

NOTES ON PRIVATE LANDS ON RESERVED LANDS

BACKGROUND:

During the course of the summer recess of Parliament, Prime Minister Steven Harper discussed the issue of introducing legislation to allow for private ownership of reserved lands. Manny Jules from the Tax Board jumped on the issue – saying it was a good idea – good for business. The good for business model is really putting in the place the final stages of the 1969 White Paper policy. The end product of the white paper was to get rid of reserves – remove 91 (24) from the British North America Act – Indians and Lands Reserved for Indians.

TREATIES

When our ancestors negotiated and concluded treaties with the British Crown, they agreed to share some of our territory to the depth of the plow. In exchange, the old People wanted to keep certain lands within our territories for the future generations – these lands were called reserved lands. Over the years – Canada has turned these reserved lands into reserves and placed them under the *Indian Act* of Canada's parliament. The result of the violation of the treaty allows parliament to make changes to the *Indian Act*. However, parliament's ability is hindered by the Treaties.

PATRIATION

Prior to the state of Canada getting its constitution from the British Parliament in 1982, there was a court case taken by the Indian Association of Alberta regarding the treaties and their future under a constitution in Canada. Lord Denning wrote that no parliament or legislature can change the treaties. However, there is a legal convention on treaties that refers to constructive consent. That is – if one party to the treaties wants to have a change – they can consent to that change. In this case, Canada is manufacturing consent by making it appear that First Nations are requesting the changes to the *Indian Act*.

HOW TO PROTECT THE RESERVED LANDS?

One of the most pressing priorities for the Treaty Nations is to protect the land base. How is this going to happen? The Nation could enact their own inherent rights to make laws. This is to make a law that prohibits the individual holdings of land within the reserved land base. This would involve holding the land in a collective trust for the future generations. It would have to be bullet proof as in the future; individuals might want to challenge the law of the Nation.

There is the issue of the treaties. What is the role of the Crown in this whole issue? When we made treaty- our ancestors agreed to share our territory with the Crown's subjects. If the reserved lands are taken away from the Indians – what happens to the Treaty relationship? It is a very serious question. There needs to be some discussions amongst the Treaty Peoples about this issue. If Canada is going to do away with the treaties, what is their legitimate reason to be in our

territories? There is no concept of terra nullius, discovery or conquest within international law. If you want to live within the territories of Indigenous Nations, there needs to be an agreement or a treaty. This is the law as set out in the *Western Sahara* case at the International Court of Justice.

OTHER LEGISLATION

- 1. MATRIMONIAL PROPERTY LAW**
- 2. CLARKE'S DRAFT BILL TO TAKE OUT SECTIONS ON EDUCATION AND WILLS AND ESTATES**
- 3. THE WATER LEGISLATION**
- 4. THE EDUCATION PROPOSED LAW**
- 5. THE PRIVATIZATION OF LANDS**
- 6. THE IMPOSITION OF TAXES**
- 7. THE HEALTH PROPOSED BILL**
- 8. GOVERNANCE UNDER THE MUNICIPAL MODEL**

THERE ARE OTHER ISSUES LIKE THE CONTRIBUTION AGREEMENT AND THE IMPOSITION OF THE HUMAN RIGHTS LEGISLATION ONTO RESERVED LANDS INCLUDING THE RIGHTS OF INDIVIDUALS OVER THE COLLECTIVE.