Directors;
- 5.3.3 The auditor, if an Annual Meeting;
- 5.3.4 such other persons who are entitled or required under any provision of the Act or the ONCA, as applicable, the Articles or By-Laws of the Corporation to be present at the meeting;
- 5.3.5 CDSB Directors of Education; and
- 5.3.6 CDSB Student Trustees and other Persons, if admitted at the invitation of the Chair or by Resolution of the Members.

5.4 Member Eligibility to Vote

Only those Members who are Trustees of CDSB's which have paid the annual membership and any outstanding assessment fees as of the Record Date, will be eligible to vote at a meeting of the Members.

5.5 Voting by Members

- 5.5.1 The method of voting at any meeting of Members shall be determined by the chair of the meeting prior to any vote being taken. Each Member shall have one (1) vote on each question raised at any meeting of the Members, and all questions shall be determined by Ordinary Resolution, unless otherwise required by the By-Laws, the Act or the ONCA, as applicable. In the case of an equality of votes, the vote shall be deemed to have been lost.
- 5.5.2 Notwithstanding registration at a meeting, no Member shall be entitled to vote at meetings of the Corporation unless present at such meeting in person or by proxy; for the purposes of this Section 5.5, a person is not present at the meeting unless the person (or the proxy) is physically present in the room or other space (including overflow space) in which the meeting is conducted;
- 5.5.3 At all meetings of Members every question shall be decided by a show of hands unless otherwise required by the By-Laws, the Act or the ONCA, as applicable, or unless a ballot is required by the chair of the meeting or requested by any Member. Whenever a vote by show of hands has been taken upon a question, unless a ballot is requested, a declaration by the chair of the meeting that a resolution has been carried or lost by a particular majority and an entry to that effect in the minutes of the Corporation is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the motion.

5.6 Ballot

A Member can demand a ballot during the meeting either before or after any vote by show of hands. If at any meeting a vote by ballot is requested on the election of a chair, it must be taken forthwith without adjournment. If a vote by ballot is requested on any other question, it shall be taken in the manner and time as the chair of the meeting directs. The result of a vote by ballot shall be deemed to be the resolution of the meeting at which it was requested. A request for a vote by ballot may be withdrawn at any time prior to the taking of the ballot.

5.7 Proxy Voting

Every Member entitled to vote at a meeting of the Members may by means of proxy appoint a proxyholder, or one or more alternate proxyholders, as the Member's nominee to attend and act at the meeting in the manner and to the extent and with the authority conferred by the proxy, the ONCA, and the Government Regulations.

A proxy must be:

- 5.7.1 in writing;
- 5.7.2 signed by the Member or the Member's Attorney,
- 5.7.3 be deposited with the Secretary of the Corporation no later than forty-eight (48) hours, excluding Saturdays and holidays, before any meeting or continuance of an adjourned meeting of the Members;
- 5.7.4 in such form as the Board prescribes; and
- 5.7.5 meet any additional requirements of the Act or its Regulations;

A proxy shall only be valid at the meeting in respect of which it is given, or if that meeting is adjourned, at the meeting that continues the adjourned meeting.

A proxy may be revoked by a Member by depositing a written and signed revocation which must be received at the registered head office of the Corporation at any time up to and including the last business day before the meeting at which the proxy is to be used, or by depositing same with the chair of the meeting on the day of the meeting.

The Corporation shall send, or otherwise make available, the form of proxy to each Member who is entitled to receive notice of the meeting concurrently with or before giving notice of the meeting.⁵

5.8 Business at Annual Meetings

Annual Meetings shall be called by the Board, and shall be held no later than fifteen (15) months after the preceding Annual Meeting, on such a day and place as the Board shall determine⁶.

The agenda for the Annual Meeting shall include the following matters of business:

⁵ Required under Part VI of the ONCA.

⁶ Required under S.52(1) of the ONCA.

- 5.8.1 consideration of the minutes of the previous Annual Meeting;
- 5.8.2 consideration of any proposed By-law amendments;
- 5.8.3 consideration of Resolutions submitted by CDSB's in accordance with Section 5.9;
- 5.8.4 consideration of the financial statements of the Corporation;
- 5.8.5 appointment of the auditor;
- 5.8.6 approval of the auditor's report;
- 5.8.7 election of the President, Vice President, and CCSTA Representative, if an even numbered year;
- 5.8.8 introduction of Regional Directors present; and
- 5.8.9 any Members' proposals, received in accordance with Section 5.9 herein.

5.9 Resolutions from CDSB's

Any CDSB may submit a Resolution for consideration at an Annual Meeting to address any challenge or opportunity which affects Catholic education in Ontario, subject to the following:

- 5.9.1 each such Resolution shall have been received at the Head Office of the Corporation not less than sixty (60) days prior to the date of the Annual Meeting;
- 5.9.2 each such Resolution shall have been considered and reported upon by a Committee of the Board, or by the Board of Directors;
- 5.9.3 each such Resolution shall be circulated among all CDSB's not less than thirty (30) days prior to the Annual Meeting;
- 5.9.4 each such Resolution shall be included in the notice of the Annual Meeting; and
- 5.9.5 no such resolution shall be acted upon unless approved by a majority of the votes cast at an Annual Meeting.

5.10 Members' Proposal Right

Through their CDSB, any Member entitled to vote at an Annual Meeting may give the Corporation notice of a proposal which the Member would like to have considered at the meeting.⁷

Provided that the proposal is received at least sixty (60) days prior to the date of the meeting, the Corporation shall refer it to a Committee of the Board or as determined by the Board of Directors, for review and consideration, and shall include it with the notice of the meeting sent to all Members. If the Member so requests, the Corporation shall also include a statement by the Member in support of the proposal, not to exceed 500 words, and/or the Member's name and address. The proposal along with the Committee's report, if any, will be tabled at the Annual Meeting, at which the Member making the proposal may read aloud the resolution proposed.

⁷ Required by S.56 of the ONCA.

Notwithstanding the above, the Corporation may refuse to send the proposal to the Members if:

- 5.10.1 it clearly appears that the primary purpose of the proposal is to enforce a personal claim or redress a personal grievance against the corporation or its Directors, Officers, Members or debt obligation holders;
- 5.10.2 it clearly appears that the proposal does not relate in a significant way to the activities or affairs of the Corporation, as outlined in the corporate Objects; [see art. 0.2]
- 5.10.3 not more than two years before the receipt of the proposal, the Member failed to present in person or by proxy, if authorized by the By-law, at a meeting of the Members, a proposal that had been included in a notice of meeting at the Member's request;
- 5.10.4 substantially the same proposal was submitted to Members in a notice of a meeting of the Members held not more than two years before the receipt of the proposal and the proposal was defeated; or
- 5.10.5 the rights conferred by this section are being abused to secure publicity.

5.11 Members' Discussion Rights

Any Member entitled to vote at an Annual Meeting is entitled to raise for discussion at that meeting any matter with respect to which the Member would have been entitled to submit a proposal, subject to the conditions outlined in Sections 5.10.1 to 5.10.5.⁸

- 5.11.1 Provided however that if such Member continues such discussion for three minutes or more, the Chair of the meeting may interrupt the Member and permit others to speak and/or make any subsidiary motion related thereto.

5.12 Special Meetings

The Board, the President or the Vice President may call a Special Meeting of the Members at any time, the nature of which must be specified in the notice to call the meeting.

The President shall call a Special Meeting upon the written request of the Members of the Corporation who hold at least ten (10) per cent of the votes that may be cast at a meeting of the Members sought to be held, within twenty-one (21) days after receiving such a request, failing which any Member who signed the request may call a Special Meeting, provided that the business of the meeting as stated in the requisition does not include a matter described in Subsections 5.10.1 through 5.10.5⁹.

No other business other than that which is specified in the notice shall be transacted¹⁰.

⁸ S.56(1)(b) of the ONCA.

⁹ S.60(1).

¹⁰ S.55(8).

5.13 Adjournments

Members' meetings may be adjourned to any time, and such business may be transacted at such adjourned meeting as might have been transacted at the original meeting from which such adjournment took place. No notice shall be required of any such adjournment and an adjournment may be made notwithstanding that no quorum is present.

5.14 Quorum

Quorum for the transaction of business at any meeting of the Members shall require the presence in person or by proxy of not less than a total of forty (40) current Members.

5.15 Effect of Loss of Quorum

In the event that a quorum is lost at any meeting of Members,

5.15.1 if, in the opinion of the chair of the meeting, such loss of quorum is temporary and likely to be short-lived, the chair of the meeting shall have the authority to forthwith declare a recess for any period of time not exceeding one hour;

5.15.2 if,

5.15.2.1 in the opinion of chair of the meeting, such loss of quorum is not temporary and likely to be short-lived, or

5.15.2.2 having declared a recess, a quorum is not present at the end of the recess,

the meeting shall stand adjourned, to be reconvened at the call of the President.

5.16 Notice of Meetings

Written notice of the time and place of a meeting, stating the nature of the business to be transacted in sufficient detail to permit a Member to form a reasoned judgement on the business, and stating the text of any Resolution to be submitted to the meeting, shall be sent to all Members entitled to receive notice, all Directors, and if an Annual Meeting then to any person appointed to conduct an audit or review engagement of the Corporation, not less than ten (10) and not more than fifty (50) days before the date on which the meeting is to take place.

No error or omission in giving notice of any meeting or any adjourned meeting of the Members shall invalidate such meeting or make void any proceedings taken thereat. Any Member may waive notice of a meeting at any time and may ratify, approve and confirm any or all proceedings taken thereat.

5.17 Appointment of Returning Officer

Prior to every meeting of Members, the Board shall appoint a Returning Officer, and may appoint one or more Deputy Returning Officers, to supervise any vote by ballot which takes place at the meeting. The appointment of the Returning Officer (and Deputy Returning Officers, if any) may be challenged by motion prior to the first call by the chair for a vote on any question at the meeting, and if such motion is successful, an appropriate replacement shall be selected by the meeting forthwith.

5.18 Authority of Returning Officer

The Returning Officer shall have full and final authority on any question as to:

- 5.18.1 the qualifications of any person to cast a ballot;
- 5.18.2 the validity of proxies;
- 5.18.3 whether any ballot is to be counted or declared spoiled;
- 5.18.4 the counting of ballots;
- 5.18.5 the results of the balloting and announcement thereof to the meeting;
- 5.18.6 and generally over the supervision of balloting subject to any specific authority vested by this By-law in the Chairperson of the meeting;

Provided that where any duty is performed by the Deputy Returning Officer, the absence or inability of the Returning Officer shall be presumed with reference thereto.

6. REGIONS

6.1 Criteria for Determining Regions and Representation

The criteria for determining the boundaries of and the representation by Regions shall be as follows:

- 6.1.1 CDSB's with a student enrolment of less than 35,000 FTE shall be grouped with other similarly sized CDSB's in a contiguous geographic area to form a Region, and such Region shall be entitled to select one (1) Regional Director if the combined student enrolment is less than 75,000 FTE, and shall be entitled to select two (2) regional Directors if the combined student enrolment is greater than 75,000 FTE;
- 6.1.2 CDSB's with a student enrolment in excess of 35,000 FTE but less than 75,000 FTE shall constitute a Region, and such Region shall be entitled to select one (1) Regional Director; and
- 6.1.3 CDSB's with a student enrolment in excess of 75,000 FTE shall constitute a Region, and such Regions shall be entitled to select two (2) Regional Directors to the Board.

6.2 Division into Regions

The Province of Ontario shall be divided into twelve (12) Regions for the purpose of selecting Regional Directors, and the number of Regional Directors respectively for such Region shall be as follows:

Region	Catholic District School Board	Number of Directors
1.	Huron-Superior Catholic District School Board Nipissing-Parry Sound Catholic District School Board Northeastern Catholic District School Board Sudbury Catholic District School Board	1
2.	Kenora Catholic District School Board Northwest Catholic District School Board Superior North Catholic District School Board Thunder Bay Catholic District School Board	1
3.	Northern Regions No. 1 & 2 (at large)	1
4.	Bruce-Grey Catholic District School Board Huron-Perth Catholic District School Board Waterloo Catholic District School Board Wellington Catholic District School Board	1
5.	London District Catholic School Board St. Clair Catholic District School Board Windsor-Essex Catholic District School Board	1
6.	Toronto Catholic District School Board	2
7.	Dufferin-Peel Catholic District School Board	2
8.	York Catholic District School Board	1
9.	Durham Catholic District School Board Peterborough, Victoria, Northumberland & Clarington Catholic District School Board Simcoe-Muskoka Catholic District School Board	1
10.	Algonquin & Lakeshore Catholic District School Board Catholic District School Board of Eastern Ontario Renfrew County Catholic District School Board	1
11.	Brant Haldimand-Norfolk Catholic District School Board Halton Catholic District School Board Hamilton-Wentworth Catholic District School Board Niagara Catholic District School Board	2
12.	Ottawa Catholic School Board	1
	TOTAL	15

6.3 Regions to Create Offices

Each Region shall create and maintain the offices corresponding to and named, respectively, the offices listed in Subsection 7.1.4.

6.4 Amendment

If and whenever the criteria set out in this Article 6 so requires, the Members shall, by Special Resolution, alter the boundaries of the Regions and the number of Regional Directors accordingly, so as to take effect at the selection of Directors next following the confirmation of such Special Resolution by the Members.

6.5 Alteration of Regional Boundaries for Other Reasons

In addition to Article 6.4 above, Region boundaries may also be altered, by Special Resolution, for reasons other than those necessitated by Article 6.1, provided that:

- (a) The change in Regions shall not result in any Board with an excess of 35,000 FTE's being in the same Region as any other Board, and
- (b) The change in Regions shall not alter the number of Regional Directors to which any one Region is entitled.

7. BOARD OF DIRECTORS

7.1 Board Composition

The affairs of the Corporation shall be managed by a Board composed of eighteen (18) Directors, as follows:

- 7.1.1 The President who shall be elected by the Members; and
- 7.1.2 The Vice President who shall be elected by the Members.
- 7.1.3 The Past President;
- 7.1.4 Fifteen (15) Directors being the incumbents for the time being of the following offices:
 - 7.1.4.1 Regional Director for Region One;
 - 7.1.4.2 Regional Director for Region Two;
 - 7.1.4.3 Regional Director for Region Three;
 - 7.1.4.4 Regional Director for Region Four;
 - 7.1.4.5 Regional Director for Region Five;
 - 7.1.4.6 Regional Director A for Region Six;
 - 7.1.4.7 Regional Director B for Region Six;
 - 7.1.4.8 Regional Director A for Region Seven;
 - 7.1.4.9 Regional Director B for Region Seven;

- 7.1.4.10 Regional Director for Region Eight;
- 7.1.4.11 Regional Director for Region Nine;
- 7.1.4.12 Regional Director for Region Ten;
- 7.1.4.13 Regional Director A for Region Eleven;
- 7.1.4.14 Regional Director B for Region Eleven;
- 7.1.4.15 Regional Director for Region Twelve.

7.2 Director Eligibility

The following persons are disqualified from being a Director:

- 7.2.1 A person who is not an individual;
- 7.2.2 A person who is under eighteen (18) years of age;
- 7.2.3 A person who has been found under the *Substitute Decisions Act*, S.O. 1992, c. 30 or under the *Mental Health Act* R.S.O. 1990 c. M.7 to be incapable of managing property;
- 7.2.4 A person who has been found to be incapable in any court in Canada or elsewhere;
- 7.2.5 A person who has the status of bankrupt¹¹; and
- 7.2.6 A person who is not a Member.

7.3 Election of President and Vice President

The President and Vice President shall be elected at Annual Meetings held in even numbered years.

Where there are more candidates nominated than there are positions to be filled by election, there shall be an election conducted by ballot, and for this purpose, there shall be a separate ballot for the election of each of the President and the Vice-President.

The Returning officer shall report to the Members the number of ballots cast for each candidate, the total number of ballots cast, the number of spoiled ballots, and the number of ineligible ballots.

7.4 Selection Process for Regional Directors

No particular manner or method is prescribed for how each Region selects its Regional Director. The CDSB's comprising each Region, therefore, shall devise and adopt a fair, equitable and democratic process by which their Regional Director is selected, in accordance with Board guidelines, provided however, that:

¹¹ 7.1.1 to 7.1.5 correspond to Sections 23(1)1 to 5 of the ONCA.

- 7.4.1 Regional Directors from CDSB's described in Section 6.1.1 shall be selected in odd numbered years, and Regional Directors described in Sections 6.1.2 and 6.1.3 shall be selected in even numbered years; and
- 7.4.2 the selection process once adopted may not be altered more frequently than every second year, and in any event not later than one hundred and eighty (180) days prior to the second Annual Meeting following the previous use of the process.

7.5 Failure to Agree Upon Regional Director Selection Process

In the event that the CDSBs comprising a Region are unable to reach a consensus as to the process to be adopted for that Region for the selection of its Regional Director, any CDSB within that Region may refer the selection process to the Board; and upon referral:

- 7.5.1 the Board shall give notice to the other CDSBs within that Region, requesting each to make representations to the Board within thirty (30) days after the notice, as to the selection process to be adopted;
- 7.5.2 within a further thirty (30) days, the Board shall consider all representations received from the CDSBs within that Region, and determine the process by which such Regional Director is selected;
- 7.5.3 such determination by the Board shall be final and binding for such Region and from which there is no right of appeal, but without prejudice to the right to adopt a new selection process subject to the limitations described in clause 7.4.2.

7.6 CCSTA Representative

The following shall determine the selection of the CCSTA Representatives:

- 7.6.1 in the event that that the Corporation shall have the right to select only one (1) person to serve on its Board of Directors, the Past President of the Corporation shall be the CCSTA representative;
- 7.6.2 for as long as the Corporation shall have the right to select two (2) persons to serve on the Board of Directors, the second CCSTA Representative (in addition to the Past President of the Corporation) shall be elected in even numbered years by the Members at the Annual Meeting;
- 7.6.3 In the event that one of the CCSTA Representatives is selected by CCSTA to serve as its president, the President of the Corporation shall appoint a Director of the Corporation in the place and stead of the person so selected to serve as a CCSTA Representative.

7.7 Termination

A Director ceases to hold office when he or she:

- 7.7.1 submits their written resignation to the President, specifying the date upon which it shall become effective;
- 7.7.2 becomes deceased.
- 7.7.3 ceases to be eligible to be a Director, as prescribed in this Article 6.5;

7.7.4 is terminated as a Member, in accordance with Section 4.4 herein;

and an elected Director further ceases to hold office when he or she:

7.7.5 is removed by Ordinary Resolution of the Members at a Special Meeting of which notice of the intention to pass such a resolution has been given

7.8 Vacancies

If, for any reason, there is a vacancy in the office of:

7.8.1 **President**, then the Vice-President shall automatically assume the office of President for the balance of the unexpired term of office;

7.8.2 **Vice-President**, then the Directors shall appoint a Regional *Ex-Officio* Director to assume the office of Vice-President for the balance of the unexpired term of office;

7.8.3 **President and Vice-President**, then the Directors shall appoint one of their number to assume each of the offices of President and Vice-President for the balance of the respective unexpired terms of office;

7.8.4 **Past President**, the person who is the next most recent former President who is willing to assume the office shall automatically assume the office of Past President for the balance of the unexpired term of office; and if none, the office shall remain vacant until there is a person eligible and willing to assume the office; and if none, the office shall remain vacant until the next Annual Meeting at which a new President is to be elected;

7.8.5 **Regional Director**, then the Members of the Region from which the vacancy occurred shall elect a person who is qualified to assume the office for the balance of the unexpired term, provided however that, where there is still a quorum of the Board in office and a vacancy occurs during the six months prior to a scheduled annual meeting, the election to fill such vacancy shall be deferred to such Annual Meeting.

7.8.6 **CCSTA Representative**, then the President of the Corporation shall appoint a Director of the Corporation in the place and stead of the vacated CCSTA Representative to serve for the remainder of the term.

7.9 Remuneration of Directors

The Directors shall receive no remuneration for acting as such provided that a Director may be paid reasonable expenses incurred by him or her in the performance of his or her duties.

7.10 Term

The term of office shall be for two years,

7.10.1 in the case of the President, Vice-President and CCSTA Representative(s) commencing at the adjournment of the Annual Meeting at which they are elected;

7.10.2 in the case of a Regional Director, commencing at the adjournment of the first Annual Meeting following such Regional Director's selection; and

ending at the adjournment of the second Annual Meeting thereafter and when the successor in office is chosen.

7.11 Limit on Term of Office

A person is not qualified to serve, and shall not serve, for more than one successive term in any one of the positions of President, Vice-President or CCSTA Representative; and for the purpose of calculating the limit on the term of office:

7.11.1 service in office by appointment to fill a vacancy of eighteen (18) months or longer shall be deemed to be service for one term of office; and

7.11.2 service in office by appointment to fill a vacancy of less than eighteen (18) months shall be deemed not to be service in office.

7.12 Nomination for President and Vice President

A nomination for the election of President and Vice-President shall conform to the following requirements:

7.12.1 such nomination shall be in writing in a form approved from time to time by the Board and circulated among CDSB's with the notice of the Annual Meeting at which the election is to take place;

7.12.2 such nomination shall include the consent of the nominee, and shall identify the name of and be signed by each of the mover, seconder and nominee, each of whom shall be qualified to hold the office for which the nomination is made, and in each case identifying by name the CDSB of which such Member is a Trustee;

7.12.3 such nomination shall be received at the Corporation Head Office not later than twenty-one (21) days prior to the time fixed in the notice of meeting for the call to order of the first plenary session at the Annual Meeting, provided however that if no nominations within the time so limited, nominations shall remain open until but not later than two hours and fifteen minutes prior to the time fixed in the notice for the call to order of the first plenary session at the Annual Meeting;

Notwithstanding the above, a Member may nevertheless propose a nomination at the Annual Meeting, and if such a nominee consents, that nomination will be added to the slate of nominees presented to the Members for election¹².

7.13 Standard of Care of Directors

Every Director in exercising his or her powers and discharging his or her duties to the corporation shall:

7.13.1 act honestly and in good faith with a view to the best interests of the corporation; and

7.13.2 exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances¹³.

¹² ONCA Section 56(5).

Every Director will comply with the Act and its Regulations, and the Corporation's Articles, By-laws, policies and Code of Conduct.¹⁴

8. BOARD MEETINGS

8.1 Confidentiality

All information pertaining to the affairs of the Corporation which are brought before the Board, including but not limited to agenda items for Board decision, background materials relating to those decision items, staff reports, and the content of debate and discussion which takes place at Board and Board committee meetings, shall be treated by Directors as strictly confidential unless declared to be otherwise by Board resolution, pursuant to the Standard of Care owed to the Corporation.

8.2 Calling of Meetings

At least three meetings of the Board of Directors shall be held between Annual Meetings of the Members. In addition, meetings of Board of Directors

8.2.1 may be called by the President, and

8.2.2 shall be convened by the Executive Director upon direction in writing of five (5) Directors.

8.3 Regular Meetings

The Board may appoint one or more days in each year for regular meetings of the Board at a set place and time. A copy of any resolution of the Board fixing the place and time of such regular meetings of the Board shall be sent to each Director as soon as possible after being passed, but no other notice shall be required for any such regular meeting except as may be required pursuant to the Act or the ONCA, as applicable

The Board shall hold a meeting within seven (7) days following the Annual Meeting of the Members of the Corporation for the purpose of organization, the election and appointment of officers and the transaction of any other business.

8.4 Place of Meetings

Meetings of the Board and of the Committees of the Board may be held at any place within Ontario, as designated in the notice calling the meeting.

8.5 Quorum for Meeting of Directors

A quorum for the transaction of business at meetings of the Board shall be the smallest whole number that is not less than a majority of the number of Directors, and, subject to the proviso set out in subsection 9.3.1, no business shall be transacted at any meeting unless the requisite quorum is present at the commencement of such business.

¹³ ONCA Section 43(1).

¹⁴ ONCA Section 43(2).

8.6 Meetings by Electronic Conference¹⁵

A Director may participate in a meeting of the Board or a committee of the Board by telephonic or electronic means that permit all participants to communicate adequately with each other during the meeting. A Director so participating in a meeting is deemed to be present at the meeting.

Provided that at the outset of each such meeting, and whenever votes are required, the Chair of the meeting shall call roll to establish quorum, and shall, whenever not satisfied that the proceedings of the meeting may proceed with adequate security and confidentiality, unless a majority of the persons present at such meeting otherwise require, adjourn the meeting to a predetermined date, time and place.

8.7 Voting

Questions arising at any meeting of the Board shall be decided by a majority vote. In the case of an equality of votes, the question shall be deemed to have been lost. At all meetings of the Board, every question shall be decided in the usual way by assent or dissent unless a poll on the question is required by the Chair or requested by any Director.

A declaration by the Chair that a resolution has been carried and an entry to that effect in the minutes is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the resolution.

8.8 Written Resolutions

Subject to the *Act*, a resolution in writing, signed by all the Directors entitled to vote on that resolution at a Board or Committee meeting, is as valid as if it had been passed at a meeting of the Board or Committee called, constituted and held for that purpose.

8.9 Notice of Meetings of Directors

Notice of meetings other than regularly scheduled meetings of the Board shall be given to each Director by one of the following methods:

8.9.1 by telephone, facsimile, email or other electronic method not less than twenty-four (24) hours before the meeting is to take place; or

8.9.2 by prepaid letter post not less than fifteen (15) days before the meeting is to take place,

provided however that a meeting of Directors shall be held without notice immediately following the annual meeting of the Corporation.

The statutory declaration of the Executive Director or the President that notice has been given pursuant to this By-law shall be sufficient and conclusive evidence of the giving of such notice.

No formal notice of a meeting is necessary if all the Directors are present or if those absent have signified their consent to the meeting being held without notice and in their absence.

¹⁵ Section 34(6) of ONCA allows the By-law to specify either that there may be no electronic participation, or electronic participation upon the unanimous consent of Directors, or as is provided here, that there is the right to participate electronically unless the Chair identifies a security or confidentiality concern.

9. **CONFLICT OF INTEREST**¹⁶

9.1 Disclosure Required

As required by the Act or the ONCA, a Director or officer of the Corporation who:

- 9.1.1 is a party to a material contract or transaction, or a proposed material contract or transaction with the Corporation; or
- 9.1.2 is a Director, officer, or has an immediate material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the Corporation,

shall disclose to the Board, or request to have entered in the minutes of Board meetings, the nature and extent of such interest.

9.2 Timing of Disclosure

This disclosure shall be made, in the case of a Director:

- 9.2.1 at the meeting at which a proposed contract or transaction is first considered;
- 9.2.2 if the Director was not then interested in a proposed contract or transaction, at the first meeting after which the Director becomes so interested;
- 9.2.3 if the Director becomes interested after a contract is made or a transaction is entered into, at the first meeting after which they become so interested; or
- 9.2.4 if a person who is interested in a contractor transaction later becomes a Director, at the first meeting after which they become a Director,

and the disclosure shall be made in the case of an officer:

- 9.2.5 forthwith after the officer becomes aware that the contract or transaction or proposed contract or transaction is to be considered or has been considered at a meeting of Directors;
- 9.2.6 if the officer becomes interested after a contract is made or a transaction is entered into, forthwith after he or she becomes an officer;
- 9.2.7 if a person who is interested in a contract or transaction later becomes an officer, forthwith after he or she becomes an officer.

9.3 Duty After Disclosure

A Director who has an interest as defined herein shall not attend any part of a Board or Committee meeting during which the contract or transaction is being discussed, and shall not vote on any Resolution to approve the contract or transaction.

- 9.3.1 Provided that if quorum does not exist for the purpose of voting on a Resolution to approve a contract or transaction only because a Director is not permitted to be at a

¹⁶ Adapted from ONCA Section 41.

meeting due to a conflict of interest, the remaining Directors are deemed to constitute a quorum for the purpose of voting on that resolution.

10. OFFICERS OF THE CORPORATION

10.1 Officers

The officers of the Corporation shall be:

10.1.1 the President,

10.1.2 the Vice-President,

10.1.3 the Past President,

each of whom shall be a Member;

10.1.4 an Executive Director who shall also be the Secretary, but shall not be a person who is a Member;

10.1.5 a Chaplain, who may but need not be a Member.

10.2 Standard of Care of Officers

The provisions of Section 7.13 apply with necessary variations to the officers of the Corporation.

10.3 Duties of the President

The President:

10.3.1 shall when present, preside as Chair at all meetings of Members of the Corporation, and at all meetings of the Board;

10.3.1.1 Provided however that the President may delegate any part or parts of such duty to preside over the Annual Meeting to any person;

10.3.2 shall be a member of every Committee;

10.3.3 shall have the other powers and duties from time to time prescribed by the Board or incident to the office.

10.4 Duties of the Vice-President

During the absence or inability to act of the President, the duties and powers of the office may be exercised by the Vice-President. Without limiting the generality of the foregoing, when delegated by and in the absence of the President, the Vice-President shall have the right to attend and to vote at all Committee meetings at which the President has the right to attend and vote. If a Vice-President exercises any of those duties or powers, the absence or inability to act of the President shall be presumed with reference thereto. The Vice-President shall also perform the other duties from time to time prescribed by the Board of Directors or incident to the office.

10.5 Absence of President and Vice-President

In the event that either the President or the Vice-President is unable to fulfil a particular obligation of the office, such officer may delegate responsibility for the task to another Director. Where a President or Vice President is unable to fulfill the duties and powers of the office, the Board may from time to time appoint another Director for that purpose. Where such other Director exercises any such duty or power, the absence or inability of the President and the Vice-President shall be presumed with reference thereto.

10.6 Duties of Executive Director

The Executive Director shall:

- 10.6.1 be the non-voting *ex officio* clerk of the Board and of every committee established by or under the By-laws of the Corporation;
- 10.6.2 attend all meetings of the Board and record all facts and minutes of all proceedings in the books kept for that purpose;
- 10.6.3 give all notices required to be given to Members and to Directors;
- 10.6.4 shall be the custodian of the seal of the Corporation and of all books, papers, records, correspondence, contracts and other documents belonging to the Corporation and as are required by the Act and this By-law, the same being delivered up only when authorized by a resolution of the Board to do so and to such person or persons as may be named in the resolution; and
- 10.6.5 shall perform such other duties as may from time to time be determined by the Board.

10.7 Other Officers

The Board of Directors may appoint other officers, including without limitation, Honorary Officers, and agents (and with such titles as the Board of Directors may prescribe from time to time) as it considers necessary and all officers shall have the authority and perform the duties from time to time prescribed by the Board of Directors. The Board of Directors may also remove at its pleasure any such officer or agent of the Corporation. The duties of all other officers of the Corporation appointed by the Board of Directors shall be such as the terms of their engagement call for or the Board of Directors prescribes.

10.8 Bonding of Officers

The Executive Director and any other officer, agent or employee of the Corporation who may be designated by the Directors shall furnish a bond in such amount and with such sureties as the Directors may approve. The cost of the said bonds shall be paid by the Corporation and they shall be deposited and kept as the Directors may direct.

10.9 Appointment and Duties of Chaplain

The Chaplain of the Corporation shall:

- 10.9.1 be appointed annually by the Board on the nomination of the Association of Catholic Bishops of Ontario;

10.9.2 invoke Divine Guidance on all meetings of the Corporation and of the Directors;
and

encourage the Directors to bring a gospel perspective and the riches of the Catholic Tradition to current issues and decision-making.

11. COMMITTEES OF THE BOARD

11.1 Executive Committee

There shall be an Executive Committee composed of the President, Vice President and Past President with authority to act on behalf of the Board with regard to urgent matters which may arise between Board meetings, provided that all decisions taken in the absence of the Board shall be reported at the next Board meeting.

11.2 Committees Generally

Subject to the Act or the ONCA as applicable, the Articles, and the By-Laws, the Board may, by Board Resolution, appoint such standing and ad hoc committees as it deems appropriate from time to time and set the rules governing such committees.

11.3 Limits on Authority of Committees¹⁷

No committee, including the Executive Committee (if any), has authority to:

11.3.1 submit to the Members any question or matter requiring approval of the Members;

11.3.2 fill a vacancy among the Directors or in the office of Auditor or of a person appointed to conduct a review engagement of the Corporation;

11.3.3 appoint additional Directors;

11.3.4 issue debt obligations except as authorized by the Board;

11.3.5 approve any financial statements;

11.3.6 adopt, amend or repeal any By-Law; or

11.3.7 establish contributions to be made, or dues to be paid, by Members.

11.4 Rules Governing Committees

Except where otherwise provided in the By-laws of the Corporation, all Committees, excluding the Committee of the Whole Board and the Executive Committee, are subject to the following:

11.4.1 a Committee shall be composed of not less than three (3) Directors¹⁸;

¹⁷ Required by Section 36(2) of the ONCA.

¹⁸ Note that quorum is defined in section 11.10.8 as requiring at least three Directors, but could be changed to a majority or two-thirds of committee members if greater flexibility is preferred.

- 11.4.2 the committee members shall be appointed by the Board of Directors, on the nomination of the President, from among the Members of the Corporation;
- 11.4.3 the members of the Committee shall select the Committee chairperson;
- 11.4.4 a member of a Committee shall serve for a term ending at the annual meeting of Members following appointment, and is eligible for reappointment for one or more additional terms;
- 11.4.5 each Committee shall meet at least annually, and more frequently at the will of its Chairperson or as required by its terms of reference;
- 11.4.6 a Committee shall carry out such additional or amended duties or tasks as may be determined by the Board from time to time, regardless of its Terms of Reference or the Terms of Reference of any other Committee;
- 11.4.7 each Committee shall be responsible to, and shall report regularly to the Board;
- 11.4.8 subject to any rules established by the Board, a quorum for the holding of a Committee meeting consists of the lesser of
 - 11.4.8.1 a majority of a Committee,
 - and
 - 11.4.8.2 three (3) members of a Committee,and otherwise each Committee may establish its own rules of procedure and may appoint subcommittees;
- 11.4.9 if and whenever a vacancy exists on a Committee, the remaining Committee members may exercise all of the Committee's powers so long as a quorum remains on the Committee, but the Board shall in any event appoint a replacement to fill any vacancy as soon as practicable.

12. PROTECTION OF DIRECTORS AND OFFICERS

12.1 Directors and Officers Liability Exclusion

Absent the failure to act in accordance with the Standard of Care as outlined in Section 7.13 or Section 10.2 in the performance of the duties of office, and save as may be otherwise provided in any legislation or law, no present or past Director or officer of the Corporation shall be personally liable for any loss or damage or defaults of such Director or officer or of any other Director or officer or employee, servant, agent, volunteer or independent contractor arising from any of the following:

- 12.1.1 insufficiency or deficiency of title to any property acquired by the Corporation or for or on behalf of the Corporation;
- 12.1.2 insufficiency or deficiency of any security in or upon which any of the monies of or belonging to the Corporation shall be placed out or invested;

- 12.1.3 loss or damage arising from the bankruptcy or insolvency of any person, firm or corporation including any person, firm or corporation with whom or which any monies, securities or effects shall be lodged or deposited;
- 12.1.4 loss, conversion, misapplication or misappropriation of or any damage resulting from any dealings with monies, securities or other assets belonging to the Corporation;
- 12.1.5 loss, damage or misfortune whatever which may occur in the execution of the duties of the Director's or officer's respective office or trust or in relation thereto; and
- 12.1.6 loss or damage arising from any wilful act, assault, act of negligence, breach of fiduciary or other duty or failure to render aid of any sort.

12.2 Pre-Indemnity Considerations

Before giving approval to the indemnities provided herein, or purchasing insurance as provided herein, the Board of Directors shall consider:

- 12.2.1 the degree of risk to which the Director or officer is or may be exposed;
- 12.2.2 whether, in practice, the risk cannot be eliminated or significantly reduced by means other than the indemnity or insurance;
- 12.2.3 whether the amount or cost of the insurance is reasonable in relation to the risk;
- 12.2.4 whether the cost of the insurance is reasonable in relation to the revenue available; and
- 12.2.5 whether it advances the administration and management of the property to give the indemnity or purchase the insurance.

12.3 Indemnification of Directors and Officers

Every person, (including their respective heirs, executors and administrators, estate, successors and assigns) who:

- 12.3.1 is a Director; or,
- 12.3.2 is an officer of the Corporation; or
- 12.3.3 is a member of a Committee; or
- 12.3.4 has undertaken, or, with the direction of the Corporation is about to undertake, any liability on behalf of the Corporation or any Corporation controlled by the Corporation, whether in the person's personal capacity or as a director or officer or employee or volunteer of such corporation;

shall, upon approval of the Board from time to time, be indemnified and saved harmless (including, for greater certainty, the right to receive the first dollar payout, and without deduction or any co-payment requirement) out of the funds of the Corporation, from and against all costs, charges and expenses which such person sustains or incurs:

12.3.5 in or in relation to any demand, action, suit or proceeding which is brought, commenced or prosecuted against such person in respect of any act, deed, matter or thing whatsoever, made, done or permitted or not permitted by such person, in or in relation to the execution of the duties of such office or in respect of any such liability; or,

12.3.6 in relation to the affairs of the Corporation generally,

save and except such costs, charges or expenses as are occasioned by the failure to such person to act honestly and in good faith in the performance of the duties of office, or by other wilful neglect or default.

The Corporation shall also, upon approval by the Board from time to time, indemnify any such person, firm or corporation in such other circumstances as any legislation or laws permit or require.

Nothing in this By-law shall limit the right of any person, firm or corporation entitled to indemnity to claim indemnity apart from the provisions of this By-law to the extent permitted by any legislation or law.

12.4 Insurance

The Corporation shall purchase and maintain appropriate liability insurance for the benefit of the Corporation and each person acting or having previously acted in the capacity of a Director, officer or any other capacity at the request of or on behalf of the Corporation, which insurance may include:

12.4.1 property and public liability insurance;

12.4.2 Directors' and officers' insurance; and,

12.4.3 such other insurance as the Board sees fit from time to time;

with coverage limits and with insurers deemed appropriate by the Board from time to time.

No coverage shall be provided for any liability relating to a failure to act honestly and in good faith with a view to the best interests of the Corporation.

It shall be the obligation of any person seeking insurance coverage or indemnity from the Corporation to co-operate fully with the Corporation in the defence of any demand, claim or suit made against such person, and to make no admission of responsibility or liability to any third party without the prior agreement of the Corporation.

13. CORPORATE RECORDS¹⁹

13.1 Required Records

The Corporation shall keep and maintain the following records at its registered head office:

13.1.1 the Corporation's Articles and By-laws, and any amendments to them;

¹⁹ In accordance with Part X of the ONCA.

13.1.2 the minutes of meetings and any resolutions of the Members;

13.1.3 a register of Directors, Officers, and Members;

13.1.4 the minutes of meetings and resolutions of the Board, and any committees of the Board;

13.1.5 accounting records adequate to enable the Directors to ascertain the financial position of the corporation with reasonable accuracy on a quarterly basis;

13.1.6 a copy of the financial statements;

13.1.7 consent to act as a Director of each individual who is elected as a Director of the Corporation.

13.2 Directors' Access to Records

Any such records shall be open to inspection by the Directors. Copies must be provided upon request at no cost to the Director.

13.3 Members' Access to Records

A Member, a Member's attorney or legal representative, may examine and take extracts from the records referred to in Subsections 13.1.1, 13.1.2 and 13.1.3.

Upon request and without charge, a Member may inspect any 'Consent to Act as a Director' and to make a copy of it.

A Member or a Member's attorney or legal representative who wishes to examine the Register of the Members shall first make a request to the Corporation accompanied by a Statutory Declaration that states the name and address of the Member applicant and shall further state that the list of Members or the information contained in the Register of Members thus obtained will only be used for an effort to influence the voting of members, requisitioning a meeting of the Members, or another matter relating to the affairs of the corporation, upon receipt of which the Corporation will as soon as is practical allow the applicant access to the Register and, on payment of a reasonable fee, provide the applicant with an extract from the Register.

14. EXECUTION OF DOCUMENTS

14.1 Cheques, Drafts, Notes, Etc

All cheques, drafts or orders for the payment of money and all notes and acceptances and bills of exchange shall be signed by the officer or officers or person or persons and in the manner from time to time prescribed by the Board.

14.2 Execution of Documents

Documents requiring execution by the Corporation may be signed by any two (2) of the President, Vice-President, the Secretary, or any one (1) of the foregoing together with any one (1) Director, and all documents so signed are binding upon the Corporation without any further authorization or formality. The Board may from time to time appoint any officer or officers or any person or persons on behalf of the Corporation, either to sign documents generally or to sign

specific documents. The corporate seal of the Corporation shall, when required, be affixed to documents executed in accordance with the foregoing.

14.3 Books & Records

The Directors shall see that all necessary books and records of the Corporation required by the By-laws of the Corporation or by any applicable statute or law are regularly and properly kept.

15. BANKING ARRANGEMENTS

15.1 Board of Directors Designate Bankers

The Board shall designate, by resolution, the officers and other persons authorized to transact the banking business of the Corporation, or any part thereof, with the bank, trust company, or other corporation carrying on a banking business that the Board has designated as the Corporation's banker, to have the authority set out in the resolution, including, unless otherwise restricted, the power to,

15.1.1 operate the Corporation's accounts with the banker;

15.1.2 make, sign, draw, accept, endorse, negotiate, lodge, deposit or transfer any of the cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money;

15.1.3 issue receipts for and orders relating to any property of the Corporation;

15.1.4 execute any agreement relating to any banking business and defining the rights and powers of the parties thereto; and

15.1.5 authorize any officer of the banker to do any act or thing on the Corporation's behalf to facilitate the banking business.

15.2 Deposit of Securities

The securities of the Corporation shall be deposited for safe keeping with one or more bankers, trust companies or other financial institutions to be selected by the Board. Any and all securities so deposited may be withdrawn, from time to time, only upon the written order of the Corporation signed by such officer or officers, agent or agents of the Corporation, and in such manner, as shall from time to time be determined by resolution of the Board and such authority may be general or confined to specific instances. The institutions which may be so selected as custodians by the Board shall be fully protected in acting in accordance with the directions of the Board of Directors and shall in no event be liable for the due application of the securities so withdrawn from deposit or the proceeds thereof.

16. FINANCIAL YEAR

16.1 Financial Year Determined

Until otherwise determined by resolution of the Board, the fiscal year end of the Corporation shall terminate on the 31st day of August in each year.

17. AUDITORS

17.1 Appointment of Auditor

The Members entitled to vote shall at each annual meeting appoint an auditor qualified to conduct an audit pursuant to the requirements of the *Public Accounting Act, 2004* to hold office until the next Annual Meeting, provided that the Directors may fill any casual vacancy in the office of the auditor. The remuneration of the auditor shall be fixed by the Members entitled to vote, or by the Board if authorized to do so by the Members entitled to vote.

18. NOTICE

18.1 Method of Notice

Except where otherwise provided in this By-law, notice shall be validly given if given by telephone, or if in writing:

18.1.1 by prepaid letter post;

18.1.2 by facsimile;

18.1.3 by e-mail; or

18.1.4 by other electronic method.

addressed to the person for whom intended at the last address shown on the Corporation's records. Any such notice shall be deemed given:

18.1.5 in the case of telephone, at the time of the telephone call;

18.1.6 in the case of letter post, on the third day after mailing; and

18.1.7 in all other cases, when transmitted.

18.2 Presumed Address of A Member

Any notice or resolution sent to a Member may be sent to such Member at the address of the CDSB for which the Member is a Trustee, whether or not such Member has provided another address to the Corporation, and so sending shall constitute notice as if the notice or resolution had been sent in an envelope individually addressed to the Member.

18.3 Computation of Time

In computing the date when notice must be given under any provision of the By-law requiring a specified number of days' notice of any meeting or other event, the date of giving the notice is, unless otherwise provided, not included.

18.4 Omissions and Errors

The accidental omission to give notice of any meeting of the Board, a Committee or Members, annual, general, regional, special meeting or other, or the non-receipt of any notice by any Director or Member or by the auditor of the Corporation or any error in any notice not affecting its substance does not invalidate any resolution passed or any proceedings taken at the

meeting. Any Director, Member or the auditor of the Corporation may at any time waive notice of any meeting and may ratify and approve any or all proceedings taken thereat.

19. USE OF ROBERTS RULES OF ORDER

Subject to all requirements of law, and subject to any specific provision set out in the By-laws, meetings of the Members, the Board and Committees shall be conducted in accordance with the rules and practice contained in the current edition of *Robert's Rules of Order Newly Revised* as far as applicable.

20. AMENDMENT TO THE BY-LAWS

The Board may pass, amend or repeal this By-law by Ordinary Resolution, except where to do so is contrary to the Act, provided that where the Board has approved any such amendments, it shall submit same to the Members at the next Members' meeting, and the Members may confirm, reject, amend or repeal the revised By-law by Ordinary Resolution.

Any amendment to the By-law by the Board shall take effect from the date of the Ordinary Resolution of the Board, but shall cease to be in effect as of the date of the next Members' meeting if not submitted to the Members for a vote at that meeting, or if at that meeting such amendments are rejected by the Members.

Notice of any such changes, including the complete text of the previous and revised version of the By-law, must be given to the Members at least thirty (30) days before the meeting at which the amendment or amendments will be voted upon.

21. REPEAL OF PRIOR BY-LAWS

21.1 Repeal

Subject to the provisions of Section 21.2 and 21.3 hereof, all prior By-laws, resolutions and other enactments of the Corporation heretofore enacted or made are repealed.

21.2 Exception

The provisions of Section 21.1 shall not extend to any By-law or resolution heretofore enacted for the purpose of providing to the Board the power or authority to borrow.

21.3 Proviso

Provided however that the repeal of prior By-laws, resolutions and other enactments shall not impair in any way the validity of any act or thing done pursuant to any such repealed By-law, resolution or other enactment.

22. EFFECTIVE DATE

22.1 Coming into force

This By-law shall come into force with no further formality on the later of:

22.1.1 the date approved by Ordinary Resolution, and

22.1.2 the coming into force of the Ontario *Not-for-Profit Corporations Act*.

ENACTED as a By-law of the **Ontario Catholic School Trustees' Association** and sealed with the corporate seal the 1st day of May, 2016.

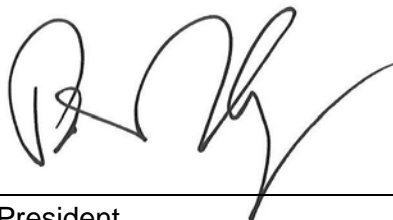


President



Secretary

CONFIRMED by the Members in accordance with the *Not-For-Profit Corporations Act* (Ontario) on the 29th day of April, 2016.



President



Secretary



Ontario Catholic School
Trustees' Association

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Patrick Daly, *President*
Beverley Eckensweiler, *Vice President*
Nick Milanetti, *Executive Director*

November 29, 2016

TO: Chairpersons and Directors of Education
- All Catholic District School Boards

CC: CDSB Student Trustees

FROM: Nicolas Bottger, President, Catholic Board Council, OSTA
Manuela Zapata, Vice President, Catholic Board Council, OSTA
Brian O'Sullivan, MA, Ed.D., Director of Catholic Education, OCSTA

SUBJECT: Student Video Submissions for CEW

Each year our Catholic Student Trustees play a leadership role in the organization of Catholic Education Week (CEW) across Ontario. The theme for CEW 2017 is, "*Walking Forward Together*" and our Catholic Student Trustees are inviting student video contributions. Students will be asked to answer one of the following questions in their video clip:

- *What does your Catholic faith mean to you?*
- *What does Catholic education mean to you?*
- *How do you follow in the footsteps of Christ in your daily life?*

Video submissions can be sent from **Wednesday, November 30, 2016 – Wednesday, February 15, 2017** (*now March 6, 2017*).

The video clip of about 15-30 words will need to be uploaded to a YouTube account. Students are asked to provide video clips that are filmed horizontally with high resolution (such as 1080p HD).

Recognizing the inclusiveness of Catholic education, students are invited to send their video responses in French, English, any other international language, sign language or any Indigenous languages. For those sending their video clip in any language other than English, please add a subtitle in English that states your message and the language you are speaking.

Once you have done so, please send the URL address to acabral@ocsta.on.ca by **Wednesday, February 15, 2017** (*now March 6, 2017*).

Students are asked to submit videos without their school or board names/logos.

These video clips will be placed on the OCSTA website when complete and schools and boards can download them for their CEW Mass in May 2017.

We see this as an exciting way for our Catholic youth to participate in a provincial project and proudly declare the importance of Catholic education in your board of education.

Please do not hesitate to contact us at OCSTA if you have any further questions.



Ontario Catholic School
Trustees' Association

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Patrick Daly, *President*
Beverley Eckensweiler, *Vice President*
Nick Milanetti, *Executive Director*

January 23, 2017

TO: Chairpersons and Directors of Education
- All Catholic District School Boards

CC: CDSB FNMI Leads & Consultants

FROM: Brian O'Sullivan, MA. Ed.D., Director of Catholic Education

SUBJECT: Additional Indigenous Materials from the Indigenous Education Presentations at OCSTA's 2017 Catholic Trustees Seminar

It was our pleasure to host Indigenous speakers at OCSTA's recent 2017 Catholic Trustees Seminar. It was an honour to hear from our OCSTA First Nations Trustees who gave a panel talk on their unique role as trustees serving their Indigenous and local communities within their Catholic district school boards.

We also had speaker, Elder Garry Sault of the Mississaugas of the New Credit First Nations, who brought greetings and performed a smudging ceremony at the conference. As promised, he has shared the following resource (*see attached*).

- Map of Land Surrenders in Ontario Prior to 1854

Additional speakers were Brent Tookenay and Robert Horton of the *Seven Generations Education Institute* that is located in Northern Ontario. Robert gave an excellent presentation on the history and legality of treaties and involved the trustee audience in a "blanket" exercise about the loss of land, culture and identity in the Canadian Indigenous Community. As promised, he too has shared resources with us (*see attached*). Also, see below for a list of resources provided. We would ask that you share these important resources with your FNMI Leads and/or Consultants.

- Doctrine of Discovery
 - Doctrine of Discovery & Canadian Law
 - Doctrine of Discovery & Papal Bulls Resources
 - Concise Points on Doctrine of Discovery
- Treaty of Niagara/Covenant Chain
 - Wampum at Niagara

- United Nations Declaration on the Rights of Indigenous Peoples
 - UNDRIP

- Treaty Three
 - Treaty Three History
 - We Have Kept Out Part of the Treaty
 - Presentation Portion

- Colonization Effects
 - Ethnostress Handout
 - Colonization & Contemporary Policy
 - More Understandings

- Building Language
 - Language Revitalization Resources
 - Ojibwe Language Table Speech

- Royal Commission on Aboriginal Peoples
 - RCAP Recommendations

Last but not least, OCSTA would like to thank the Toronto CDSB and the Dufferin-Peel CDSB for providing student artwork on Indigenous Education (walking sticks and large wooden carving) that beautifully graced our presentation hall.

Colonization and Contemporary Policy

Reflect: Before we begin, what does Reconciliation mean if this remains to be the reality? Is it true Reconciliation - or is it merely turning the page on the past without fundamentally righting the wrongs where Indigenous Nations are forced to reconcile ourselves to colonialism?

Colonization

Cecil Rhodes (1853-1902): British Businessman, Mining Magnate, a creator of DeBeers, and politician in South Africa, described the concept of colonization well:

“We must find new lands from which we can easily obtain raw materials and at the same time exploit the cheap slave labor that is available from the Natives of the colonies.”

Understanding Colonization

1. Entering into a Territory
2. Purposes of Land and Resources
3. Passing/Administrating Policies Upon Indigenous People to Do So
4. Policies **Re-Shape Indigenous People** so they are Purposeful (or even the Labor) and Participate in the Resource/Land Grab.
5. Neo-Colonialism further shapes colonization where Indigenous People are put in positions to pass such policies and laws on their own people so others can re-shape them at a distance.

It is often coercive, even violent.

The heart of the matter today is not racism. It is colonization. Racism is simply a spoke in that wheel.

Indian Policy in Canada Today (Palmater)

2 Consistent Policy Objective that have not strayed.

1. Extinguishing Indigenous Land Title
2. Reducing Fiduciary Responsibility due to Treaty, etc.

2 Methods That Have Been Utilized: Assimilation and Extermination

Understanding Today

In 1867, Canada's Constitution was born.

It contained 2 distinct heads of government power.

They are:

Section 91: Federal Powers
Section 92: Provincial Powers

Under section 91 is "91-24" which is titled Indians and Lands Reserved for Indians

In 1876, the Indian Act (Consolidated Colonial Legislations) was imposed.
The Intent: Terminate Indians and Lands Reserved for Indians.

Under the Indian Act, currently there is Section 6:

This gives provisions for creating a Status Indian.
Although a Nation has the right to determine who its members are, these provision documents are reviewed in Gatineau, Quebec and people in this department determine who is.
This puts a definable limit on who is a Status Indian.
Often for "Cost" and "Commodity" in intent.

This sets an Extinction Date on Status Indians in Canada (Palmater)

1951 (and expanded upon in 1985)

- 6-1 *Acquired: Original Indians, Non-Native Children, Non-Native Women,
Mostly Men here (this is a protected area)
- 6-1B New Indians
- 6-1C Double Mother Clause Indians
200 Men and Re-instated Women
Almost all women here.
- 6-1D Omission Orders
- 6-1F 2 Parents with Status
- 6-2 Child with only 1 Status Parent

"Notional" Blood

Mostly Men Here

$$6-1 (100) + 6-1 (100) = 6-1 (100)$$

$$6-1 (100) + 6-2 (50) = 6-1 (75)$$

$$6-2 (50) + 6-2 (50) = 6-1 (50)$$

Mostly Women Here

$$6-1 (100) + \text{Non Status Indian } (0) = 6-2 (50)$$

$$6-2 (50) + \text{Non Status Indian } (0) = \text{Non Status Indian } (25)$$

$$\text{Non Status Indian } (25) + \text{Non Status Indian } (25) = \text{Non Status Indian } (25)$$

This system was never meant to make Indians, it was to get rid of Indians.

First Nation Out Marriage Rates in Canada:

Low:	~20%	25
Moderate/Low	20-39.9%	111
Moderate	40-59.9%	246
Moderate/High	60-79.9%	162
High	80-100%	49

2060: Common Figure of when most Status Indians will be gone.

Why is this important?

No members = no band, no band = no reserve, no reserve = land transfers to the Crown.

Today's Comprehensive Claims Processes Includes this.

1985: Canada's Constitution (Nepinak)

Section 35: All existing Aboriginal and Treaty Rights are hereby affirmed.

This created a golden thread to the Treaty of Niagara and our Treaties.

This means that the same person mentioned in the Niagara Treaty, Royal Proclamation, and Treaty 3 is not the same character of statute in Section 6 of the Indian Act

How much impact does policy have on our lives?

Today:

40% of all children in care
30% of prison population and rising
40% homes in need of serious repair
116+ communities without clean water
Life Expectancy - 7 to 20 years shorter than mainstream
94% of languages at risk
Education and Employment Gap widening.
Massive suicide rate.

Impoverishment = Directly connected to being locked out of own economies on shared land.

How have women been targeted by policy?

1749: Scalping Laws
1800: Forced Relocations
1876: Indian Act
1900: Residential Schools (experimentation, abuse, sterilization without knowledge or consent)
1960: Theft of Children

State Violence, Neglect, Impoverishment, Victim Blaming, etc.

*Chronic Underfunding of Essential Human Services: home, water, food insecurities, policy, etc.

Missing and Murdered Indigenous Women = Where policies and effects cross each other

Indian Act, Policies
Chronic Underfunding
Impoverishment
Housing, Food, and Water Insecurity
Coping Mechanisms
Multigenerational Impacts
Theft of Children

Current Policies Today:

Enfranchisement: Stripping legal recognition of Indigenous Personhood and leave Enfranchised Canadian status only.

Domestication of Treaty Promises (taking them out of International Agreement level legislating them into the Federal, Provincial, or Municipal level or turning them into Programs), as well as Divide and Conquer, etc.

Divide and Conquer: Categorizing Indigenous Peoples, giving more privilege to some.

Some Holes Punched in Nationhood Today

Identity: Aboriginalism, Legislated Extinction Dates, etc.

Territory: Municipality Push, Privatization

Governance: Indian Act Chief and Council

Language: Seeing ourselves through the English language, Residential Schools, Underfunding programs

Treaties: Domestication of Treaty Promises

Policies relying on Consultation and Accommodation (rather than Consultation and Consent) including those in the Resource Sector.

Ourselves consenting/signing to Policies without the Nation to Nation Treaty Process

Getting leaders and community people to sign agreements that impact Treaty to areas of Federal, Provincial, and Municipal programs.

Anishinaabeg Governance Systems Attacked by Laws/Policies (Ward)

1868: Gradual Civilization Act
1869: Gradual Enfranchisement Act
1876: Indian Act
1879: Department of Indian Affairs Grants Power of the Superintendent General to Impose Band Council Systems
1884: Anti-Sundance and Anti-Potlatch Laws
1900s: Hereditary Rule Banned

Purpose - to shrink jurisdiction to the Reserve by means of the Chief and Council system and open up access to resources in our Territory

Traditional governance's jurisdiction spans an entire territory

Chief and Council jurisdiction spans only the reserve.

Understanding NEO-Colonization

1. Entering into a Territory
2. Purposes of Land and Resources
3. Passing/Administrating Policies Upon Indigenous People to Do So
4. Policies **Re-Shape Indigenous People** so they are Purposeful (or even the Labor) and Participate in the Resource/Land Grab.
5. **ADD: Indigenous Peoples administer policies of another Nation on fellow Indigenous Peoples**

Frederick Lugard

"First Baron"

Soldier and Colonial Administrator in Africa

Utilized Direct Rule (Colonialist placed within an Indigenous community and passing laws/policies upon them.)

Later, wrote "The Dual Mandate in British Tropical Africa"

Advocated "Indirect Rule" - Find loyal Indigenous Peoples within an Indigenous community who would pass colonial laws/policies upon their own people in a middle manager form. Rule from a distance.

In a Canadian Context:

DIRECT RULE: INDIAN AGENT

INDIRECT RULE: INDIAN ACT CHIEF AND COUNCIL

Creation of the Reserves (S. Ward)

As settlers moved in for colonial purpose, the movement of Indigenous Peoples here was a problem and hindrance for a colonial project.

We were never nomadic. It was purposeful movement.

1858: Secretary of State of the Colonies Edward Lytton gives direction to stop mobility of Indigenous Peoples out West:

Purposes:

- a. Protect Settler Claim to Land
- b. Minimize Indigenous Interaction with Settlers and Resources
- c. Control and Re-Shape Indigenous Peoples to make them compatible with colonial project desires.

1858: Colonial Governor of Vancouver Island Sir James Douglas Responds.

He Doesn't have the funds for a Treaty, so he proposes the Agri-Reserve system. This means 10 Acres per Family in order for families to provide for themselves and not being a burden to colonists, but still keeps them out of the way. However, can't seem to get this done.

1862: Suspicious outbreak of Smallpox erupts in Esquimalt territory of the island.

The response is to send gunboats to shell the Esquimalt people. In turn, they ran to other villages and spread the sickness. Over 100,000 die. Ethnic Cleansing weakened the people and makes way for this Colonial Settlement.

Lt. Governor Joseph Trutch then adopts the US Reservation System Model of economic dependency. This shrinks Reserve Lands by 91%. Knows families cannot provide for themselves However, creates a system of economic dependency which means control.

Purposes for Reserves in the Colonial mind:

1. Control Mobility, Shape, Remold Indigenous People with Colonial Development Interests.
 2. Keep Indigenous Peoples Away from Resources
 3. Minimize Interaction Between Indigenous Peoples and Settlers
 4. Protect Settler's Claim to Land
- *Creation of Economic Dependency

Important: Treaty #3 - Indigenous peoples NEVER gave up land off-reserve.

Land was studied and selected to be protected for Indigenous use.

All land off reserve is to be shared.

The reserves, under the pass system, quickly became in policy what Lytton, Douglas, and Trutch advocated.

Remain vs. Reshape
Miinigoowiziwin vs. Imposed Policy (for Colonial Purposes)

Anishinaabe
Ojibwe
Indigenous
Nations
Citizens of Nations
Clan Governance
Anishinaabe Aki - Territory
Natural Law and Inaakonigewin
Anishinaabemowin

vs.

Imposed Policy

Enfranchised Canadian
Aboriginal
Ethnic Group within Canada
Indian Bands
Band Members
Band Council
Reserves
Indian Act and Canadian Law
English

Ask yourself:

What are the different implications of each?
How does the psychology of each impact us?

Another Comparison:

“Ojibwe vs. Aboriginal”

Ojibwe

Language: Our Language
Source: Our Teachings, Lodges
Nationhood: Acknowledged

Distinctiveness of Nations: Acknowledged
Positionality: Nation-to-Nation
Origin: Independent. Pre-Contact.
Effect: Revitalizing.

Aboriginal

Language: English
Source: Canadian Policymakers/Lawmakers
Nationhood Acknowledged?: No.
Distinctiveness of Nations Acknowledged?: No. Umbrella-Term for Nations.
Positionality: Within/Under the Canadian Body Politic
Origin: Creation of Canada.
Effect: Colonizing.

Ask yourself:

What are the different implications of each?
How does the psychology of each impact us?
How does this protect/play ball with the colonial project?

Concise Points on Doctrine of Discovery

Reflect: Before we begin, what does Reconciliation mean if this remains to be the reality? Is it true Reconciliation - or is it merely turning the page on the past without fundamentally righting the wrongs where Indigenous Nations are forced to reconcile ourselves to colonialism?

Origins of International Law: The Vatican (among other duties, coordinating the activities of the Kingdom's of Europe, and determining sovereignty)

Where did this assumed authority derive?

Petrine Mandate:

Pope holds supreme authority over all spiritual and secular matters by virtue of passages (verses 13-19) from the sixteenth chapter of the book of Matthew. According to Vatican officials, Jesus Christ had given St. Peter the keys to the kingdom of heaven. According to the officials of the Catholic Church, this bequest, called the Petrine Mandate, gave Peter's successors, the Catholic popes in Rome, the right to convey title to and dominion over lands that had been, or might be, discovered by a Christian nation.

"Thou art Peter and on this rock I will build my Church. I will give to thee the keys of the Kingdom of Heaven. And whatsoever thou shalt bind upon earth it shall be bound also in heaven." (Matthew 16:19)

Quod Super His:

Commentary by Pope Innocent III, this gave Popes the legal right to enslave non-Christian people who refused to submit to baptism, as well as to confiscate their land. Over the centuries, Quod Super His would morph into laws that are still with us in the secular world in the twenty-first century. One of those laws, with a legal pedigree that links it directly, is Eminent Domain. Pope Innocent decides that if a non-believer refuses to accept and adopt the teachings of Christ, he is not truly a full human being and therefore is undeserving of humane treatment and subject to force. Being subject to force is an opening to violent means at conversion.

Pope Innocent III posed the legal question of how to legally take land and property of non-Christian people.

Pope IV crafted legal tools to enforce this.

Quod Super His gave future Popes the legal right to enslave non-Christians who refused to submit to baptism and confiscate their land.

Papal Bulls

Official letters of Charter issues by a Pope of the Roman Catholic Church. At first, used internally and administrative purposes. Later, became official and guided conduct of Christian Nations of Europe.

1302: Unam Sanctum Papal Bull

Pope Boniface VIII in **Unam Sanctum** declares "that it is altogether necessary to salvation that every human creature to be subject to the Roman pontiff" -- a vision of universal papal jurisdiction.

1452: Dum Diversas Papal Bull

Papal Bull by Pope Nicholas V. It authorized Afonso V of Portugal to conquer Saracens and pagans and consign them to "perpetual servitude." Aimed at Western Africa in intention, but geographically unlimited in its application.

"We grant you [Kings of Spain and Portugal] by these present documents, with our Apostolic Authority, full and free permission to invade, search out, capture, and subjugate the Saracens and pagans and any other unbelievers and enemies of Christ wherever they may be, as well as their kingdoms, duchies, counties, principalities, and other property...and to reduce their persons into perpetual servitude."

1453: Romanus Pontifex Papal Bull

A revised version of Romanus Pontifex, originally written by Eugene IV, distinctly draws the lines of exploration between Spain and Portugal. This bull helps to define which lands can and cannot be conquered, while preserving rights in favour of the Portuguese crown. Follow-up to Dum Diversas.

"...to invade, search out, capture, vanquish, and subdue all Saracens and pagans whatsoever, and other enemies of Christ wheresoever placed, and the kingdoms, dukedoms, principalities, dominions, possessions, and all movable and immovable goods whatsoever held and possessed by them and to reduce their persons to perpetual slavery, and to apply and appropriate to himself and his successors the kingdoms, dukedoms, counties, principalities, dominions, possessions, and goods, and to convert them to his and their use and profit..."

1493: Inter Caetera Papal Bull

Pope Alexander VI issues the most famous of all bulls concerning New World exploration. His Inter Caetera Papal Bull gives Spain the right to colonize all of the Americas that Portugal has not yet conquered.

"in our times especially the Catholic faith and the Christian religion be exalted and be everywhere increased and spread, that the health of souls be cared for and that barbarous nations be overthrown and brought to the faith itself. ...[W]e ... assign to you and your heirs and successors, kings of Castile and Leon, ... all islands and mainlands found and to be found, discovered..."

Terra Nullius:

Roman Legal Principle meaning "Nobody's Land", further unpacked by England and France, which is used in international law to describe territory which has never been subject to the sovereignty of any state, or over which any prior sovereign has expressly or implicitly relinquished sovereignty. It made the case that discovered, uninhabited lands could be claimed and put under the sovereignty of the discovering/conquering nation. Used greatly in Australia.

Doctrine of Discovery:

This completed the argument to colonize: As Non-Christians were not human, lands occupied by non-Christians were lands that were not inhabited by humans and could be claimed by Terra Nullius.

Non-Christians did not have rights to land, sovereignty, or property - and the Christian Nations that “discovered” them had the right to those things, to take their land, and put their laws over the people and territories.

Utilizing the Doctrine of Discovery, the terms “discovery” and “conquest” are often unpacked as legal categorizations of justifications.

System of Domination and Subordination that ignores Indigenous Peoples’ free and independent rights to self-determination as Nations.

Royal Charters

Not authorized by the Vatican (but instead the Crown), but Royal Charters (especially evident in the Royal Charter given to John Cabot) unpack the Doctrine of Discovery.

12 Common Elements of Doctrine of Discovery

(unpacked by Robert Miller Jr.)

1. **First Discovery** (The first European country to “discover” lands unknown to other Christian Europeans claimed property and sovereign rights over the lands and Indigenous peoples.)

To prove their “First Discovery”

Examples:

Maryweather Lewis = Branding Iron

Burying coins, making carvings, mapping of Areas

Renaming of rivers, mountains, and features

Lewis and Clark renamed Rivers they came across

Colorado Pike’s Peak - after Lt. Zebulon Pike sent by Thomas Jefferson to explore boundaries of Louisiana Territory. Drainage systems of major rivers makes territorial boundaries.

2. **Actual Occupancy** - Elizabeth I, 1587, and her lawyers add this to First Discovery.

If Spain and Portugal are not in actual occupancy of territories when the English arrive, the English can claim it.

Discovery into Recognized Title

Establishing Forts and getting people there.

3. Pre-Emptive European Title Under Doctrine of Discovery, Europeans claimed immediate full ownership of the land - owns sole exclusive title to land. They claim the sole right, the only right to buy land from Indigenous people, if and when they ever want to sell it to them. There can only be one buyer. Indigenous people only have a "right to occupy and use" their own lands. And they only have limited land use and limited title. If never sold, this will last forever.

Pre-Emption: Named by Thomas Jefferson

The First US Congress used this in Trade and Intercourse Acts to limit Native right and claim to their own land.

Johnson v M'Intosh: US owns full title of Native lands, Natives lose full ownership, but can only occupy. This is still law today.

4. Indian Title

Only can occupy and use Lands, but could last forever if they never sold to preemptive European country. Indigenous Nations only own "beneficiary title" to lands held "in Trust" by their true owner (the country that colonized) - by permission and approval of that government. Limited title. Not Fee Simple Title.

5. Tribal Sovereignty and Commercial Rights Limited

(Indigenous Nations lose most inherent sovereign powers, international trade, and diplomatic relations. Could only deal with who discovered them. Not acknowledge as a "full sovereign" - rights stripped. cut off from International Trade. Cut off from Diplomatic Relations - can only deal with who "discovered them." Government approval or permission to use own land. Restrictions on utilizing territory.

6. Contiguity

European Nation held rights over 'unoccupied' lands that were half way points to next settlements, as well as if a mouth of a river was 'discovered', all lands drained by that river can be claimed.

7. Terra Nullius If lands were not possessed or occupied by any person or nation (and later, even if they were occupied but were not being used in a fashion that European legal and property systems approved), then the lands were considered to be "empty" and available for taking, possessing, and putting foreign law over it.

8. Conquest Europeans could acquire Indian title by military victories in "just" and "necessary" wars. Also, property rights Europeans claimed to have gained automatically over Indigenous Nations just by showing up and making a "first discovery."

9. Christianity Under Discovery, non-Christian peoples were not deemed to have the same rights to land, sovereignty, and self-determination as Christians.

10. Civilization European Nations claimed God had directed them to bring civilized ways and education and religion to Indigenous Peoples and to exercise paternalism and guardianship powers over them. Central to Manifest Destiny.

In Canadian/U.S. Context

Doctrine of Discovery has a thread reaching from Vatican Papal Bulls, the Royal Proclamation, the Constitution Act of 1982 / Charter of Rights and Freedoms, many landmark Supreme Court holdings, and Aboriginal title in Canada.

Keep in mind, Aboriginal Title is Canada holds that we can only use and occupy lands who is owned by another Nation. Full title is not ours. Governance has also been severely limited and is greatly controlled.

1. Canada: While the **Royal Proclamation (when applied unilaterally and taken out of the continuation understanding that is followed by the Treaty of Niagara in 1764)** binds the Crown to Treaty, acting honourably/fiduciary responsibility, and acknowledging Indigenous Nations as sovereign, self-determining, and self-governing, it also assumed Indigenous Nations are under the “protection of the Crown” who claims ownership of the land Indigenous Peoples occupy and utilize - subsuming Native title within the territorial sovereignty of the Crown. Embedded was also a potential means to extinguish any title to land - it established regulations for doing so. Only licensed agents could trade with Native People and Natives are not to be permitted to sell their land to any party, but the British Crown.

The Royal Proclamation, through the lens of the Doctrine of the Discovery, deals greatly with sovereignty, title, and commerce in relation to Indigenous peoples. Through the Royal Proclamation (and many Supreme Court holdings), the limited notion of land title is reflected in today’s “Aboriginal Title” in Canada.

2. In United States: The Supreme Court case Johnson v. McIntosh (1823) wrote the Doctrine of Discovery into US Case Law where it remains to this day. This sits at the heart of U.S. Indian Policy - and one can understand how sovereignty over Indigenous Peoples and lands is assumed, how Indian Lands are given limited title as the U.S. claims full ownership and title, and why one cannot sell, lease, or develop reservation land without a signature from a United States Department. It is an affirmation of the Doctrine of Discovery and enshrined into United States Case Law.

Legal scholar Robert Williams Jr. has shared that Johnson v. McIntosh has been cited in over 60 Canadian court cases, over 45 times in Australia, over 20 times

in New Zealand, 3 times by the Privy Council, 2 times in Africa, and once in India by 2014.

A few notable examples of U.S. cases which cite *Johnson v. McIntosh* are:

1831: *Cherokee Nation v. Georgia*, 30 U.S.

1954/5: *Tee-Hit-Ton Indians v. United States* 348 U.S. 272

Claiming the Tee-Hit-Ton Peoples in Alaska did not deserve compensation from the taking of their timber because “the Christian Nations of Europe had discovered the lands of Heathens and Infidels.” This was upheld in 1955, citing Henry Wheaton’s “Elements of International Law” which references these elements of Doctrine of Discovery and Papal Bulls. Wheaton states, “The Heathen Nations of the other corners of the globe were the lawful spoil and prey of their civilized conquerors.

As well as:

1978: *Oliphant v. Suquamish Indian Tribe* 435 U.S. 191

1990: *Duro v. Reina*, 495 U.S. 676

2005: *City of Sherrill v. Oneida Indian Nation of New York*

3. In Canada: Years after the Royal Proclamation of 1763, The case *St. Catherine’s Milling and Lumber Case* (1888) established the principle in Canadian common law that Aboriginal did not hold fee simple interest in their property or lands. Aboriginals possessed rights of occupation and use, but the Crown maintained underlying title. This was based upon what is put forth in the above understanding of the Royal Proclamation.

The Doctrine of Discovery is alive within Indian Policy of Canada. This can explain many things, especially why one cannot sell, lease, or develop reserve land without a signature from a Canadian Department, as well as why sovereignty has been reduced and foreign law placed upon Indigenous Peoples and lands.

The *McIntosh* Case from the U.S. as well as the Royal Proclamation in Canada, were cited by Justice Norris in determining the Supreme Court Case **R v. White and Bob** (1965) in Canada. *St. Catherine’s* was also cited.

4. *Calder v. Attorney General of British Columbia* (1973) stated that Aboriginal title didn’t depend on the Crown or stemmed from the Royal Proclamation, but occupation and social organization of Indigenous peoples. This was the first time the court approached some kind of acknowledgement of the fact that Indigenous peoples lived in legitimate societies and had rights of

self-determination that were not extinguished at the time that Canada claimed sovereignty over their land. The dissenting judges upheld the tenants of Crown sovereignty and pre-emptive rights on the basis of Doctrine of Discovery.

Justice Hall called *Johnson v. McIntosh* (in the United States) the “locus classicus of the principles governing aboriginal title in Canada.” Notwithstanding his assertion that Aboriginal title was a “legal right”, it could be extinguished “by surrender to the Crown or by competent legislative authority.

5. **Guerin v. R (1984)** stated that Aboriginal Title in Canada was characteristically unique based upon pre-contact occupation of a territory and Aboriginal title predates the Royal Proclamation which merely recognizes it. “Indians have a legal right to occupy and possess certain lands, the ultimate titles lies with the Crown.

Justice Dickson cites *Johnson v. McIntosh* and goes on to write that presumptive and underlying rights were different in kind and that ultimate title belonged to Europeans by right of discovery. The Pre-Emptive European Title rights found in the Royal Proclamation were also affirmed by Dickson.

Still, this case was a catalyst which would lead to Section 35(1) of the Canadian Constitution.

6. **Section 35(1)**: the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

This has not been self-explanatory and has been the central issue in many Supreme Court cases since. Such as *Sparrow* (1990), *Van Der Peet* (1996), *Adams* (1996), and *Delgamuukw* (1997) to which tenants of the Doctrine of Discovery can be found within.

Also, according to Section 25 of the Charter of Rights and Freedoms, it is a “guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights of freedoms that pertain to the aboriginal peoples of Canada including (a) any rights of freedoms that have been recognized by the Royal Proclamation of October 7, 1763.”

7. **Sparrow (1990)**: the majority opinion in the case maintained that rights such as fishing (and others) are protected only if they had not been extinguished prior to 1982. Also stated Aboriginal rights were not absolute, but could be regulated by legislation. It is made clear that the legitimacy of underlying title, based upon the Doctrine of Discovery, is not a debatable issue, citing the

Royal Proclamation and Johnson v. McIntosh.

8. **Van Der Peet (1996)** Justice Lamer wrote at length on Aboriginal title. It was concluded that Aboriginals did live on the land in distinct societies and it is acknowledged and reconciled with the sovereignty of the Crown. Johnson v. McIntosh was repeatedly cited and in her dissent, Justice Lachlin turned to both the Royal Proclamation and the Johnson v McIntosh case. The presumption of British sovereignty and acknowledgement and recognition of Aboriginal Peoples as existing, occupying peoples who can use and alienate the rights they enjoyed in the use of territories was stated.

Interestingly, Terra Nullius is given criticism while at the same time, the Johnson v. McIntosh case is cited repeatedly.

In McIntosh, Chief Justice Marshall stated that aboriginal title is the right of aboriginal people to land arising from the intersection of their pre-existing occupation of the land with the assertion of sovereignty over that land by various European nations.

Justice Lamer agreed with the McIntosh (and other Marshall decisions) as “providing structure and coherence to an untidy and diffuse body of customary law based on official practice” and he asserts that these decisions are ‘as relevant to Canada as they are to the United States.

9. **R v Adams (1996)**: the issue of prior occupation was critical to its connection to Aboriginal Title Chief Justice Lamer underscored the injustice inherent in the Doctrine of Discovery and how it played out in law, but it appears to Reid (2010) that due to the Doctrine of Discovery, First Nations are “expected to demonstrate a pattern of occupancy to which the Crown has never been under any obligation to conform.”

10. **Delgamuukw v. British Columbia (1997)** was a landmark case where in respects to rights of title, should be upheld in the claimants could demonstrate their society occupied a given territory exclusively prior to the Crown’s assumption of sovereignty. Oral history could be accepted. Because of Aboriginal title being sui generis, it might potentially encompass not only occupation and use, but resource rights.

It was the first successful challenge to the St. Catherine’s Milling case.

However, the Royal Proclamation could still be (and was) leaned on.

Justice La Forst (in a concurrence) remained faithful to limited title. He upheld that Aboriginal rights can be unilaterally extinguished citing the Royal Proclamation.

****As you can see, the lone/unilateral understanding of the Royal Proclamation (apart from the Treaty of Niagara which sets up a firm misunderstanding), as well as Johnson v. McIntosh which bring Doctrine of Discovery to life is part of today's Indian Policy in Canada, even within "Aboriginal Title", not title holders - but only use and occupation.**

Sources: Jennifer Reid's "The Doctrine of Discovery and Canadian Law", "Pagans in the Promised Land" by Stephen Newcomb, "The American Indian in Western Legal Thought" by Robert Williams Jr., presentations by Newcomb and Williams, and various prime secondary documents.

THE DOCTRINE OF DISCOVERY AND CANADIAN LAW

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Abstract / Résumé

This article will focus on a set of fifteenth-century assumptions regarding sovereignty known as the Doctrine of Discovery. The doctrine was the “legal” means by which Europeans claimed preemptive rights in the New World, and it underlies the relationship between Indigenous and non-Indigenous peoples to this day. This article will explore the Doctrine’s development from its inception to its integration into Canadian law. By demonstrating continuity between fifteenth century papal bulls, the Royal Proclamation, the Constitution Act, 1982, and Supreme Court holdings, I will argue that Aboriginal title in Canada was—and continues to be—entrenched in the Doctrine of Discovery.

L’article se concentre sur un ensemble d’hypothèses du XV^e siècle au sujet de la souveraineté, connu sous le nom de « doctrine de la découverte ». La doctrine a été le moyen « légal » qu’ont utilisé les Européens pour faire valoir des droits de préemption dans le Nouveau Monde et elle sous-tend toujours les liens entre Autochtones et non-Autochtones. L’article examine l’élaboration de la doctrine, de sa création à son intégration dans le droit canadien. En démontrant la continuité entre les bulles papales, la Proclamation royale, la Loi constitutionnelle de 1982 et les décisions de la Cour suprême, l’auteure met de l’avant que le titre ancestral au Canada a été et continue d’être inscrit dans la doctrine de la découverte.

Most non-Aboriginal Canadians are aware of the fact that Indigenous peoples commonly regard land rights as culturally and religiously significant. Fewer non-Natives, I suspect, would consider their own connection with property in the same light; and fewer still would regard the legal foundation of all land rights in Canada as conspicuously theological. In fact, however, it is. The relationship between law and land in Canada can be traced to a set of fifteenth century theological assumptions that have found their way into both common law and the Canadian Constitution. These assumptions, collectively referred to as the Doctrine of Discovery, were initially formulated to mediate rivalries among European states vying for sovereignty rights in the New World. Although there were antecedents to the doctrine, it was Pope Alexander VI who applied them to the Atlantic World of the fifteenth century, in a two-part papal bull known as *Inter caetera*. The Doctrine of Discovery was the legal means by which Europeans claimed rights of sovereignty, property, and trade in regions they allegedly discovered during the age of expansion. These claims were made without consultation with the resident populations in these territories – the people to whom, by any sensible account, the land actually belonged. The Doctrine of Discovery is a critical component of historical relations between Europeans, their descendants, and Indigenous peoples; and it underlies their legal relationships to this day, having smoothly transitioned from Roman Catholic to international law. Upon discovery of a territory, the doctrine held that Indigenous peoples could not claim ownership of their land, but only rights of occupation and use. In this way, colonial powers claimed preemptive rights while conceding only restricted title to a territory's owners (Miller 2006: 4).

It has been suggested that law regarding Aboriginal peoples is the “most uncertain and contentious body of law in Canada,” the result of the fact that no legal principles relating to the rights of Indigenous peoples existed at the time of the assumption of British sovereignty (McNeil 1997: 117). This is not entirely accurate, since the Doctrine of Discovery was a firmly entrenched principle of international law that guided earliest British relations with First Nations and, as I will presently point out, the drafting of the Royal Proclamation of 1763 which has loomed large in the history of Aboriginal rights in Canada. Issues relating to Aboriginal title, sovereignty, and self-government, for instance, are complicated precisely because underlying title was assumed by the British Crown in 1763. The principle of discovery thus forced Aboriginal peoples into an ongoing position of dependence on colonial governments and courts for the recognition of rights that Aboriginals take for granted (Assembly of First Nations 2005). Neither the Constitution nor common law, however, has

been able to define these rights in a comprehensive manner (Asch and Zlotkin 1997: 212). Attempts to do so were a focus of a series of constitutional conferences in the wake of their inclusion in s.35 of the *Constitution Act, 1982*, but no resolution was reached; and the courts, which have consequently been the principle arena for adjudicating this issue, have had limited success. Despite this lack of resolution, one principle has never been called into question: namely, the legitimacy of the Crown's assumption of underlying title and the attendant limitation of Aboriginal rights to those of occupation and use.

Aboriginal Canadians do not generally regard their title to land as merely involving these kinds of usufructuary rights. Rather, they trace title back to pre-contact relationships with land and rights of self-governance. Fundamentally, then, title is not considered something that should be subject to the legal or political system; and s.35 of the Constitution is regarded as having acknowledged already existing rights. From this perspective, the courts' struggle to define the scope of these rights, rather than to implement them, has been an error; and the Canadian government's claim to underlying title is based on a misconception. Leroy Little Bear described the mistake in this fashion: "[Aboriginal peoples] are not the sole owners under the original grant from the Creator; the land belongs to past generations, to the yet-to-be-born, and to the plants and animals. Has the Crown ever received a surrender of title from these others?" (Little Bear 1986: 247, Asch and Zlotkin 1997: 215-217). From the standpoint of dominant voices in the ongoing conflict over issues of sovereignty, title, and self-government, however, Native rights are considered to be common law rights stemming from—and subordinate to—the British Crown's earliest sovereignty claims.

The Doctrine of Discovery

The Doctrine of Discovery is not simply an artifact of colonial history. It is the legal force that defines the limits of all land claims to this day and, more fundamentally, the necessity of land claims at all. To call it into question, even now, would change the rules of the argument entirely. As one journalist puts it: "It is the federal and provincial governments of Canada who are trying to make a claim to land, a claim based on the Doctrine of Discovery" (Steinhauer 2006). The roots of the doctrine can be traced back at least as far as the Crusades, although some would claim that its foundation rests in Augustine's teachings on "just war," through which the Catholic Church became morally obligated to meddle in international affairs (Washburn 1995: 4-5).¹ It was during the Crusades, however, that the Church had to fully confront the thorny issues of invading other peoples' territories and determining the property

rights, or *dominium*, of Muslims. One of the most significant pronouncements on the subject came from Pope Innocent IV, who concluded in 1240 that despite the fact that infidels possessed natural rights, they could be legally deprived of these by virtue of the pope's obligation to oversee the spiritual needs of all people. The issue of property rights was at the core of Innocent's influential statement, as it dealt specifically with the question of the legitimacy of invading non-Christian territories and claiming sovereignty therein. He ruled, not surprisingly, that invasions of this kind were "just wars" fought in the service of Christendom (Miller 2006: 12-13, Miller 2005: 8-9).

Contention over control of Lithuania in the early fifteenth century led to a church ruling that would impact directly on the development of the Doctrine of Discovery. In staking a claim against that of the Teutonic knights, Poland turned to Innocent IV's earlier ruling in favor of just war, and the Council of Constance ruled in 1414 that Poland did indeed have the right to disregard the natural law rights of (in this case, Lithuanian) pagans if they violated Catholic notions of natural law. Conquest and subjugation were thus permissible in the interest of spreading Christianity. It was Pope Nicholas V who established the legal principle by which Europeans could claim enemy territories. In two Bulls, *Dum diversas* (1452) and, especially, *Romanus Pontifex* (1455), Nicholas sanctioned the conquest of north Africa by the Portuguese, and ultimately provided the legal foundation for European colonialism and the slave trade (Miller 2005: 9, Miller 2007).² Although the fifteenth century papal bulls served Portugal well, they effectively barred Spain from African exploration. In response, Spain turned its attention westward with the voyages of Christopher Columbus, who was instructed by the Crown to assume the admiralty of the territories he was to "discover and acquire." Upon his return to Spain, King Ferdinand and Queen Isabella immediately sought papal validation of their title to Columbus' discoveries in the Caribbean, and Pope Alexander VI subsequently issued three bulls legitimizing the claim, the most important of which was *Inter caetera*, which fully articulated the Doctrine of Discovery with specific reference to the Americas. Alexander's bulls divided the globe from the North to the South Poles along a line running about 500 kilometers west of the Azores. In order to pursue the "holy and laudable work" of expanding the Christian world, Spain was given title to all discovered and later to be discovered territories west of this boundary. While the bull defined the limits of Iberian discovery claims, Spain and Portugal mutually agreed to shift the boundary through the Treaty of Tordesilla in 1494. The pope endorsed the agreement with another bull, *Ea qua* in 1506, which allowed Portugal limited access to the Atlantic world. As a result it was able to claim discovery

rights in Brazil (Alexander VI: 1493).

Papal constraint on discovery claims would be the object of a great deal of re-interpretation by European crowns and their legal and theological advisors; but on two points, at least, they were in agreement: (i) the pope's primary authority to grant sovereignty, and (ii) the assumption that Indigenous peoples lost underlying title to their land. The latter would remain a point of European international law.³ Initially, discovery claims could be made through any one of a number of symbolic acts: the planting of a cross or a flag, the burying of coins, or, in the case of the Spanish conquistadors, the reading of an official pronouncement called the "Requerimiento" (requirement). The document, written by the Spanish jurist Palacios Rubios in 1510, asserted that the Spanish Crown had sovereign rights in the Americas based on *Inter caetera*. By the turn of the sixteenth century, canon and international law had melded with respect to the Doctrine of Discovery largely through the application of the doctrine to Portuguese and Spanish claims in the New World. England and France followed the Iberians closely into the age of exploration, and the crowns of both were guided by the doctrine not merely as a point of international law. Rather, the law was regarded as originating in papal bulls, and since both nations were Catholic at the time of their early explorations, concern over contravening the Church's mandate for Spain loomed large in their respective imaginations, and resulted in the emergence of new legal concepts that became associated with the original doctrine. Intellectuals in both nations scrutinized the bulls and other Church law in order to find justification for new claims to title in the New World that would not undermine the original papal regulations. English scholars, in particular, became adept at the practice, advising Henry VII that he would not be in contravention of the 1493 bull if claims to title were limited to territories not yet discovered by Spain or Portugal (or any other Christian nation). Those advising Elizabeth I honed the theory further by arguing that claims to sovereignty could not be made by symbolic acts alone, but required actual occupation of a territory (Miller 2006: 18).

Thus British monarchs began the practice of directing their subjects to lay claim to those regions not already in the possession of other nations. In his charter to John Cabot and his sons, for instance, Henry VII gave John Cabot and his sons "...full and free authority, faculty and power to sail to all parts, regions and coasts of the eastern, western and northern sea, under our banners, flags and ensigns,...to find, discover and investigate whatsoever islands, countries, regions or provinces of heathens and infidels, in whatsoever part of the world placed, which before this time were unknown to all Christians. We have also...given licence to

set up our aforesaid banners and ensigns...acquiring for us the dominion, title and jurisdiction of the same towns, castles, cities, islands and mainlands so discovered..." (Biggar 1911: 7-10). The French and English also developed the idea of *terra nullius* ("vacant land") to further substantiate their right to assert sovereignty over regions belonging to non-Europeans. By this principle, land could be regarded as empty, and underlying title could be claimed, if non-Europeans were failing to make use of it in accordance with European expectations or if they had migratory subsistence patterns. Despite these refinements of the doctrine, however, England and France continued to accompany their claims to title in the New World with the established symbolic acts of planting crosses and flags, burying items such as coins, or reading from a commission (Miller 2005: 18-19). Propagation of the Christian faith and assertions of political sovereignty continued to be melded with one another such that explorers (especially those representing the French Crown) generally erected insignia on discovered territory that bore both religious and political symbols.

On the basis of John Cabot's explorations of 1496 through 1498, England laid claim to the entire eastern seaboard of North America. Upon reaching North America, wrote one of Cabot's Venetian contemporaries, he "placed on his new-found land a large cross, with one flag of England and another of St. Mark, by reason of his being a Venetian, so that our banner has floated very far afield" (Williamson 1929: 29). England's discovery claims were challenged by France for over two centuries, the latter basing its claims for sovereign rights on the discoveries of Jacques Cartier which began in 1534. Cartier was the first European explorer to travel the St. Lawrence River, and the first to refer to the northern region of the continent as Canada. The two countries would eventually come to war over their conflicting claims to sovereignty in the New World, with France conceding most of its territories in 1763 (Miller 2005: 16). Until that time, however, explorers continued to claim territory through discovery. Martin Frobisher, for instance, wrote that at Hudson Bay in 1577, he had "marched through the Countrey with Ensigne displaied, so far as thought needfulle, and now and then heaped up stones on high mountaines, and other places, in token of possession, as likewise to signifie unto such as hereafter may chance to arrive there, that possession is taken in behalfe of some Prince, by those who first found out the countrey..." (Hakluyt 1903: 32, Green 1989: 11-12). Upon landing in Newfoundland in 1583, Humphrey Gilbert had "openly read and interpreted his commission; by vertue thereof he tooke possession in the same harbour of St. John, and 200 leagues every way, invested the Queenes Majestie with the title and dignities thereof.... And signified unto all men,

that from this time forward, they should take the same land as a territories appertaining to the Queen of England, and himself authorized under her Majestie to possesse and enjoy it" (Hakluyt 1903: 53-54, Green 1989: 12). A half century later, Samuel de Champlain would stake his claim to New France through the planting of symbols: "Of this wood I made a Cross which I set up at one end of the island, on a high and prominent point, with the arms of France, as I had done in the other places where I had stopped. I named this place Saint-Croix island.... Before I left, I built a Cross, bearing the arms of France, which I set up in a prominent place on the shore of the lake, and begged the Indians to be kind enough to preserve it, as well as those they would find along the trails by which we had come" (Biggar 1925: 272, 297, Green 1989: 9-10).

We might note that such symbolic acts of possession continued to be employed well into the nineteenth and twentieth centuries. When William McDougall was sent by the Canadian government to Rupert's Land in 1869 to assume his post as lieutenant governor of the soon to be acquired territory, he was prevented from entering the colony at Red River by a group of armed Métis who did not recognize Ottawa's sovereignty in the region. He was forced to retreat across the US border where he remained for a month before he decided to re-enter the territory one night after dark to read an official statement asserting Canadian sovereignty despite the fact that there was no one there to hear it.

More disturbing, however, was the Canadian government's 1953 and 1954 relocation of northern Quebec Inuit to Resolute Bay and Grise Fiord in the High Arctic. The ostensible reason for the move was to foster self-sufficiency on the part of the Inuit by providing them with a better supply of game. The families involved in the relocation were from communities in which government relief payments were considered by the government to be too high. The unofficial reason for the relocation, however, was to signify, through occupancy, Canada's sovereignty in the high North. In 1946, the government learned that the Americans were planning to build a series of weather stations in the High Arctic as part of their defense system, and had no intention of consulting with Canada about the scheme. External Affairs was understandably concerned that Canada's sovereignty in the region might be compromised. Worries continued among government officials, and in 1953 the Prime Minister, Louis St. Laurent, announced in Parliament that "we must leave no doubt about our active occupation and exercise of our sovereignty in these northern lands right up to the Pole." Canadian security, he said, was threatened "by the fact that this northland of ours is between these two great world powers [the United States and the Soviet Union]." Effective occupation remained a concern of the federal government throughout the decade,

as the Minister of Northern Affairs, Alvin Hamilton, explained to the House in 1958: “you can hold a territory by right of discovery or by claiming it under some sector theory but where you have great powers holding different points of view the only way to hold that territory, with all its great potential wealth, is by effective occupation” (Marcus 1995: 49, 53, 57-59).

By 1960, it had become clear that the Inuit relocation had not resulted in an improvement in economic conditions for the Inuit; but a confidential report prepared for Northern Affairs in 1958 noted that “this community also serves a distinctly useful purpose in confirming, in a tangible manner, Canada’s sovereignty over this vast region of the Arctic.” The Inuit were, as many have since described them, “human flagpoles.” Their initial move was accompanied by promises that they would be assisted in returning to northern Quebec, if they chose to do so, after two years; but the promise was not kept. While some were provided with support to move back to their original communities in the 1970s, most had to wait until the late 1980s (Marcus 1995: 59, 77-78, Tester and Kulchyski 1994: 114).

Fifteenth-century papal bulls were the legal foundation upon which North America was colonized. The basic principle of the doctrine they set down—that Indigenous peoples had no sovereign rights in relation to their own land—remained unaltered through centuries of international jurisprudence. The Doctrine of Discovery is not simply a relic of colonial history; it is the legal force that defines the limits of all land claims issues to this day, and it was integrated into North American law from an early period. There are, in particular, two documents that have been principally responsible for keeping the doctrine alive in Canadian law: (i) the Royal Proclamation of 1763 and (ii) the US Supreme Court’s 1823 holding in *Johnson v. McIntosh*, 21 U.S. (8 Wheat.) 543 (1823).

The Doctrine of Discovery in Canadian Law

Disputed claims over sovereignty in the New World led Britain and France into the Seven Years War, which ended in 1763 when France surrendered to England its discovery rights over Canada and the territory east of the Mississippi River. The Royal Proclamation, issued the same year, was a document that reflected the English crown’s understanding of its rights stemming from the Doctrine of Discovery. Lands occupied by Native peoples were defined in the Proclamation as “our dominions,” despite the fact that no Indigenous nation had relinquished its title. Furthermore, the Crown promised to protect Native rights of occupancy and land use, thus subsuming Native title within the territorial sovereignty of the Crown. Finally, the document reiterated the trade

and preemptive rights long recognized as integral to the principle of discovery: only licensed agents could trade with Native people, and Natives were not permitted to sell their land to any party but the British Crown. The Royal Proclamation thus established as a principle of English colonial law key features of the discovery doctrine dealing with issues of sovereignty, title, and commerce. It was intended as a legal instrument for mediating tensions between First Nations and expanding colonial settlements; but while it defined the limits of settler encroachment on Native land, its clear assertion that the territories in question were ultimately Crown “dominions” effectively removed the issue of sovereignty from the conversation about land rights and Aboriginal title. While ostensibly protecting First Nations from appropriation of their land, the Royal Proclamation also allowed for the dissolution of such protection since it not only reserved to the Crown the prerogative to extinguish Aboriginal land rights but established regulations for doing so. Essentially, neither individuals nor colonial governments were permitted to acquire Native land. This privilege was reserved to the Crown. The proclamation asserted that “the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions or territories as, not having been ceded to or purchased by Us, are reserved to them;” and it forbade any administrator or private citizen from “making any Purchases...or taking Possession of any of the Lands above reserved, without our especial leave and Licence for that Purchase first obtained.” Thus the document ensured that “if at any Time any of the Said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name” (*Royal Proclamation, 1763*, Miller 2006: 31-32, Green 1989: 102-103, Borrows 1997: 159-160).

Not only did this document dismiss the question of First Nations sovereignty by reserving preemptive rights to the Crown, but its promise not to impose the British legal system on Native peoples (which, in itself, might be considered to be an indication of sovereignty) was undermined by a proviso permitting colonial officials to enter into Native territories without consultation with the community in order to apprehend non-Native criminals who might be hiding there: “And we do further expressly conjoin and require all officers whatever, as well Military as those Employed in the Management and Direction of Indian Affairs, within the Territories reserved as aforesaid for the use of the said Indians, to seize and apprehend all Persons whatever, who standing charged with Treason, Misprisons of Treason, Murders, or other Felonies or Misdemeanors, shall fly from Justice and take refuge in the said Territory,

and to send them under a proper guard to the Colony where the crime was committed, and of which they stand accused, in order to take their Trial for the same" (*Royal Proclamation, 1763*). The Royal Proclamation was steeped in the Doctrine of Discovery. In this document, the British Crown asserted sovereignty over former French territories by virtue of France's cession of its own discovery rights and despite the fact that no First Nation had ever ceded its land to either France or Britain. On the basis of the doctrine, France's authority to transfer sovereignty to England needed no justification.

Turning to the second document, the judgment in *Johnson v. McIntosh*, we find an affirmation of the Doctrine of Discovery in American common law that was based to a noticeable degree on the Royal Proclamation: "This treaty expressly cedes, and has always been understood to cede, the whole country, on the English side of the dividing line, between the two nations, although a great and valuable part of it was occupied by the Indians.... The proclamation issued by the King of Great Britain, in 1763, has been considered, and, we think, with reason, as constituting an additional objection to the title of the plaintiffs. By that proclamation, the crown reserved under its own dominion and protection, for the use of the Indians, 'all the land and territories lying to the westward of the sources of the rivers which fall into the sea from the west and northwest,' and strictly forbade all British subjects from making any purchases or settlements whatever, or taking possession of the reserved lands" (*Johnson v. McIntosh*, 21 U.S. [8 Wheat.] 543, 593 [1823]). Despite the fact that Native peoples were the obvious owners of the lands in North America at the time of initial European incursions, Chief Justice Marshall asserted that European states acquired sovereign title to these lands upon discovery. What this meant in Anglo-European practice was that First Nations retained rights of occupation and use, but that Europeans automatically gained rights of preemption; that is, the sole right to purchase these lands from Native peoples. Marshall's opinion established a legal precedent by which the loss of underlying Aboriginal title to land could be justified, and the principle was based wholly on the Doctrine of Discovery: "In the establishment of these relations, the rights of the original inhabitants were, in no instance, entirely disregarded; but were necessarily, to a considerable extent, impaired. They were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion; but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclu-

sive title to those who made it" (*Id.* at 574).

Both the Royal Proclamation and the Court's opinion and holding in *McIntosh* would be used by subsequent Canadian courts to support the principles of Crown sovereignty and Aboriginal title. An early ruling of the Privy Council set the stage for this continuity. *St. Catherine's Milling and Lumber Company v. The Queen* (1888) has been interpreted as having established the principle in Canadian common law that Aboriginals did not hold a fee simple interest in their property (the kind of interest that non-Aboriginals typically have when they purchase property). On the basis of the Royal Proclamation, the Court determined that Aboriginals possessed rights of occupation and use, but the Crown maintained underlying title. In his opinion, Lord Watson stated that Royal Proclamation guaranteed that Native peoples would be protected in their occupation of the land. He also referred directly to *Johnson v. McIntosh*, calling the holding in the case a "classic and definitive judgment." He thus concluded that First Nations' land rights amounted to "a personal and usufructuary right dependent on the good will" of the Crown: "Documentary evidence was referred to, to shew the nature and character of the Indian title. It was contended that the effect of it was to shew that from the earliest times the Indians had, and were always recognized as having, a complete proprietary interest, limited by an imperfect power of alienation. British and Canadian legislation was referred to, to shew that such complete title had been uniformly recognized...to have the same force as a statute, under which the lands in suit were reserved to the Indians in absolute proprietary right.... The proclamation in 1763 was uniformly acted on and recognized by the Government as well as the legislature, and was regarded by the Indians as their charter. It was not superseded by the Quebec Act...but it was held by the Supreme Court of the United States to be still in force in 1823: see *Johnson v. McIntosh*." (*St. Catherine's Milling & Lumber Co. v. The Queen*, [1889] L.R. 14 App. Cas. 46, 48 [P.C. 1915] [appeal taken from the Supreme Court of Canada], see generally McNeil 1997a: 142, Bell and Asch 1997: 47-48).

For the better part of a century, *St. Catherine's Milling* would join the Royal Proclamation and *McIntosh* as rationale in support of limitations on Aboriginal title. In point of fact, recourse to *St. Catherine's Milling* often went further than would have been acceptable to even Lord Watson, who concluded his remarks with, "There may be other questions behind, with respect to the right to determine to what extent, and at what periods, the disputed territory, over which the Indians still exercise their avocations of hunting and fishing, is to be taken up for settlement or other purposes, but none of these questions are raised for decision in the present suit" (*St. Catherine's Milling*, 14 App. Cas. at 60). *R v. White*

and Bob (1964), a case decided by the British Columbia Court of Appeal, and later affirmed by the Supreme Court of Canada, is a case in point (*R. v. White and Bob*, [1964] 50 D.L.R. (2d) 613) (affirmed by the Supreme Court of Canada at *R. v. White*, [1965] 52 D.L.R. (2d) 481n). The trial involved the harvesting of deer in contravention of British Columbia gaming laws, and while the Court of Appeal held in favor of the defendants' (both Nanaimo) usufructuary rights, in framing his opinion, Justice Norris referred repeatedly to both the Royal Proclamation and *Mclntosh*. Chief Justice Marshall's opinion in the 1823 case was, according to Justice Norris, "entirely consistent with the opinion of the Privy Council in *St. Catherine's*, and both were consonant with the principles of the Royal Proclamation" (*Id.* at 631). The Proclamation, he wrote, "had the effect of a statute," and it was "declaratory and confirmatory of... aboriginal rights" (*Id.* at 653). He stated, further, that "the principles there laid down [in the Royal Proclamation] continued to be the charter of Indian rights through the succeeding years to the present time – recognized in the various Treaties with the United States in which Indian rights were involved and in the successive land Treaties made between the Crown and the Hudson's Bay Co. with the Indians" (*Id.* at 653).

Finally, Justice Norris confirmed the principle of limited Aboriginal title stemming from discovery that was set down in the Royal Proclamation: "The Proclamation was made on the basis of a claim to dominion and its protective provisions became applicable in fact to Indians as their lands (the Indian Territory) came under the de facto dominion of representatives of the British Crown" (*R. v. White and Bob*) (*Id.* at 661). The long-standing notion that Aboriginal title depended on the Crown and stemmed from the Royal Proclamation was discarded in the majority opinion in *Calder v. Attorney-General of British Columbia* (1973). In his opinion, Justice Judson claimed instead that it was based on pre-existing occupation and social organization: "Although I think that it is clear that Indian title in British Columbia cannot owe its origin to the Proclamation of 1763, the fact is that when the settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries. This is what Indian title means..." (*Calder et al. v. Attorney-General of British Columbia*, [1973] S.C.R. 313 ¶ 26). This was the first time that the court had approached some kind of acknowledgment of the fact that Native peoples lived in legitimate societies and had rights of self-determination that were not extinguished at the time that Canada claimed sovereignty over their land. This opinion had a substantial impact, and is considered to have directly influenced the decision to include the recognition of Aboriginal and treaty rights in the *Constitution Act, 1982*. While the case initiated major strides with

respect to Aboriginal land rights, the dissenting justices (who in this instance supported the Native appellants in their claim that their title to land in northwestern British Columbia had never been legally extinguished) upheld the tenets of Crown sovereignty and preemptive rights; and they did so on the basis of the Doctrine of Discovery as articulated in the Royal Proclamation and by Justice Marshall in *McIntosh*. The Royal Proclamation, according to Justice Hall, was a “fundamental document upon which any determination of fundamental rights rests;” and citing *White and Bob*, he called it a “charter of Indian rights” (*Id.* at ¶ 138, Hall J., dissenting). As for *Johnson v. McIntosh*, Justice Hall called the case “the locus classicus of the principles governing aboriginal title” (*Id.* at ¶ 121). Thus, notwithstanding his assertion that Aboriginal title was a “legal right,” it could nonetheless be extinguished “by surrender to the Crown or by competent legislative authority” (*Id.* at ¶ 118, *see also* Bell and Asch 1997: 48, Asch 1997: ix, Borrows 1997: 155, Asch and Zlotkin 1997: 210).

Aboriginal title was defined further in *Guerin v. R* (1984) as *sui generis* (characteristically unique) and based upon pre-contact occupation of a territory (*Guerin v. R.*, [1984] 2 S.C.R. 335). In the majority opinion, Justice Dickson stated that Aboriginal title predates the Royal Proclamation which merely recognized it; and he cited Marshall’s opinion in *McIntosh* to support this claim: “In *Johnson v. McIntosh* Chief Justice Marshall, although he acknowledged the Royal Proclamation of 1763 as one basis for recognition of Indian title, was none the less of the opinion that the rights of Indians in the lands they traditionally occupied prior to European colonization both predated and survived the claims to sovereignty made by various European nations in the territories of the North American continent” (*Id.* at ¶ 84). Dickson went on to write, however, that presumptive and underlying rights were different in kind, and that ultimate title belonged to Europeans by rights of discovery: “The principle of discovery which justified these claims gave the ultimate title in the land in a particular area to the nation which had discovered and claimed it. In that respect, at least, the Indians’ rights in land were obviously diminished; but their rights of occupancy and possession remained unaffected.... Indians have a legal right to occupy and possess certain lands, the ultimate title to which is in the Crown” (*Id.* at ¶ 93). Further, the preemptive rights established in the Royal Proclamation were also affirmed by Justice Dickson: “An Indian band is prohibited from directly transferring its interest to a third party. Any sale or lease of land can only be carried out after a surrender has taken place, with the Crown then acting on the band’s behalf. The Crown first took this responsibility upon itself in the Royal Proclamation of 1763” (*Id.* at ¶ 83). Thus, although

Justice Dickson clearly rejected the tradition of regarding the Royal Proclamation as the source of Aboriginal title, his description of Aboriginal title as *sui generis* did not fundamentally define the scope of interest in land beyond the principle articulated in the Proclamation (Bell and Asch 1997: 49, Fairweather 2006: 99, Borrows 1997: 161).

Still, the case was a catalyst for public discussions concerning Aboriginal rights that would ultimately contribute to the interpretation of these rights as they are articulated in section 35(1) of the *Constitution Act, 1982*:

35(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Section 35(1) is not at all self-explanatory, and its meaning has been the central issue in numerous Supreme Court cases since. The first time the court had to consider the scope of constitutional protection of Aboriginal rights was in *R. v. Sparrow* (1990), a case that concerned Aboriginal fishing rights. The majority opinion in the case maintained that s.35(1) protects only those rights that had not been extinguished before 1982 (*R. v. Sparrow*, [1990] 1 S.C.R. 1075). Additionally, the majority noted that Aboriginal rights were not absolute, but could be subject to regulation by legislation (*Id.*). This latter point made it clear that the legitimacy of underlying title, claimed on the basis of the Doctrine of Discovery, is not considered to be a debatable issue. In underscoring this point, the justices cited the Royal Proclamation and Chief Justice Marshall: “It is worth recalling that while British policy towards the native population was based on respect for their right to occupy their traditional lands, a proposition to which the *Royal Proclamation of 1763* bears witness, there was from the outset never any doubt that sovereignty and legislative power, and indeed the underlying title, to such lands vested in the Crown; see *Johnson v. M’Intosh* (1823)...” (*Id.* at ¶ 49). *Sparrow* had broader implications with respect to the issue of Aboriginal title. Although the majority opinion concerning the salmon fishery in British Columbia was not intended to speak to the general question of the scope and nature of Aboriginal rights, Chief Justice Dickson and Justice La Forest linked the issue of title to “traditional activities recognized by the aboriginal society as integral to its distinctive culture” (*Id.* at ¶ 40). Thus, since *Sparrow*, courts have generally required that in making a claim, Aboriginal appellants demonstrate that their ancestors exclusively occupied given territories that were loci for activities deemed “integral” (*Id.*, see Bell and Henderson; Macklem 1997: 527, McNeil 1997: 144-145).

Two more cases bear consideration here, for both the advancements they made in dealing with s.35(1) as well as the continued limits they

placed on Aboriginal title. In *R. v. Van der Peet*, (1996), Chief Justice Lamer wrote at length on the issue of Aboriginal title, concluding that, “what s. 35(1) does is provide the constitutional framework through which the fact that Aboriginals lived on the land in distinctive societies, with their own practices, traditions and cultures, is acknowledged and reconciled with the sovereignty of the Crown” (*R. v. Van der Peet*, [1996] 2 S.C.R. 507, ¶ 31). The supporting opinion in the case referred repeatedly to *McIntosh*, and in her dissent, Justice McLachlin turned to both the Royal Proclamation and *McIntosh*. The Royal Proclamation, she wrote, “set out the rules by which the British proposed to govern the territories of much of what is now Canada. The Proclamation, while not the sole source of aboriginal rights, recognized the presence of Aboriginals as existing occupying peoples. It further recognized that they had the right to use and alienate the rights they enjoyed the use of those territories. The assertion of British sovereignty was thus expressly recognized as not depriving the aboriginal people of Canada of their pre-existing rights; the maxim of *terra nullius* was not to govern here” (*Id.* at 270). This direct reference to the concept of *terra nullius* is unusual, and would appear to raise the problem of the Doctrine of Discovery. However, the fact that the presumption of British sovereignty, as an obvious assault on pre-colonial rights, could be justified in the manner suggested in the opinion ultimately diminishes the cogency of this claim. Assumptions concerning sovereignty or underlying title that undergird this statement have pervaded all disputes over Aboriginal title in Canada, a fact that accounts for the courts’ continued recourse to *McIntosh*. Thus, again in *Van der Peet*, we find extensive references such as this to the case: “In *Johnson v. McIntosh*...the first of the Marshall decisions on aboriginal title, the Supreme Court held that Indian land could only be alienated by the U.S. Government, not by the Indians themselves. In the course of his decision (written for the court), Marshall C. J. outlined the history of the exploration of North America by the countries of Europe and the relationship between this exploration and aboriginal title. In his view, aboriginal title is the right of aboriginal people to land arising from the intersection of their pre-existing occupation of the land with the assertion of sovereignty over that land by various European nations. The substance and nature of aboriginal rights to land are determined by this intersection” (*Id.* at ¶ 36). And again, Justice Lamer wrote: “I agree with Professor Slattery both when he describes the Marshall decisions as providing ‘structure and coherence to an untidy and diffuse body of customary law based on official practice’ and when he asserts that these decisions are ‘as relevant to Canada as they are to the United States. . .’ I would add to Professor Slattery’s comments only the observation that

the fact that aboriginal law in the United States is significantly different from Canadian aboriginal law means that the relevance of these cases arises from their articulation of general principles, rather than their specific legal holdings" (*Id.* at 35).

In *Van der Peet*, the issue of prior occupation was critical, as it was in *R. v. Adams* (1996), and in the context of dealing with the issue, Chief Justice Lamer underscored the injustice inherent in the Doctrine of Discovery as it continues to play itself out in law. Although the Chief Justice admitted to being unsure about how "permanent" prior occupation would have to have been, he nonetheless felt that it was a question that needed to be considered in *Adams*: "Aboriginal rights cannot be inexorably linked to aboriginal title given that some aboriginal peoples were nomadic.... Moreover, some Aboriginal peoples varied the location of their settlements both before and after contact. The Mohawks are one such people.... That this is the case may (although I take no position on this point) preclude the establishment of Aboriginal title to the lands on which they settled..." (*R. v. Adams*, [1996] 3 S.C.R. 101, ¶ 27). The absurdity of suggesting such a gauge in determining title is hard to disregard. European colonials were patently more nomadic than Aboriginal North Americans, having shifted their settlement a span of nearly 5,000 kilometers at the time they asserted sovereignty in the North America, yet the underlying title of their descendants is not disputed. It appears that because of the Doctrine of Discovery, First Nations are expected to demonstrate a pattern of occupancy to which the Crown has never been under any obligation to conform.

Chief Justice Lamer reiterated many parts of the *Van der Peet* opinion a year later in *Delgamuukw v. British Columbia* (1997), but the latter case made some important steps forward in terms of Aboriginal rights. In fact, with respect to rights of title, *Delgamuukw* has been a defining case. The court's opinion stated that a claim to title should be upheld if the claimants could demonstrate that their society occupied a given territory exclusively prior to the Crown's assumption of sovereignty. To make this possible, the justices made the unprecedented decision to accept oral history as admissible evidence of exclusive occupation. Additionally, Chief Justice Lamer further refined the notion of Aboriginal title as *sui generis*, suggesting that it might potentially encompass not only occupation and use, but resource rights (Bell and Henderson, *Fairweather* 2006: 104). In spite of these strides, Justice La Forest (in a concurrence) remained faithful to other long-standing principles of limited title. For instance, while more forceful in his statement concerning discussion and the payment of compensation, he upheld the prevailing view that Aboriginal rights can be unilaterally extinguished, citing the

Royal Proclamation as part of the opinion: “More specifically, in a situation of expropriation, one asks whether fair compensation is available to the aboriginal peoples.... Indeed, the treatment of ‘aboriginal title’ as a compensable right can be traced back to the Royal Proclamation, 1763.... Clearly, the Proclamation contemplated that aboriginal peoples would be compensated for the surrender of their lands...” (*Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, ¶ 203, La Forest, J. dissenting/concurring).

Conclusion

According to international law as it was established by European colonial states, sovereignty in the New World was possessed by whatever European state claimed discovery and settlement. Later claims to the same territory could be made by other states through the negotiation of treaties or through successful military bids. It has never been necessary for any state to settle an entire territory in order to maintain its title; rather, it need only prevent all other states from challenging claims to sovereignty. The land rights of Indigenous peoples have never been recognized by the European-based system of international law as having priority over the rights of colonizing states; and although international law has undergone dramatic shifts in terms of recognizing human rights, there has never been an attempt to revisit the injustice inherent in the notion of sovereignty based on the Doctrine of Discovery. Consequently, Indigenous peoples have been forced to deal with judicial systems that are wedded to an archaic and racist principle of papal law. In the Canadian context, recourse to *Johnson v. McIntosh* and the Royal Proclamation have ensured that rights of sovereignty based on the Doctrine of Discovery have remained definitive in common law. Sovereignty is presumed to reside in the Crown, and thus the Crown has the right to own Native land. Native peoples are regarded as having an Aboriginal claim on land, but this claim is not equivalent to ownership. Aboriginal title relates to rights of occupation and use, not underlying title. Thus, all Aboriginal land rights are limited in Canada. Any land right can be contravened if the government deems such a move necessary for economic or other reasons. Regardless of the negotiations and payment of compensation that are now by convention considered to be necessary components of the process of extinguishing Aboriginal rights, the fact that extinguishment is possible, and that limits on alienability continue to be imposed on Native peoples, underscore the Crown’s preemptive rights that are founded in the Doctrine of Discovery. These rights have a long legal history in Canada, tracing back to the Royal Proclamation, which was regarded as the source of Aboriginal title until the Supreme Court

ruled in *Sparrow*, *Van der Peet*, and *Delgamuukw* that it was merely formal recognition of existing rights (Green 1989: 125-126, Asch 1997: 47, Miller 2006: 9, Thom).

The Royal Proclamation and *Johnson v. McIntosh* have had an indelible impact on Canadian common law as it applies to Aboriginal rights. The Doctrine of Discovery has provided a foundation on which all deliberations concerning Aboriginal title have proceeded. It has been suggested that s.35(1) recognizes the aspiration for Aboriginal self-government and thus requires that the courts revisit the legitimacy of Canadian sovereignty claims with respect to Aboriginal peoples – that Chief Justice Marshall's ruling in *McIntosh* should no longer provide a template for assertions of territorial sovereignty (Macklem 1997: 528). While this may be a defensible position, the Constitution itself complicates matters since s.25a of the *Charter of Rights and Freedoms* legitimizes the foundation of Marshall's opinion – the principle of limited Aboriginal title as expressed in the Royal Proclamation:

The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763....

As we have noted throughout this essay, the rights recognized by the Royal Proclamation are double-edged: the protections it provides in respect to use and occupation of land are countervailed by limits on alienability and the Crown's assertion of preemptive right. Title to land is, according to the Proclamation, an Aboriginal right that is inherently limited. It appears that the Doctrine of Discovery is not only well-established in common law, but has been entrenched in the Constitution as well. And while the Royal Proclamation may not be the source of Aboriginal rights in Canada, it has unmistakably served to define the outermost parameters of these rights – parameters that were established by Pope Alexander VI in 1493.

Although non-Aboriginals are largely unaware of the theological basis of Canadian sovereignty, it has been a significant issue among Aboriginal peoples. When the Royal Commission on Aboriginal Peoples released its five-volume report in 1996 (*The NationTalk Project 2007*, Hurley and Wherrett 2000),⁴ and recommended that Canadian governments commit themselves to dramatically recreating their relationship with Aboriginal peoples, it specifically targeted the Doctrine of Discovery:

The Commission recommends that

To begin the process the federal, provincial and territorial governments...commit themselves to building a renewed relationship based on the principles of mutual recognition, mutual respect, sharing and mutual responsibility...

Federal, provincial and territorial governments further the process of renewal by

- (a) acknowledging that concepts such as *terra nullius* and the doctrine of discovery are factually, legally and morally wrong;
- (b) declaring that such concepts no longer form part of law making or policy development by Canadian governments;
- (c) declaring that such concepts will not be the basis of arguments presented to the courts;
- (d) committing themselves to renewal of the federation through consensual means to overcome the historical legacy of these concepts, which are impediments to Aboriginal people assuming their rightful place in the Canadian federation....

(Indian and Northern Affairs Canada 1996)

It should not be surprising that among RCAP's key recommendations was also the following: "To begin the process, the federal, provincial and territorial governments,...and national Aboriginal organizations,... commit themselves to building a renewed relationship based on the principles of mutual recognition, mutual respect, sharing and mutual responsibility; these principles to form the ethical basis of relations between Aboriginal and non-Aboriginal societies in the future and to be enshrined in a new *Royal Proclamation* and its companion legislation" (Indian and Northern Affairs Canada 1996, my stress).

Postscript

The *Canadian Charter of Rights and Freedoms* opens with the following statement: "...Canada is founded upon principles that recognize the supremacy of God and the rule of law...."

Most constitutional law experts have agreed that the reference to God in the *Preamble* is purely symbolic, and that it does not conflict with the later clause protecting religious freedom (Barnett 2006). The *Preamble*, however, might have a more literal meaning than we conventionally assume. The inclusion of the *Royal Proclamation* in s.25 of the *Charter* constitutionally entrenches a principle of international law that was created by the Roman Catholic Church to limit the property rights

of Indigenous peoples. Furthermore, this principle impacts on the definition, and compromises the scope, of “inherent rights” referred to in s.35(1). The *Preamble*’s melding of secular and religious law might well be less than purely symbolic in the context of constitutional treatment of Aboriginal rights.

Notes

1. Washburn cites the *Summa Theologica*, Part II, Question 40.1, where Augustine defends “just war” in situations where “a nation or state has to be punished for refusing to make amends for the wrongs inflicted by its subjects....”
2. Nicholas authorized Portugal to “...invade, search out, capture, vanquish, and subdue all Saracens and pagans whatsoever, and other enemies of Christ wheresoever placed,...to reduce their persons to perpetual slavery, and to apply and appropriate to himself and his successors the kingdoms, dukedoms, counties, principalities, dominions, possessions, and goods....”
3. While the Catholic Church attempted on occasion to speak officially on behalf of the rights of Indigenous peoples, no pope addressed the fundamental issue of territorial sovereignty which was integral to European claims throughout the colonial period. Thus Paul II, in his bull, *Sublimis deus sic dilexit* (1537), declared that Native Americans should not be treated like “dumb brutes created for our service ...[but] as true men...capable of understanding the Catholic faith... [Moreover] the said Indians and other peoples who may be discovered by Christians, are by no means to be deprived of their liberty or the possession of their property, even though they may be outside the faith of Jesus Christ...nor should they be in any way enslaved.” Similarly, Urban VIII declared that anyone who denied Indigenous peoples the right to freely occupy their land would face excommunication.
4. The Commission was created under Prime Minister Brian Mulroney, and announced by Chief Justice Brian Dickson, in 1991. The Prime Minister’s hope was that it would help to resolve all outstanding land claims by the year 2000. The Commission’s report was submitted to the government late in 1996. It encompassed five volumes and made over 400 recommendations aimed at improving the relationship between Aboriginal peoples and other Canadians.

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Doctrine of Discovery and Papal Bulls

YOUTUBE VIDEOS

Water Echo Hawk Presentation - International Seminar on Doctrine of Discovery

Discussed: Johnson v. M'Intosh and the Doctrine of Discovery in the United States: Impacts upon Federal Indian Law; and the Future of the Doctrine under the United Nations Declaration on the Rights of Indigenous Peoples

Steven Newcomb Presentation - International Seminar on Doctrine of Discovery

Discussed: Our original free and independent existence as Nations and Peoples

Robert Miller Presentation - International Seminar on Doctrine of Discovery

Discussed: The International Law Application of the Doctrine of Discovery

Louise Mandell Presentation - International Seminar on Doctrine of Discovery

Discussed: The Tsiloqot'in Case and the Doctrine of Discovery

Jeannette Armstrong Presentation - International Seminar on Doctrine of Discovery

Discussed: The Subjugation of Indigenous Governance

Tonya Gonnella Frichner Presentation - International Seminar on Doctrine of Discovery

Discussed: The Impact on Indigenous Peoples of North America from the International Legal Construct known as the Doctrine of Discovery and consequently the leadership of the United Nations Declaration on the Rights of Indigenous Peoples

Oren Lyons Presentation - International Seminar on Doctrine of Discovery

Discussed: Challenges we face day as Indigenous Nations and challenges we face today as the human species.

Stephen Newcomb Delivers Keynote on Original Nations and Peoples at 2015 Parliament

D2D Panel 1: Doctrine of Christian Discovery and its Impact with Steven Newcomb and Robert Miller

D2D Panel 3: UNDRIP in the US with Dalee Sambo Dorrough, Peter d'Errico, and John Kane

D2D Panel 6: Unmasking Domination Code Q&A with Sheldon P. Wolfchild and Steven Newcomb

Dr. Ron Ignace Presentation - International Seminar on Doctrine of Discovery

Discussed: A policy of racial subjugation and genocide

Professor Robert Miller: The Doctrine of Discovery and Manifest Destiny

Dismantling the Doctrine of Discovery - Professor Robert J. Miller

Steven Newcomb at Indigenous Peoples Forum on the Doctrine of Discovery, Arizona

Steven Newcomb: Pagans in the Promised Land - Part 1

Steven Newcomb: Pagans in the Promised Land - Part 2

Steven Newcomb: The Language of Domination in the Vatican's Papal Bulls

Chief Oren Lyons on Doctrine of Discovery

Christian Doctrine of Discovery: Steve Newcomb, Part One

Christian Doctrine of Discovery: Steve Newcomb, Part Two

Ethnostress: The Disruption of the Aboriginal Spirit

**Tribal Sovereignty Associates
August, 1992**

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Ethnostress: The Disruption of the Aboriginal Spirit

Introduction

In the early 1980s, the key discussions being held between representatives of various cultural groups whether they were Black, Puerto Rican, Chicano, or North American Indian, concentrated on what was happening within their respective communities. People of all races and colours were exploring the causes underlying the dysfunctional social behaviour, the reasons behind the poor economic situation, and the reality of the political battles being waged inside of their communities. Community leaders of all nations were attempting to understand the "confusion" inside of their world.

We felt that if could begin to look at our world, and to try to figure it out, we could get a handle on what was troubling our communities.

So it was during this time that we coined the term known as "Ethnostress". Ethnostress was to become the label for the confusion and disruption that people were experiencing inside of their world. For the purpose of definition, Ethnostress, comes from two words; "ethnicity" which refers to the roots of our Aboriginal identity and "stress" pertaining to the impact that the reality of our experience has on the psycho-social development of the Aboriginal person. In short, living within Native communities, is a very stressful experience. But, to simply state this and not provide the bigger picture would not do the concept justice, we need to be able to relate the stress to the disruption of the Aboriginal identity, and further, to understand the impact of this disruption on the individual and community itself.

Prior to contact, it is known that Aboriginal societies had their own unique form of social organization, spiritual practice, and system of government. Aboriginal peoples developed their social systems so they could function in a manner that supported their beliefs in a Creator and their understanding of "natural law". Many of these beliefs may not be general knowledge today, but Aboriginal people have not forgotten. Beliefs about kinship ties that encompassed a wide range of both human and spiritual relationships was the central theme carried in the minds and hearts of the people. This "holistic" and universal system of kinship made it possible for Aboriginal people to be truly respectful and humanistic in their daily interactions with people, and in their co-existence, and interdependence with the environment in which they lived.

At the time of contact, Aboriginal peoples were subjected to the first forms of physical, psychological, emotional and spiritual abuse that came with the force of "colonialism". This was a time when one race of people began exercising power and control over Aboriginal people by firstly, their "right of discovery", and later, by claim over a dependent area and its inhabitants by "right of conquest". As the colonies grew, the human spirit of the Aboriginal people became overwhelmed by the oppressive forces, stemming from the "racism" that they experienced. Rightly or wrongly, we know today that it was the belief in the superiority of one race of people over another that led the

Europeans to unjustly and cruelly exercise power and establish authority over Aboriginal people and the environment in which they lived.

The Aboriginal view of co-existence and universal kinship allowed the Europeans free access to the resources of the new world. The establishment of the fur trade brought many burdens that affected the minds and the bodies of Aboriginal people. Their human spirits became overwhelmed by the physical and emotional abuse resulting from the epidemic numbers of deaths caused by 11 major diseases. Psychological, physical and sexual abuse came with the influx of large quantities of "the mind-changer" known as alcohol. Emotional, spiritual and psychological abuse came when Aboriginal spiritual practices changed under the stress created by organized and institutionalized religion. "Sexism" became prevalent when patriarchal values and male-dominant systems resulted in the subservience of women and children that worked to disrupt matrilineal family systems. Land was a commodity, and so were the creatures who lived on it. The continuing exploitation of the fur trade resulted in further burdens and "economic stress" as people became physically deprived of food and economically dependent upon their oppressors.

Later historical changes in the form of Indian Act legislation added new "educational stresses" when Aboriginal people had to enfranchise (give up being an Indian) in order to become a doctor, lawyer or some other professional. The implementation of a residential boarding school system created further educational stresses and added new psychological, emotional, physical and spiritual stresses stemming from the separation of children from the family and enforced changes in family roles and structure. De-humanized and demoralized, large numbers of Aboriginal people in an attempt to ease their suffering accepted and adopted the views, ideas, values, and practices of the culture who held power and control over their lives. Our ancestors who were the direct recipients of this abuse changed their beliefs as a way of hopefully improving the quality of their life and the lives of their children.

The Aboriginal concept of a universal system of kinship suffered and broke down under the weight of the many burdens affecting the bodies and the minds of the people. The concept of kinship amongst people which included an extended kinship with all of Creation and the many life forms within it no longer made sense under the influence and weight of the oppressive forces that worked to disrupt family and contributed to a sense of powerlessness and hopelessness. The cycle of family violence we know today stems from an anger and fear that can be traced to the disruption of the Aboriginal spirit.

Historical analysis has shown that family dysfunction and family violence has existed for many generations. A loss of faith and belief in a unique Aboriginal view of family and kinship affects not only how we relate to one another as a people, but ultimately how we relate to all forms of life on this planet and beyond.

Over the years, we have observed the impact that this early history had on the identity of Aboriginal people. We know that our identity is our sense of self. A strong sense of self is shaped in the early years of our life when we can be loved as a "precious child" who has purpose, who is acceptable, who belongs and has a place, whose very existence is

beneficial and who has a sense of safety and security in the world because he or she also lives in a world that has sufficient food, water and shelter. These are the basic needs which are required by all human beings and which act as the foundation for a strong sense of self. A strong sense of self is further supported and enhanced if the "precious child" receives positive affirmation of his/her sex and identity as an Aboriginal person.

We receive our beliefs about family life and our child-rearing practices from our family of origin. Our family of origin in turn received their beliefs and concept of family from the generation previous to them and so on. Our beliefs are shaped by our experience and these experiences will determine how various family members behave and relate to one another. If our family life and beliefs support a healthy and nurturing family environment, then the chances that we are able to meet all of our basic human needs is quite good. The level at which we are able to meet and fulfill our basic needs is what determines our sense of self; the more needs met, the stronger our sense of self. A strong sense of self in turn greatly affects the level of self-confidence and self-esteem we possess.

On the other hand, if our family experience and beliefs about family stem from a history of family violence and confusion of identity, then the child's loss of faith and belief in self and about family in general is disrupted. The loss of this sense of self and confusion in identity is reinforced and held in place by the emotional pain and confusion in belief that we have inherited from our family of origin (early childhood stress) and from generations past.

Failing to evaluate our beliefs and leaving our emotional pain unresolved allows us to carry these beliefs and pain into adulthood where we tend to act them out on our own children. Thus, the cycle of abuse and family violence is maintained.

The disruption of our cultural beliefs has been occurring since the time of contact with non-Indigenous people for about 500 years. Over the years since that first meeting in the early 1980s, we have come to recognize that specific "hurting" behaviours associated with the feelings of fear and anger within our communities are examples that Aboriginal people are suffering from an "Ethnostress"; a loss and confusion of identity. When the joyful identity of a "precious child" is not affirmed, the person suffers from both mental confusion as well as physical and emotional pain—a state of being that contributes to a person's sense of powerlessness and hopelessness.

CONDITIONS THAT CREATE ETHNOSTRESS

THE DISRUPTION OF THE CULTURAL BELIEFS OR JOYFUL IDENTITY OF A PEOPLE

THE RESULT OF OPPRESSIVE CONDITIONS FORCED UPON A PEOPLE IN THEIR

OWN ENVIRONMENT

**THE NEGATIVE EXPERIENCE THEY FEEL
WHEN INTERACTING WITH MEMBERS OF EITHER
THEIR OWN OR OTHER CULTURAL GROUPS**

**THE FEELINGS OF POWERLESSNESS AND HOPELESSNESS
THAT DISRUPTS OUR ABILITY TO ACHIEVE
OUR BASIC NEEDS**

Ethnostress and the Conditions Created within the Aboriginal Community

Once the four conditions that characterize the "Ethnostress" within Aboriginal communities become deeply internalized within the community's psychological make-up, the effects of Ethnostress often remain within the community long after the oppressive forces are removed. It is in this way that the force of the oppression continues as people now work to oppress each other.

We have already defined the first condition as being the disruption of the cultural beliefs that support a joyful identity. The beliefs of which we speak are the ones that help us to meet our human needs. These beliefs, which help us to know who we are and give us purpose, once disrupted, instill a deep sense of loss that is accompanied by the feelings of anger, fear, hurt, loneliness and shame. The stress that we feel then as Aboriginal people comes from our inability to recognize these feelings and to discharge them in a safe place where no one is hurt. Thus, we have high levels of family dysfunction, violence and abuse occurring within our world.

Ethnostress results when oppressive conditions are forced upon a people in their own environment. Here again, we have already elaborated on the history of our contact with non-Aboriginal people. Many of the historical changes in Aboriginal culture were forced upon the people. Many Aboriginal people accepted these changes without the freedom of choice. For example, in the case of land transactions, many Aboriginal nations were the victims of fraud and deceit. However, probably the best example of what we mean by oppressive conditions being forced upon a people is the implementation of the Indian Act, that spawned the creation of the reservation system and worked to control every aspect of "Indian" life.

Thirdly, Ethnostress occurs under the condition of negative experience. It is the negative feelings we experience when we are interacting with members of either our own or some other cultural group. We call this condition, "internalized racism", and it is one form of the many oppressions we have internalized over the generations. Essentially what this means is that we mimic our oppressors. For example, when we have been hurt by the stereotypical messages of being called "dumb and drunken Indians", we often retaliate in

kind and send out similar messages out of our fear and anger, sometimes hurting our own but usually aimed at hurting people of other races. Another example of negative experience occurs when we hurt our own people by labeling them as being "pagans" or "witches" for practicing their traditional ways. This occurs when we internalize the views held by certain religious authorities.

Lastly, Ethnostress is at its highest when the feelings of powerlessness and hopelessness pervades our community existence. Often, it is these feelings that are working to disrupt our ability to achieve our basic human needs. Most markedly, these are the feelings that are often experienced by those community members who contemplate suicide, and who take the chance of attempting suicide. When Ethnostress occurs within communities, there is a general condition of seemingly endless crisis. Under crisis conditions, community members are held in a constant state of reaction, constantly reacting to threats of impending crisis and feeling powerless to do anything about it.

Although we have used some very specific examples of Ethnostress in the Aboriginal world, it should be noted that many other cultures throughout the world are experiencing their own unique form of Ethnostress under very similar conditions. The presence of Ethnostress and its attendant behaviour patterns is perhaps the one thing that Aboriginal people share with the other cultures of the world.

THE EFFECTS OF ETHNOSTRESS IN INDIGENOUS COMMUNITIES

NEEDS ARE FROZEN

LOSS OF FAITH AND BELIEF

THE HOSTAGE SYNDROME

THE NARROWING OF CULTURE

CULTURE UNDER GLASS

TRIBAL ISOLATION

INTERNALIZED STEREOTYPES

ADOPTING OF "SURVIVALIST" BEHAVIOURS

The Effects of Ethnostress: Creation of Distress Patterns

In examining the impact that the disruption of identity and confusion of belief has on the family and individual, we observed that the Ethnostress experienced by Aboriginal people promoted very specific behaviour patterns. We would now like to share some examples of these behaviour patterns to help you to understand more fully the impact of Ethnostress on the Aboriginal family and individual.

The first is a pattern of trying to fulfill "**FROZEN NEEDS**". When we began this paper, we mentioned that human beings require the fulfillment of certain basic needs. To reiterate, these needs are:

- * to be seen
- * to be heard
- * to know that we are accepted and believed
- * to know that others have faith and trust in us
- * to know our place and purpose in the world
- * to feel secure, safe and at peace with one's self
- * to know that our existence is beneficial to the important people in our life
- * to love and be loved

These are the basic needs that we often neglect both within ourselves and when we are interacting with other people. Why do we neglect them? Because we never learn about them soon enough. These needs have been expressed by many psychologists and psychotherapists, but we often do not know about them until we take a course in psychology or find it necessary to see a counsellor or therapist. And, by the time we do, we are already set in our ways and do not really appreciate the full impact that these needs have on our human growth and spiritual development. In fact, Abraham Maslow was the first such social scientist to express these needs as a hierarchy of human needs theorizing that meeting these needs step by step would move us closer to self-actualization—our full human potential.

Over the years of our counselling practice, we have found that most people neglect these needs despite the fact that they are central to the well-being and happiness of any human being. As previously stated, we neglect them because we don't know about them. People in a state of emotional despair often say, "I don't know what I need." – never fully realizing the depth and truth to their statement.

For the Aboriginal person who has had a history of negative experiences and negative messages about who he or she is as a person is at an even greater disadvantage. The many negative messages we have internalized and come to believe about ourselves firstly, as human beings, and secondly, as Aboriginal people, have interfered with our ability to fulfill our most basic and essential needs. In our community history and perhaps most importantly, in our family history, we have experienced much pain and hurt. It is this pain and hurt that interferes with our ability to feel good about ourselves and others, and that prevents us from being totally open and honest in relationships.

Because these human needs have not been met for many people, both Aboriginal and non-Aboriginal, we say that the needs have become “frozen” usually at a time when the “precious child” needs to be affirmed for who he or she is. This period of time differs for every human being, but generally, these needs should be met by the time the child reaches the age of 7 years.

Further, because much of our Aboriginal experience and family dysfunction has been occurring for generations, we often see people behaving in ways as an attempt to fulfill their basic needs. For example, a young girl who is very promiscuous would be trying to fulfill her "need to love and be loved", particularly if her parents did not provide the appropriate physical, psychological, emotional and spiritual nurturing. Just think about the many times, you heard the word "no" without explanation when you were growing up. This word can be devastating to a child who is attempting to experience and explore the world. It is even more devastating if the "no" was accompanied by a slap, hit or punch. Sometimes the attempt to fulfill an unfulfilled need can be advantageous, as many people in fulfilling their "need to be heard" have become excellent public speakers. But, the main idea behind all of this discussion centers on the idea that our behaviours are learned in an attempt to fulfill unmet needs.

The next behaviour that we have observed operating in the Aboriginal world is the **"LOSS OF FAITH AND BELIEF"**. As previously stated, we lose faith and belief in our cultural beliefs and practices first, and then later still, under the influence of negative experience, we lose faith and belief in ourselves, in our family, and in our community. After a time, we don't know what to believe in and we become lost and confused leaving us vulnerable to anyone or any "thing" that promises to help us.

The third thing that we have seen over the years, and of which we still see remnants today is the behaviour pattern known as **"THE HOSTAGE SYNDROME"**. The hostage syndrome results when a person becomes confused and begins to adapt to the loss of freedom by accepting and supporting the beliefs of his or her captor. The hostage syndrome was more prevalent during the period of time when permits were required for an Indian to leave his reserve, and when children were captured and returned to the residential boarding school whenever they ran away. However, the term is useful because it describes the psychological effects of captivity on an individual. We still see remnants of the hostage syndrome taking effect when people express the belief that all ceremonies must be hidden and that sacred objects, like the eagle feather, must never appear in public places. Times are changing, but there are still a great number of Aboriginal people who adhere to these beliefs that stem from a time when one could not leave the reserve and when all ceremonial items were confiscated and branded as articles of "witchcraft".

The fourth behaviour pattern that we see at work is **"THE NARROWING OF CULTURE"**. During the course of their historical experience, many Aboriginal people lost control of their culture and consequently, their lives. The narrowing of culture began with the loss of mobility experienced by the shrinkage of the Aboriginal homelands. The cultural experience of Aboriginal people became defined by the new and limited environment of the reservation system. Cultural lifestyles became limited and practices were dictated by various religious and governmental controls exercised by those who

assumed "authority" over the lives of the people, namely, the Indian agents, missionaries and bureaucrats. Many Aboriginal people accepted this newly defined and limited version of culture, and today we can still find people who have never left the reserve, and who adhere so strongly to the beliefs of the majority culture that they reject anything that has to do with "traditional" ways. The narrowing of culture sets into motion a myriad of hurting behaviours. Many of us still remember being the victims of ridicule, humiliation, attack and isolation because we came from or didn't come from traditional families, because we did or did not excel in school, because we did or did not talk in a particular way, because we liked or disliked a certain kind of music, and in many other ways. We may have been told that we were not legitimately Native or Native enough. We sometimes hear this attack in the phrase, "You're trying to be White." All of these behaviours are served up and accepted by people who are caught up in a narrow view of culture.

Working closely in hand with the narrowing of culture is the fifth behaviour pattern that we call "**CULTURE UNDER GLASS**". In this instance, it is not just the human needs that become frozen, but the entire Aboriginal culture. The concept of "being Indian and possessing an unique culture" takes on a near exclusive identification with a lifestyle that existed before the loss of mobility (somewhere between 100 or 300 years ago). This view of Aboriginal culture is reinforced by the history books that talk about Aboriginal people and cultures in the past tense, place anthropological emphasis on what used to be, and denote the recent trend in the courts where the opposition to Native rights argues that changed lifestyle means a particular people no longer exists, and therefore, have no claim to land or other rights.

The most damaging aspect of "culture under glass" occurs when a culture becomes defined almost exclusively in material terms. In the 1980s, various Indian education programs examined culture through history, through beadwork and crafts, with some song and dance, but mostly in terms that declared that there was once a certain physical existence that is no more. As a result, a number of contemporary Native children had their identity undermined.

Today, this too is changing, as the more progressive Indian education programs and schools are offering language immersion and designing curriculum that expresses the full scope of cultural belief and practice. However, you can still hear the arguments that a particular ceremony must be done in this way and only in this way; that the "real" traditional person must look, dress and live in a way prescribed by the past, and so on. These arguments can get us locked into highly emotional feelings and beliefs that argue about "going back" instead of recognizing the living culture that we carry within us. If we can see culture as a living dynamic, then we can see that we can carry our language, traditions and beliefs into the future.

"TRIBAL ISOLATION" is another behaviour pattern. This particular pattern has to do with the development of defense patterns that lead us to withdraw and to isolate ourselves from other Aboriginal people. Our childhood experiences may have created high levels of fear and mistrust within us especially if we had been hurt deeply by our own people. We may sometimes feel ashamed of ourselves and of other Aboriginal people. The isolation

can become so severe that we may feel safer with and more trustful of non-Aboriginal people. Most of the time however, we feel the isolation as a barrier that keeps us separate from other Aboriginal communities despite the fact that we may have the same tribal roots.

Another behaviour pattern operating within the Aboriginal world is the one where we act out "**INTERNALIZED STEREOTYPES**". The stereotypical images of Aboriginal people are directly connected to the imagery projected by the Hollywood film industry. The result of these stereotypes has led to the creation of a confusion on what a Native male and Native female should be in the 20th century. The image of the male "warrior" and "chief" and female "Indian princess" and "beast of burden" have created images in the minds of both Aboriginal and non-Aboriginal people that are not a true representation of the roles defined by our culture and traditions.

The impact of these images is felt when Aboriginal people become ashamed and angry at themselves for having skin that is too dark, or not dark enough, dress and talk that is different, and behaviour that is stereotyped as being "backwards or uncivilized" and at times, even "violent".

"INTERNALIZED FACTIONALISM" is another behaviour pattern that is perhaps the most damaging when Aboriginal people are attempting to unite their people and move towards a common goal. The factionalism is acted out in political meetings, at social functions, and amongst families. When these behaviour patterns overtake us, we can easily attack, criticize, or have unrealistic expectations of anyone who has the courage to step forward and undertake leadership responsibilities within the community. When we continue to act in ways that emphasize our differences, we fail to provide the support that is absolutely necessary for effective leadership to emerge and for group strength to grow. Often, effective community leaders and organizers become "burnt-out" from their attempts to work in a community where people are very negative and highly critical of leadership.

The final and resulting pattern that usually emerges as a response to all the confusion, pain, and divisions experienced within Aboriginal communities is what we call "**SURVIVALIST BEHAVIOUR**". The "survivalist" develops ways to cope with all of the oppressive situations he or she experiences in life. To survive, we learn to "shut down" our feelings so that we can silently withstand humiliation and criticism. We do so in an attempt to prevent ourselves from once again being hurt, rejected, or trapped by someone else. We learn not to show or to share our feelings with others, and in the process, we learn how to isolate ourselves to the point where we may not understand or be able to feel our own emotions. Survivalist behaviours can be scary. Especially if our attempt to protect ourselves causes us to fail in comprehending the feelings and emotions of those individuals closest to us, namely our spouses and our children.

The use of alcohol, drugs and the development of other addictions such as gambling and becoming a "workaholic" are all ways of coping with our internal despair and unhappiness. Compulsive and harmful sexual behaviours, flashy consumerism, irrational use of money, energy-wasting behaviours and time-consuming games can also become

part of a person's method of surviving.

All of these behaviour patterns are patterns of "distress" and as such they are the most obvious examples that Aboriginal communities and the individuals who comprise them are suffering from "Ethnostress".

When we developed the material on Ethnostress, we knew that if we were to effect positive social change within Aboriginal communities, we would need to direct our attention to helping ourselves and others heal the pain of our unmet needs and clear the confusion from our minds. As workers for the community, we are often faced with the task of managing people who are filled with painful memories connected to a broad range of personal issues stemming from their unmet needs. These issues often surface as various dysfunctional behaviours, as "distress patterns" that work to disrupt community organizations and our interpersonal relationships with family and others.

Understanding the concept of Ethnostress provides one with a broader understanding and vision of the work required in organizational management and community development programs. Thus, when problems surface within an organization, community or family, we can stop judging and blaming and look objectively at the roots of the problem. What distress patterns are at work, and what might be causing this behaviour? What needs am I or is this person attempting to fulfill? And, most importantly, how can I help them and myself break free of the distress patterns that are controlling my life?

LANGUAGE REVITALIZATION RESOURCES

Youtube Language Resources

Google Search

“First Speakers: Restoring the Ojibwe Language”

Youtube Search

“First Speakers: Language & Culture Loss”

“First Speakers: Language Revitalization”

“First Speakers: Embarrassing Moment Learning Ojibwe”

“First Speakers: Strength Through Humility”

“First Speakers: Louise Erdrich on Learning Ojibwe”

“First Speakers: Ojibwe in the Home”

“First Speakers: Ponemah Roundhouse”

“First Speakers: Restoring the Ojibwe Language Preview”

“First Speakers: Anna’s Winter Story”

“First Speakers: Lisa LaRonge Says Just Do It”

“First Speakers: Teaching at the Niigaane Immersion School”

“First Speakers: A Feather Teaching”

“First Speakers: Ojibwe Rapper Prayers in a Song”

“The Fire Inside Turtle Lodge”

“Anton Treuer Keeping the Language Alive”

“Waasa Inabidaa: We Look in All Directions”

Youtube Search

“Ojibwe Basics 1 Niigaanmedia”

“Ojibwemotaadidaa”

“Ojibway Language Syllabics Ancestral App Ogoki”

“Our Strength As Anishinaabe”

“Ojibwe Immersion Language Camp”

“Decolonizing Language Revitalization - Simon Fraser University”

“Indigenous Language Revitalization: How Owning a Bug Changed the World”

“Our 7 Ojibway Teachings SagkeengCFS” (Note: This is Manitoba dialect)

“Tim Speaks Ojibwe/Tim Ojibwemo”

“Language Apprentice: Bringing Back to the Ho-Chunk Language”

“Living Language: Menominee Language Revitalization”

“Wenji-Apiitendaagwak Ojibwemowin”

“Melissa and Katie talk about Hugh Jackman in Ojibwe”

Ojibwe Digital Archive

Search: “ojibwedigitalarchive”

Click Top Option

Click “Videos” between “Home” and “Playlists”

Scroll to the bottom, click “Load More” until complete

Ask an Elder

Search: “jason yup”

Click Top Option

Click “Videos” between “Home” and “Playlists”

Scroll to the bottom, click “Load More” until complete

Free Ojibwe Instruction (Sault Ste. Marie Dialect)

Search: “Let’s Start Ojibwe Sault College Lesson”

Click the top option choice that says “Let’s Start Ojibwe (language series)”

Waadookodaading Immersion: <https://vimeo.com/144622523>

Language is our Life Line - Joye Walkus

Language Web Resources

(If URLs are expired, please Google Search the name of the website)

The Ojibwe People's Dictionary (free web-based talking Ojibwe dictionary)

<http://ojibwe.lib.umn.edu/>

Freelang (Free Online Ojibwe Word List)

<http://www.freelang.net/dictionary/ojibwe.php>

Wiigwaas Press

<http://birchbarkbooks.com/wiigwaas-press>

Patricia Ningewance Publications

www.patningewance.ca

Grassroots Indigenous Multimedia

www.gim-ojibwe.com

Anishinaabemowin Teg

<http://www.anishinaabemowin-teg.org/>

NIEA

<http://www.niea.org>

Birchbark Books

<http://birchbarkbooks.com>

Wollotuka Institute

<http://www.newcastle.edu.au/about-uon/our-university/indigenous-collaboration/the-wollotuka-institute>

Anishinaabemowin Language Geek

<http://www.languagegeek.com/algon/ojibway/anishinaabemowin.html>

Ojibwe Cultural Foundation
<http://www.ojibweculture.ca>

Our Mother Tongues
<http://www.ourmothertongues.org/language/Ojibwe/9>

First Peoples Cultural Council
<http://www.fpcc.ca>
Language Section: <http://www.fpcc.ca/language>

Language Education Programs (Ojibwe and Others)

Seven Generations Education Institute's Anishinaabemowin Immersion Program
(in partnership with Sault College)
<http://www.7generations.org/>

Waadookodaading Ojibwe Language Immersion School
www.lco-nsn.gov/waadookodaading.php

The Piegan Institute
<http://www.pieganinstitute.org>

Bemidji State University
www.bemidjistate.edu/academics/departments/languages_ethnic_studies/academic_programs/ojibwe

UMD Center for Indigenous Knowledge and Language Revitalization
<http://cehsp.d.umn.edu/departments=centers/indigenous-ed>

Indigenous Language Institute
<http://www.ilinative.org>

Centre for Applied Linguistics
<http://www.cal.org>

CARLA: Centre for Advanced Research on Language Acquisition
<http://www.carla.umn.edu>

CARLA Immersion Education and Research
<http://www.carla.umn.edu/immersion/index.html>

Niigaane Ojibwe Immersion Program
<http://www.bugonaygeshig.org/niigaane>

College of St. Scholastica Ojibwe Language Program
<http://www.css.edu/undergraduate/undergraduate-traditional/academics/education/ojibwe-language-and-culture-education.html>

Fond du Lac Tribal and Community College
<http://fdltcc.edu/campus-life/ojibwemowining-resource-center/>

University of Minnesota-Twin Cities Ojibwe Language Program
<http://amin.umn.edu/languageprog/>

Aha Punana Leo (Hawaii)
<http://www.ahapunanaleo.org>

Kualono (Hawaii)
<http://www.olelo.hawaii.edu>

N'kwusm Salish
<http://www.salishworld.com>

University of Minnesota-Duluth Ojibwe Language Program
Enweyang Ojibwe Language Nest:
<http://www.d.umn.edu/unirel/homepage/10/languagenest.html>

Wicoie Nandagikendan Program
<http://wicoienandagikendan.org/about-wicoie-nandagikendan/wicoie-nandagikendan-staff/>

University of Wisconsin-Madison Linguistics Program
<http://vanhise.lss.wisc.edu/ling>

University of Wisconsin-Eau Claire Ojibwe Language Program
<http://www.uwec.edu/flang/academics/ojibwe/index.htm>

Lakehead University Native Language Instructors Program
<https://www.lakeheadu.ca/faculty-and-staff/departments/services/ai>

University of Michigan-Ann Arbor Ojibwe Language Program
<http://www.umich.edu/~ojibwe/>

Little River Band of Ottawa Anishinaabemowin Program
<http://www.anishinaabemdaa.com>

Ojibwe Language Books

“Ojibwemowin I” - Tom and Judith Vollum (CD and workbook)

“Ojibwemowin II” - Tom and Judith Vollum (CD and workbook)

“A Concise Dictionary of Minnesota Ojibwe” - Nichols and Nyholm

“Daga Anishinaabemodaa” - Pebaamibines Jones (with CD)

“Ezhichigeyang” - Treuer

“Aaniin Ekidong: Ojibway Vocabulary Project” - Treuer

Free Here: <http://minnesotahumanities.org/resources/BOOK%20Contents.pdf>

“Talking Gookum’s Language: Learning Ojibwe” - Ningewance (CD and workbook)

“Indians Don’t Cry: Gaawiin Mawisiiwag Anishinaabeg” - Kenny

“Anishinaube Tresaurus” - Basil Johnston

“Bawaajimo: A Dialect of Dreams in Anishinaabe Language and Literature” - Noodin

“You’re So Fat: Exploring Ojibwe Discourse” - Spielmann

“Dibaajimowinan: Anishinaabe Stories of Culture and Respect” - Jones (with CD)

Eastern Ojibwa-Chippwea-Ottawa Dictionary” - Rhodes

Word Racing: Games to Play at Language Camps” - Ningewance

“Pocket Ojibwe” - Ningewance

“Awesiinyensag” - Wiigwaas Press

“Mino-Doodaading” - Wiigwaas Press

“Naadamaading” - Wiigwaas Press

“Wijikiiwending” - Wiigwaas Press

“The Dog’s Children: Anishinaabe Texts Told by Angeline Williams” by Leonard Bloomfield

“Portage Lake: Memories of an Ojibwe Children” - Maude Kegg

“Everyday Ojibwe - Some Common Expressions & Commands” - Gresczyk and Sayers (w/ CD)

“Let’s Speak Ojibwe!” - Gresczyk and Sayers (w/ CD)

“Ojibwe Word Lists: A Few Questions and Lots and Answers” - Gresczyk and Sayers (w/ CD)

“Ojibwe Medical Interpreter’s Handbook” - Aboriginal Languages of Manitoba

“Living our Language: Ojibwe Tales and Oral Histories” - Treuer

“Survival Ojibwe” - Ningewance

“Memengwesi” - Preston

“Dictionary of the Ojibway Language” - Baraga

“Anishinaabemodaa: Becoming a Successful Ojibwe Eavesdropper” - Ningewance (w/ CD)

“Ambe, Ojibwemodaa Endaayang: Come On, Let’s Talk Ojibwe at Home” - Clark and Gresczyk

“We’re in Ojibwe Country” - Clark and Gresczyk

“Our Ojibwe Grammar Volume 1” - Gresczyk

“Ojibwe from the Boundary Waters: Giwii-Nitaa-Anishinaabem Ina?” - Geysick and Gresczyk
(w/ CD)

“Loosii Eta Izhinikaanizhiyok: Just Call Me Lucille” - SayItFirst

“Ozowi Dibaajimowinan: A Tale of a Tail” - SayITFirst

“Gaaziwab Gaye Unaabiwin: Hide and Peek” - SayITFirst

“Onzaam Gigizhiwe: You Are Too Loud” - SayITFirst

“I Will Remember: Inga-Minjimendam” - Nelson

“Waabishkiziibiing, Anwaatiningaming: White Water, Still Water” - SayITFirst

“Nursery Rhymes for Anishinaabe Children and Their Families” - Gresczyk and Gresczyk

“Memegwaan Wii-Wiidookaage Iskigamizigewin” - Sather (w/ CD)

“Miinigowiziwin: The Gift” - SayITFirst

“Aaniin Da-Ge-Izhichigeyaan noongom Gaa-Giizhigak: What Can I Do Today?” - SayITFirst

“Nishnaabemwin Reference Grammar” - Valentine

“Traveling with Ojibwe” - Clark and Gresczyk

“Gdi-Nwenina: Our Sound, Our Voice” - Shirley Ida Williams

“Ahaw Anishinaabem” - Monague

“Pocket Ojibwe for Kids and Parents” - Greyeyes and Linklater

“Weweni: poems in Anishinaabemowin and English” - Noodin

“Introductory Ojibwe: Parts One and Two in Anishinaabemowin (Western Ojibwe)
NLIP, Lakehead University

“Foundations of Nishnaabemowin: Stepping Stones to Conversational Fluency in Ojibwe”
Cordiere, Dickson, and Osawamick (w/ CD)

“Ojibwewi-Ikidowinan: An Ojibwe Word Resource Book” - John Nichols and Earl Nyholm

“Kwayachiiwin Education Resource Centre: Materials Catalogue”

Language Journal (In Both english and Ojibwe with Audio - FREE Back Issues)

Oshkaabewis Native Journal (with PDFs and accompanying MP3 files)
<http://www.bemidjistate.edu/airc/journal/history-and-back-issues/>

Language Revitalization Books

“Bringing Our Languages Home: Language Revitalization for Families” - Hinton

“How to Keep Your Language Alive” - Hinton

“Nim-bii-nini Ojibwe Language Revitalization Strategy: Families Learning Our Language at Home” - Abraham

“ThinkNDN: Languages Are Beyond Price” - Johnston

“Awakening our Languages ILI Handbook Series: Handbooks 1-9” - Indigenous Language Institute

“The Green Book of Language Revitalization in Practice” - Hinton

Audio Resources

“Ojibwe Basic: Learn to Speak and Understand Ojibwe” Pimsleur Language Programs
(CD Library)

“Let’s Sing Children Songs in Ojibwe: Nagamodaa Ojibwemong Abinoojiinh-Nagamonan”
-Gresczyk (CD)

“Language and Meaning: An Ojibwe Story with David Treuer” (Episode and Unedited Versions)
<http://www.onbeing.org/program/language-and-meaning-ojibwe-story/118>

Cell Phone Apps

Byki: http://anishinaabemodaa.com/data/upfiles/media/BYKI%20App%20Instructions_2.pdf

Ogoki Learning: www.ogokilearning.com/ojibway/

Software

“Ojibwemodaa” by Grassroots Indigenous Media

“Anishinaabemowin: Western ojibwe Dictionary” - Ningewance and Valentine

DVDs

“Waasa Inaabidaa: Ojibwemowin” - PBS Documentary Series

“Aaniin Zhigaag Wenji-Maazhimaagozid: Why the Skunk Stinks” - Roulette

“Aaniin Wneji-Bepeshizid Zheshegwaabikoons: How the Chipmunk Got His Stripes”
- Roulette

“Aandi Anishinaabe Gaa-Ondinang Ishkode: How the Anishinaabe Got Fire” - Roulette

“Ojibwemo: He Who Speaks: Learning to Speak Ojibwe (Lessons 1-20)” - Seven Generations
Education Institute

Ojibwe Cultural Revitalization Books

“Ojibwe Waasa Inaabidaa: We Look in All Directions” - Peacock

“Ojibwe in Minnesota” - Treuer

“Ojibwe Sky Star Map and Constellation Guidebook: An Introduction to Ojibwe Star
Knowledge” - Lee and Wilson

“The Four Hills of Life” - Thomas Peacock

“The Good Path: Ojibwe Learning and Activity Book” - Peacock

“The Mishomis Book: The Voice of the Ojibway” - Benton Banai

“Holding Our World Together” - Child

“Talking Rocks: Geology and 10,000 Years of Native American Tradition in the Lake Superior
Region” - Morton and Gawboy

“The Seventh Generation: Native Students Speak About Finding the Good Path” - Peacock

“Our Knowledge is Not Primitive: Decolonizing Botanical Anishinaabe Teachings” - Geniusz

“Preserving the Sacred: Historical Perspectives on the Ojibwa Midewiwin” - Angel

“The Assassination of Hole in the Day” - Treuer

“The World We Used to Live In: Remembering the Powers of the Medicine Man” - Deloria Jr.

“Wild Rice and the Ojibwe People” - Vennum

“Seeking Mino-Pimatsiwin: An Aboriginal Approach to Helping” - Hart

“Dancing on our Turtle’s Back: Stories of Nishnaabeg Re-Creation, Resurgence and a New Emergence” - Simpson

“Ojibwa Warrior: Dennis Banks and the Rise of the American Indian Movement” -Banks

More Understandings

Youtube Video Resources:

Sharon Venne

Sharon Venne: ONECA Conference 2013

Sharon Venne: Think Indigenous 2016

Jurisdiction and Education by Sharon Venne

Pam Palmater

Canada's State of Emergency

Pam Palmater Unmasks First Nations Financial Transparency Act

Pam Palmater on court rulings impacting Aboriginal Rights

Pam Palmater interview on MMIWG

Should Indigenous People vote in Canada's Federal Election

Pamela Palmater Section 35's Empty Shell of Constitutional Promise

Pam Palmater Talk: The Law's Role in Canada's Disgrace

Child Welfare Unfair for First Nations

Russell Diabo

Breaking Down the Indian Act with Russell Diabo

Russell Diabo: A Chronology of Canada-First Nations Relationship



BOOZHOO GAAGIIGIDOWIN



1. Boozhoo nindinawemaaganidok/niiji-anokiimaaganadok.
2. Bangii eta go ninitaa-anishinaabem / Gaawiin aapiji ninitaa-anishinaabemosii.
3. Ninga-gojitoon ji anishinaabemoyaan / Ninga-Anishinaabe-gaagiigid ajina.
4. _____ indigoo Anishinaabemong idash _____
indizhinikaaz zhaaganaashiimong / ingikenimigoo gaye.
5. _____ niin indoodem. Gaawiin ingikenimaasii nindoodem.
6. _____ niin indoonjii./ _____ izhinikaade ishkongigan wenjiiyaan.
7. _____ indanokii./ Gaawiin indanokiisii.
8. _____ o'apii ingii-tibishkam / ingii-ondaadiz.
9. _____ nindaso-biboonagiz / nindaso-biboone.
10. _____ izhinikaazo ninaabem / _____ izhinikaazo niwiiw /
_____ izhinikaazo niinimosenh. / Gaawiin awiia niwijiiwaagan.
11. Gaawiin mashi nindayaawaasiig niniijaanisag.
Bezhigo niniijaanis / Niizhiwag niniijaanisag / Nisiwag / Niiwiwag / Naaniwag...
 - i. _____ izhinikaazo nindaanis.
 - ii. _____ idash _____ izhinikaazowag nindaanisag.
 - iii. _____ izhinikaazo ningozis.
 - iv. _____ miinawaa _____ izhinikaazowag ningozisag.
12. Nimino-ayaa gaye niminwendam eyaawaan omaa noongom.
bangii ningotaaaj wiinge nindagaj indaakoz
inzhaagwenim nindewikwe niminwendam
13. _____ agwajiiing noongom.
mino-giizhigad gizhaate gimiwan ningwakwad mizhakwad
zoogipon gichi-gisinaa dakaasin
14. Niminwendaan _____ miinawaa _____
ataageyaan wiisiniyaan manoominikeyaan babaamibatooyaan
gashkigwaasoyaan anokiiaayan agindaasoyaan nagamoyaan
wewebinaabiyaan andawenjigeyaan giizhizekweyaan niimiyaan
15. Niminwendaan gikinoo'amaagoyaan ji-nitaa-anishinaabemoyaan.
16. Mii ih, miigwech bizindawiyeg.



ANISHINAABEMOWIN BASIC SPEECH



1. Greetings my relatives/coworkers.
2. I only speak a little bit Ojibwe / I hardly know how to speak Ojibwe.
3. I shall attempt to speak Ojibwe / I shall speak in Ojibwe for a little while.
4. _____ is what I am known by (the spirits) in Ojibwe and
_____ is what I am called in English / is what I am also known by.
5. _____ is my clan. / I do not know my clan.
6. _____ is where I am from / _____ is the name of the first nation that I come from.
7. _____ is where I work / I do not work.
8. _____ is my birthday/is the month I was born.
9. _____ is how many years old I am.
10. _____ is the name of my husband / _____ is the name of my wife /
_____ is the name of my sweetheart. / I do not have a partner.
11. I do not yet have any children.
I have one child. I have two children / three of them / four of them / five of them...
 - i. _____ is the name of my daughter.
 - ii. _____ and _____ are the names of my daughters.
 - iii. _____ is the name of my son.
 - iv. _____ and _____ are the names of my sons.
12. I am fine and I am glad to be here today.

<i>I am a little afraid</i>	<i>I am very shy</i>	<i>I am sick</i>
<i>I am hesitant</i>	<i>I have a headache</i>	<i>I am glad</i>
13. _____ outside today.

<i>it is a nice day</i>	<i>it is hot</i>	<i>it is raining</i>	<i>it is cloudy</i>	<i>it is clear</i>
<i>it is snowing</i>	<i>it is very cold</i>	<i>there is a cool breeze</i>		
14. I like to _____ and _____.

<i>gamble</i>	<i>eat</i>	<i>pick wild rice</i>	<i>run</i>
<i>sew</i>	<i>work</i>	<i>read</i>	<i>sing</i>
<i>fish</i>	<i>hunt</i>	<i>cook</i>	<i>dance</i>
15. I like being taught how to speak Ojibwe.
16. That's all, thank you for listening to me.

TREATY POINTS

Reflect: Before we begin, what does Reconciliation mean if this remains to be the reality? Is it true Reconciliation - or is it merely turning the page on the past without fundamentally righting the wrongs where Indigenous Nations are forced to reconcile ourselves to colonialism?

It can only happen between Nations.

After entering into Treaties, they sit at the International level (above Federal, Provincial, and Municipal By-Laws).

Anishinaabeg utilize ceremony and the pipe to not only bring forth spirit to witness the agreement, but to lift the agreement (the spirit and intent understanding) into Spirit, entrenching/enshrining it at the spiritual level.

This is why our Treaties are sacred, spiritual agreements.

Below are Treaties, as well as other important events in order to gain a fuller understanding.

What Makes a Nation?

Internationally - What Constitutes a Nation?

1. Identity (distinctive culture, population)
2. Territory
3. Governance
4. Language

This can be found in similar evidence to:

Tribal Nation Recognition by United Nations Criteria

1. Living Language (Language)
2. Living Identifiable Culture (Identity)
3. Sovereign Landbase (Governance and Territory)

Our Introductory Protocol Upholds Our Nation

1. Spirit Name (Declaration of our Identity)
2. Where We're From - the name of the land, not the reserve - (Declaration of our Territory)
3. Clan (Declaration of our Governance)
4. Delivered in the Language (Declaration of our Language)

4. We Are a Nation

Miingoowiziwin (“they which we are given”) includes our language, our laws, our governance, original instructions, etc. Some would call these Inherent Rights.

Only Nations can make Treaties.

(“Nations Make Treaties. Treaties Do Not Make Nations.”)

Our Nationhood is Recognized Internationally

We Have the Right Sovereignty

This ability/right to create/follow our own laws based upon Natural Law, Original Instructions.

However, the term **Self-Determination** may be preferable as sovereignty retains a need to be acknowledged by others. Nations have the right to Sovereignty, as well as determining who their members are.

Our Inherent Rights Are Many

They Include our Governance, Identity, Language, Relationship and Responsibility, Nationhood, Our Laws (Legal System), Knowledge Systems, Health and Medicines, etc.

Inherent Rights are different than Treaty Rights

Inherent Rights, you are born with that which is gifted to us.

Treaty Rights (Treaty Promises) are birthed of an Agreement with another Nation.

Agoodiiwin: “It hangs above.” Treaty Rights do not extinguish Inherent Rights, it simply supplements them (example: visualize the fudge on a sundae.)

Our land ‘Title’ (for lack of a better term) is birthed of our connection, relationship to, responsibility to, and inherent right to; and always has been. It is not birthed of ownership, such as was the case in Europe.

Before explorers and settlers arrived, we made Treaties between our Nations

This includes other Nations of life, as well.

A Treaty with another Nation which brought about peace is the **One Dish, One Spoon Treaty** of the 1650's, the Ojibwe made with the Haudeneosaunee after more than one hundreds years of conflict. It is woven onto a belt with hide, wampum beads, and sinew. The white background constitutes peace. There are seven rows that reflect seven sacred teachings. In the middle is a purple dish. The people are sharing from the same territory. When we live on the Earth, we eat from the same dish. When we do, we are not to harm the other. In the middle is a spoon. There are no sharp edges to a spoon, so it would be peaceful.

Two Row Wampum

- The First Treaty between Indigenous Peoples and Europeans
- Between the Haudeneosaunee and the Dutch
- Visual Representation: River of Time with a Ship and a Canoe on Parallel Paths
- 3 Beads Between: Peace, Honesty, and Friendship
- Established all Future Relationships: Interdependent, Interrelated, Interconnected, but respecting each other's sovereignty - never passing law over the other or controlling the other.

(It doesn't matter what form a Treaty takes, they are as valid today as the day two Nations entered into them.)

Following Seven Years War Between the French and the English

By no means, Indigenous People did not consider themselves conquered or sovereignty being extinguished following this event.

British Officials remarked upon this, "The Six Nations, Western Indians (Anishinaabe, etc.) having never been conquered, either by the English or French, nor subject to the Laws, consider themselves as free people."

Minavavana, an Ojibwe leader from west of Manitoulin at Michilimackinac, made this clear to the British.

He stated unequivocally that they were "not yet conquered" with allegiance to the Great Spirit and not to any European power.

It is important that the Ojibwe regarded themselves and the English as being reliant on one another for trade and peace and their power relationship would be parallel.

It was stated that the British must fulfill certain obligations, such as the giving of gifts, to attain co-existence with them which were necessary for diplomatic relations.

(Borrows)

Articles of Capitulation

Foundational principles of Indigenous/Settler relationships were further developed in the Articles of Capitulation at the end of the Seven Years War. It was done to insulate Indigenous Peoples

from British influence and they supported the view about the unextinguished nature of their sovereignty. Although drafted without direct input, it reflected Indigenous perspectives - especially in Article 40 - territory was not to be reduced nor was Indigenous sovereignty to be subsumed.

(Borrows)

16. Royal Proclamation of 1763 (must be understood as a continuation of discussions that would flow into the 1764 Treaty of Niagara)

Acknowledged self-governing, self-determining Nations

Newcomers could not be in Indigenous territories without a Treaty Agreement. If they were, they would be removed. Treaty Agreement - only in Indigenous Peoples desired it.

This put the power and authority of Treaty making into the hands of Indigenous Nations.

Bound Crown to Treaty relationship (and those in the future).

Bound Crown to act honourably, fiduciary responsibility.

Implied no lands would be taken from Indigenous Peoples without their consent.

However, in order to consolidate the Crown's position in North America, words were placed in the Royal Proclamation which did not reflect Indigenous perspective or viewpoint at all.

Claimed dominion and sovereignty over territories Indigenous people occupied

Outlined a policy of extinguishing Indigenous Nations rights which at the same time, claiming to protect them in a paternalistic way.

Reflected elements of the Doctrine of Discovery

Drafted under the control and preference of the colonial power.

No Indigenous viewpoint, consent, involvement, or agreement was in this.

*However...**(this is very important)** to accurately understand this, one must view the Royal Proclamation as part of a continuation of discussions that came to fruition in the 1764 Treaty of Niagara which expressed a different result of Agreement than is shown by the Royal Proclamation a year before (*Borrows, "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government"*).

1764 Treaty of Niagara

24 Nations Including the Ojibwe and the Three Fires Confederacy with The Crown.

Agreement

Extended a renewed Covenant Chain of Friendship

First Treaty with the Crown of England

Multination Alliance which no member gave up their Sovereignty

Peace, Friendship, and Respect

Embedded the Philosophy similar to the Two Row Wampum - sovereignty and Nation to Nation relationship

Established all Future Relationships: Interdependent, Interrelated, Interconnected, but respecting each other's sovereignty - never passing law over the other or controlling the other.

"As long as the sun shines, the grass grows, and the rivers flow."

The line of Sacred Agreements: The Silver Covenant Chain

The Royal Proclamation was part of this Treaty, according to John Borrows, but at that point, it did not reflect Indigenous consent or Agreement. After this understanding by means of oral statement and the development of the Treaty of Niagara wampum belt, was an agreement about relationship accepted. Also, things that implicit in the Proclamation was made explicit in this belt. This made a treaty alliance and peace between the 24 Nations and the Crown, represented by William Johnson.

This took place in July and August of 1764. Over 2,000 Chiefs attended negotiations. 24 Nations gathered with representative nations as far as Nova Scotia, as far north as Hudson's Bay, and as far west as Mississippi.

An interpretation of the Royal Proclamation using the Treaty of Niagara discredits the claims of the Crown to exercise sovereignty over First Nations. Sir William Johnson indicated this when he commented on the Treaty in 1865:

"These people had subscribed to a Treaty with me at Niagara last, but by the present Treaty, I find, they make expressions of subjection, which must either have arisen from the ignorance of the Interpreter, or from some mistake; for I am well convinced, they never mean or intend anything like it, and that they can not be brought under our laws, for some Centuries, neither have they any word which can convey the most distant idea of subjugation, and should it be fully explained to them, and the nature of subordination punishment etc, defined, it might infinite them...and I dread its consequences, as I recollect that some attempts towards Sovereignty not long ago, was one of the principal causes of all our troubles."

William Johnson did not regard the extension of the Royal Proclamation and the Treaty of Niagara as an assertion of sovereignty over the First Nations. Records such as the two-row wampum belt, and statements such as Johnson's, further allow First Nations to assert that their jurisdiction can not be molested or disturbed without Aboriginal consent.

Borrows shares, "The concepts found in the Proclamation have different meanings when interpreted in accord with the wampum belt. The belts denotation of each nation pursuing its own path while living beside one another in peace and friendship casts new light on the Proclamation's wording "the several Nations...with whom we are connected...should not be

molested or disturbed.” These words, read in conjunction with the row row wampum, demonstrate that the connection between the nations spoken of in the Proclamation is one that mandates colonial non-interference in the land use and governments of First Nations. Therefore, First Nations regarded the agreement, represented by the Proclamations and the two-row wampum, as one that affirms their powers of self-determination in, among other things, allocating land. This agreement, at the start of the formal relationships between the British and the First Nations of Canada, demonstrates the foundation-building principles of peace, friendship, and respect agreed to between the parties.”

Please see *John Borrows, “Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government*

Treaty #3

Treaty #3 was intended to be Treaty #1, but Anishinaabeg stood firm on negotiations to share land.

Anishinaabeg held the negotiating power and authority at the time of Treaty.

The Treaty: Between the Anishinaabeg and the Crown (not Canada)

Pre-1870's:

Newcomers becoming more frequent.

A Few Reasons:

1. Transcontinental Railroad Requested (British Columbia stipulation)
2. Road from Fort Gary to Fort William
3. Resources

1869-1873: 4 Years of Treaty Negotiations

3 Ojichidaag served as lead spokespeople including Mawedobines (Rainy River) and Powassin (Lake of the Woods) and Saagajiwe (Lac Seul)

Crown: Alexander Morris (Crown Negotiator and Representative), Simon Dawson, Provencher

Ceremony, Women also helped with ceremony, advise, etc (Sharon Venne).

There are noble reasons why their names are not signed on the Treaty. It is not out of inequality.

Agreement: October 3, 1873 (Harrison Creek at the Northwest Angle)

Manidoo Mazina'igan (Spirit Document) - ceremonies guided our stand and our negotiations.

Spirits were included to witness this Agreement, as well as to lift the agreement into spiritual agreement.

Along with Ojichidaag, 1400 Anishinaabeg and 24 Ogimaag (Leaders) were present.

“As long as the sun shines and the waters flow, that is to say forever”, words connected to the Treaty of Niagara over 100 years prior.

Treaty Promises 'top up' the Inherent Rights we have never given up. Treaty Promises never extinguished Inherent Rights.

Treaty #3: Never about land ceding, giving up, or selling, but rather **sharing space** and place.

Established a Nation to Nation relationship - and process.

The Treaty was with the Crown and under the BNA Act of British Parliament, Canada is known as a successor state. Successor states inherit such responsibilities. Canada's role today as a successor state post-BNA Act is only to administer the Treaty (Venne).

A leader from Roseau territory shared that policies by Federal, Provincial, and Municipality levels imposed without following the same process of deliberation are undermining this process and the Treaty

Matters **never** up for discussion: Sovereignty, Members of a Nation, or Treaty Making Powers.

Treaty = Consultation and Consent

Companies who utilize Consultation and Accommodation only while skipping consent- this undermines our Treaty (Atkinson).

Treaty Unpacked: Conditional access to land contingent on fulfillment and follow-through of Treaty Promises. Walking together in a respectful way.

All land off reserve is shared land - to share sovereignties in shared place.

There is a Spirit and Intent that must never be forgotten.

Treaty Promises Areas

Education (lifelong learning)
Minerals,
Fishing and Fisheries,
Hunting,
Self-Government
Agriculture,
and Forestry and Wild Plants

Sharon Venne shares that for full understanding of Treaty, one must know why they were put on Turtle Island and what our original teachings are instructions were, as well as Clan knowledge.

The Issue of Treaty #3

However, Alexander Morris submitted a draft copy from 1-2 years prior.

Last year-plus of negotiations are not included in this draft.

This means the popular version read on Indian Affairs, many Textbooks, etc. isn't the true agreement.

To understand the Treaty Promises, one cannot leave out: Collateral Documents: Paypom Treaty (notes given to Chief Powassin on final days of negotiations), Nolin Notes, Shorthand Reports, Dawson's Submission, Letters to Kenora Newspaper, Letters to Indian Affairs, Actions Taken, and our Understanding. These are inconsistent with "Treaty #3 As Published by Canada"

Also, there were edits made after signing (notably regarding the construction of schools).

Why Was this Done ? **It's All About the Land**

Our correct understanding of our Treaty is crucial as it is still valid today as the day it was agreed upon. To understand the full scope of the Treaty Agreement, one must put all the sources together, including oral knowledge.

This is why Spirit and Intent is so crucial because the textual source of terms is what is widely accepted was manipulated.



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Patrick Daly, *President*
Beverley Eckensweiler, *Vice President*
Nick Milanetti, *Executive Director*

January 23, 2017

MEMORANDUM

TO: Chairpersons and Directors of Education
- All Catholic District School Boards

FROM: Stephen Andrews, Director of Legislative and Political Affairs

SUBJECT: Bill 68 Modernizing Municipal Legislation—Submission to Standing Committee

Further to the President's report at our recent trustee seminar, Municipal Affairs has introduced Bill 68—*Modernizing Municipal Legislation Act, 2016* (bill 68). Second reading debate started on December 1, 2016. The legislation will likely pass into law during the first quarter of 2017. This package of reforms proposes to amend certain acts including the *Municipal Act*, the *City of Toronto Act*, and the *Municipal Conflict of Interest Act*.

Bill 68 proposes to amend the *Municipal Conflict of Interest Act* in ways that will impact all school boards. Schedule 3 of the Bill proposes the following changes:

- Require trustee's to declare any financial interest at any meeting that may conflict with his or her duties and file a written statement of the members financial interest at that meeting or as soon as possible after the meeting.
- Require boards to establish a "registry" of statements and declarations of interests of trustees that would be available for public inspection.
- Prohibit a trustee from using his or her office to influence a decision or recommendation being considered by board staff, if the member has financial interest in the outcome of the decision or recommendation.
- Municipal Conflict of Interest Act Penalties: if a judge determines that a contravention of the Municipal Conflict of Interest Act has occurred (that is the trustee did not disclose a financial interest in a matter at a meeting) then the judge may reprimand the trustee, suspend the trustee's pay for up to 90 days, declare the seat vacant, disqualify the trustee during a period of up to seven years and/or require the trustee to make restitution.
- Proposed amendments to the *Municipal Elections Act, 1996*. The term of office is proposed to change from December 1 to November 15 in the year of a regular election. This is to address the lag time from election dates (third week of October) to start date of the term of office.

OCSTA is in the process of developing a submission to the Ministry of Municipal Affairs and the Standing Committee of the Legislature that will outline our concerns with the bill. A preliminary review has been conducted and the following issues have been identified as concerns for our school boards:

1. Changing the start date from December 1 to November 15 in an election year for school boards will impose disruptive changes onto its schedule of meetings and various administrative functions. December 1 has been the start date for municipal and school board terms of office for decades and the change seems unnecessary.
2. The proposed amendments to the Municipal Conflict of Interest Act that will require trustees to file written conflict of interest statements for each board meeting, where the trustee declares his or her financial interest, will impose a significant administrative burden on trustees. We are proposing a quarterly written statement for each financial conflict of a trustee that would be posted on the new registry. This reduces the burden on drafting written statements for each school board meeting.

If you require further information please contact Steve Andrews at sandrews@ocsta.on.ca.



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January 23, 2017

MEMORANDUM

TO: Chairpersons and Directors of Education
- All Catholic District School Boards

FROM: Patrick Daly, President

SUBJECT: **Pupil Accommodation Review**

As you know a number of boards have begun or are considering commencing Pupil Accommodation Reviews (PAR's) or Modified Pupil Accommodation Reviews (MPAR's). In some cases the process has become an issue within the community and/or gathered provincial (media/government) attention.

In an effort to appreciate the number and scope of PAR's and MPAR's within Catholic School Boards we would appreciate it if you could at your convenience forward to us; the number of Accommodation Reviews and type currently under way as well as a summary of the number of schools involved.

This will assist us in our advocacy efforts as well as heighten our awareness of the circumstances in particular boards and parts of our Province.

Please return the attached questionnaire to Steve Andrews, Director of Legislative and Political Affairs c/o cdemelo@ocsta.on.ca.

Thank-you for your assistance regarding this matter and if you have any questions please call Steve at 416.932.9460 ext. 224 or myself.



Ontario Catholic School
Trustees' Association

PUPIL ACCOMMODATION REVIEW or MODIFIED PUPIL ACCOMMODATION REVIEWS

Board Name: [Type text]

Contact: [Type text]

Number of Accommodation Reviews

[Type text]

Type Currently Underway

[Type text]

Summary of Number of Schools Involved

[Type text]

**Please return questionnaire to Steve Andrews, Director of Legislative and Political Affairs
c/o Connie Araujo- De Melo cdemelo@ocsta.on.ca.**