

What is a Crime?
Pimatsiwin Weyasowewina:
Aboriginal Harvesting Practices Considered

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Executive Summary

Societal norms are a projection of the behaviors expected of members of a society. The law, criminal or otherwise, is the standard means by which societal norms and morals are regulated and enforced. "Crime" exists where there is two sets of normative ideologies that conflict with one another, and where one group that has the power to enforce its ideology over another promotes its ideology.

Pimatsiwin Weyasowewina considers and records social norms as these relate to traditional Aboriginal harvesting activities. In addition to fulfilling subsistence needs, these traditional practices, which are the traditional hunting, fishing, trapping and gathering practices of numerous Aboriginal people and communities throughout Canada, play a significant role in the preservation of Aboriginal cultures, values and belief systems. The importance of harvesting, the continuing opportunity to participate in these activities and to transmit traditional knowledge about the practices extends beyond meeting subsistence needs. The ability of one generation to pass these traditions on to subsequent generations facilitates and ensures the cultural survival of the group.

Pimatsiwin Weyasowewina was prompted by a belief rooted in community-based knowledge that many members of contemporary Canadian society do not understand traditional Aboriginal harvesting practices as being necessary or significant. Part I of this report considers and describes the traditional harvesting practices of various Aboriginal communities in northern Alberta. As part of the community-based research component of this work, researchers dialogued with Aboriginal harvesters, elders, and community leaders for the purpose of the social norms of these Aboriginal societies that maintain traditional harvesting practices.

Traditional Aboriginal harvesting practices often conflict with the normative ideologies upon which contemporary laws and policies are based. Consequently, Aboriginal values and

beliefs are less likely to be reflected in laws and policies. In many cases, conflict exists between the ideologies of Aboriginal societies that seek to maintain their traditional practices and the values and beliefs of mainstream society.

As demonstrated in this work, to the extent that the law promotes or reflects the values of mainstream society over the values of Aboriginal societies, traditional Aboriginal harvesting practices are criminalized. Aboriginal persons seeking recognition of their Aboriginal practices, which are integral to the continued existence of their communities, become, in essence, criminal. The statements given by research participants in this case study effectively reflect this sense of criminality that has been created by this conflict of ideologies.

Aboriginal people continue to practice their traditions, holding to their values and customs despite these laws and policies that criminalize directly and indirectly both them and their practices. Many interpret these limitations on socially and culturally motivated activities as abuse of state power. Criminalization of traditional Aboriginal harvesting practices, it was suggested, represents in fact, an act of criminality in itself.

A prevalent view within Aboriginal communities is that law enforcement techniques are tantamount to abuse of power and authority. Because these views are substantiated by personal experiences, interactions between law enforcement officials and Aboriginal peoples are tenuous at best and often hostile and openly antagonistic at worst. In many Aboriginal communities, the potential for developing any sense of mutual understanding is negligible. Unfortunately, this lack of understanding has a negative and lasting impact on the quality of life of the Aboriginal peoples involved, particularly because of the power relations in effect in this situation. To live in fear that personal and communal traditional ways of living and being are endangered places a people in severe mental, physical and emotional distress. This is

the place assigned to Aboriginal peoples as individuals and as collectives by numerous provincial and federal laws and policies relating to harvesting practices.

The cumulative effect of these situations in the long term is the broad criminalization of Aboriginal cultures and peoples. This criminalization is evident not only from a legal theoretical perspective, but is also observable in the attitudes and conduct of law enforcement officials. Further, and perhaps of more serious note, is the damage that such criminalization is likely to cause in the lives of the Aboriginal peoples themselves. From this perspective, legal and attitudinal positioning has represented and continues to represent huge barriers to the survival and well being of Aboriginal societies. The long-term personal, cultural and social impact of this criminalization has never been fully and impartially investigated. The personal narratives collected during this work clearly describe such negative impact.

INTERVENTION STRATEGIES

While criminal law is often used as a default means of securing social control, it is only one available strategy. Alternate methods may include co-management arrangements, mediation, formal or informal agreements, self-regulation, codes of conduct, and education and awareness. Every method of responding to behaviours has its own personal, social and, pertinent in this case, legal consequences. Given the broad range of options available, is it necessary that traditional Aboriginal harvesting practices be criminalized? What are some of the legal, social and cultural factors that influence the decision to criminalize or not criminalize certain behaviours? What are some of the personal and social consequences that evolve from the criminalization of certain behaviours? With respect to this project, the answers to these questions are crucial to generations of Aboriginal peoples. Indeed, the answers implicate all Canadians.

Many of these mechanisms noted above have been proposed as an alternative to standard civil and criminal procedure. Some of these strategies have been more successful than others, leading to positive Aboriginal-state relations in some instances, and intensified antagonism in others. Part II of this report considers alternative methods to dealing with Aboriginal harvesting practices other than criminal prosecution.

CONCLUSION

Pimatsiwin means life, within itself, with its own laws. It stands for the notion that “the law” evolves from the relationship that Indigenous peoples have with the land and its resources. These laws are embedded in the relationship between a people and the land it survives with, and are therefore part of the meaning of *Pimatsiwin*. *Weyasowewina* refers to externally imposed laws, which as demonstrated in this case study, are often reflective of the societal norms and morals of non-Aboriginal society. Together, *pimatsiwin weyasowewina* is the impact of these externally imposed laws on the way of life of Aboriginal peoples.

This work has demonstrated how law and policy is reflective of the social norms and ideologies of mainstream Canadian society. We have illustrated how reconciliation of laws and policies in Canada with traditional Aboriginal harvesting practices, which are integral aspects of the culture of Aboriginal peoples, is at risk. The values, beliefs and practices of Aboriginal societies are often fundamentally different, and in certain instances adverse to those of mainstream society. Consequently, traditional harvesting practices based on traditional Aboriginal values and beliefs are often made criminal simply by virtue of this foundational difference. Traditional Aboriginal harvesting practices have effectively been criminalized through alteration of access to the land and its resources. These activities, sanctioned by laws and policies, strip away Aboriginal identity, traditional beliefs and practices, and means of survival.

If Aboriginal peoples in Canada are to survive as distinct societies, retaining the integrity of their unique cultures, identities, and institutions; it is imperative that their ability to use the land and to practice their traditions on the land, including traditional harvesting practices, be assured – not criminalized. In order for true reconciliation to occur, consideration must be given to the values that law and policy reflects, including those of Aboriginal societies.

Part I: Introducing the Research Study

A. Introduction

A non-status Aboriginal individual ventures out onto unoccupied lands in northern Alberta in order to secure food for his family. Successful in the hunt, he returns with a bull moose that he and his wife distribute amongst thirty-five immediate and extended family members. Subsequently, the man is charged by Fish and Wildlife officials under the provincial Wildlife Act for hunting without a license. He loses his vehicle, his guns and the meat that has already been preserved for the family's use.

A middle-aged Métis woman assists her friend to set a net in the lake beside which the two have lived for their entire lives. Provincial authorities arrive at the woman's residence at 6 o'clock the following morning, unannounced, and question her about the net and the fish that may have been caught. Concurrently, other officers are questioning the friend, who is a Treaty Indian, about his relationship with the woman.

These are two examples of countless similar incidents that Aboriginal persons experience on a regular basis throughout northern Alberta.¹ The negative outcomes of these events are exacerbated by the fact that many Aboriginal persons, families and, indeed, whole communities of Aboriginal people in this country live under conditions of severe poverty. These poverty conditions have contributed to the numbers of persons "criminalized" while engaging in traditional hunting and gathering practices because poverty will often force Aboriginal people to rely heavily on the products of "criminal activity" such as unlicensed killing of big game animals like moose and deer. Nonetheless, despite situations where the stereotypical "poverty leads to crime" syndrome may be used as a rather superficial explanation for criminal behaviours, this reasoning cannot be applied easily, accurately or fairly to most cases of "criminal" activities as these activities are traditional Aboriginal harvesting and gathering activities in traditional Indigenous territories.

¹ See the following cases accessible through the Alberta Courts Judgment database at <http://www.albertacourts.ab.ca>, *R. v. Quinney*, 2003 ABPC 47, *R. v. Ferguson*, 2001, ABPC 215, *R. v. Breaker*, 2000, ABPC 179, *R. v. Lamouche*, 2000, ABQB 461, *R. v. Rodgers*, 1998, ABPC 127, *R. v. Jacko*, 1998, ABPC 10.

Across the northern parts of the western provinces where boreal forest conditions prevail, Aboriginal peoples continue their traditional practices of harvesting and gathering as the foundational expression of their social and cultural existence. These activities are the expressions of distinct ontologies and epistemologies just as deeply and certainly as they are the sources and means of Aboriginal peoples' collective and individual physical and social existence and survival.

In many of these particular regions of the country, where the people continue to practice their traditional ways of life, extended families will rely, in some cases almost exclusively, on the capacity and abilities of key individuals in the family network to hunt, fish and trap as a means of subsistence. Further, this reliance of families and communities on the resources that accrue from hunting, fishing and gathering activities is connected integrally to social practices that encompass the trading, sharing and sometimes selling of particular resources. In this way, individuals with highly developed skills that are used to serve the peoples' needs are greatly respected and honoured because they ensure the peoples' survival.

Traditional harvesting and gathering activities and practices are viewed generally, even by those most ill-informed members of Canadian society, as representative of the social context of Aboriginal peoples in Canada, and more widely in North America.

Notwithstanding this as a reality, such "behaviour" often attracts the excessive attention of law enforcement representatives. This excessive, and usually negative, focus by authorities on socially- and culturally-motivated activities is reasonably interpreted by many Aboriginal people as abuse of state power.

Although many Aboriginal people continue to deal with the issues that surround the criminalization of their traditional harvesting activities, there remains a very great lack of public and professional understanding and practically no knowledge base on which to construct a fair and just legal or even social consideration of these issues. There is little public awareness, for example, that the criminalization of "traditional" Aboriginal land use activities was a consequence of unilateral changes to both the common law and legislation since the Confederation of Canada. There is even less consideration or awareness that one of the most serious outcomes of this criminalization of subsistence

practices was an unwavering and ruthless process of criminalization against the mindsets or psyches of generations of Aboriginal peoples.

One of the first things I learned was how to hide a deer so the Fish and Wildlife wouldn't find it. I remember watching the blood dripping down on the snow as my uncle stood and talked casually to the Fish and Wildlife officer who had stopped us on the bush road. Lying didn't seem wrong then. But what else did that experience teach me? What were the long-term impacts of those experiences? Will I ever know?

The refrain throughout the community sessions of this project described how the younger generations of Aboriginal peoples had grown up learning to distrust and lie to fish and wildlife authorities, watching and helping their parents and grandparents hide the meat and fish that meant the survival of their families. Not one of the research participants believed that such actions were “criminal”, but neither did any one of them deny the negative impact of such experiences in their lives.

While the historical and legal records of Canada clearly reveal that the spiritual practices of the Aboriginal peoples were prohibited and criminalized through government legislation, the connections between these legal actions and policies of the state and the physical, intellectual and psychological development, well-being or survival of Aboriginal peoples has rarely if ever been fully analysed. Even less has there been an awareness that traditional harvesting and gathering practices are deeply involved with the spirituality of Aboriginal peoples. Thus the criminalizing of hunting and gathering activities and the criminalizing of spiritual practices are in many ways like different expressions of the same relationship. The latter as a 19th century expression of the relationships, the former a 20th century expression that carries into the 21st century.

Generally, when individual or group behaviour is “criminalized” through the laws of a society, the members of that society are confident that such categorization is preceded by considerable and careful analysis of the social context of the behaviour. In Canada, this confidence is based on the belief and broad understanding that the ethos of democracy guarantees society members the right to full participation in processes of their own government, including law making. Therefore, since the careful analysis of proposed laws for a society involves and indeed, by design, depends upon the participation of members of that society, the confidence of those society members in the

“fairness” and “justice” of their own laws becomes closely associated with notions of personal patriotism and nationalism. To question the fairness of a law becomes tantamount to questioning the ability of the individual self and his or her society as a whole to build or support a democratic society. In Canada, to question the nation's “democracy” is heresy.

Where the governing body of a society purports to support democratic participation in lawmaking but in fact co-opts individual thought to support state laws and policies, the creation and maintenance of a public membership that is uninformed or ignorant is a primary prerequisite. A public that chooses avoidance or denial as a response to its own societal issues reflects an ignorant, uninformed and therefore essentially powerless public. This in turn provides the context for a particular form of “democracy”, one that engenders a powerful state structure that in fact rules the people under the general guise and claims of the ideal “democracy”. The people are essentially governed through their own ignorance with minimal or misinformation, suggestions, innuendos, promises, and flattery. Today, with almost unlimited access to information and multiple local, national and international perspectives, the children continue to ask about the emperor's clothes, but the adults are afraid to answer for fear that they too will stand naked.

This is the social context that helped to determine and shape the historical relationships between Canadians and Aboriginal peoples. The laws that criminalized the beliefs and activities of Aboriginal peoples came from “settler” people who had no clear understanding and no accurate information about the peoples who inhabited the lands that they were ‘given’ when they immigrated to Canada. Basic information about European laws that recognized and guaranteed the rights of the Aboriginal peoples the settlers were legally supplanting was denied them in the same way that it was denied to the Aboriginal peoples themselves. Laws were passed by their own “settler” governments without any consideration of legal or social impacts on the Indigenous peoples of North America. Because these were laws of a democracy, and based on the very nature of a democracy, the peoples of that democracy have been forever implicated by every aspect, outcome and impact of those laws. This recognizes the unstated

imperative for each individual of a democratic society to accept personal responsibility to be informed about the laws and the policies that are implemented on his or her behalf.

The intent of this project is to contribute to public information and awareness in relation to specific impacts of the criminalization of traditional harvesting practices of Aboriginal peoples in Northern Alberta. The issues that confront contemporary Aboriginal societies are complex but cannot be resolved in isolation from Canadian laws and therefore, from Canadian individuals or Canadian society.

In relation to the history of the criminalization of Aboriginal “behaviours” in Canada or Alberta, society’s confidence that its laws and policies have been weighted for negative impacts on its own membership would seem groundless. Community participants in this project pointed out that Canadian society in general accepts that Indigenous populations on “Canadian” lands exist somewhere outside of and are denied the same respectful, ethical and legal considerations such as are granted to its “other” memberships prior to the enactment of legislation/laws that criminalize their “behaviours”. For many and complex reasons, including linguistic and accessibility issues, most Aboriginal peoples have been and continue to be excluded from the processes of law making in Canada. In other words, the democratic approach doesn’t work in this context. In fact, the ongoing enactment of legislation that threatens Aboriginal peoples’ survival continues without their full participation. They remain objects of the legislation and are not perceived as cultural beings within distinct societies.

The ethical and legal responsibilities of law-makers to engage Aboriginal peoples in culturally appropriate situations of dialogue about the impact of proposed legislation is usually ignored. The reasons cited most often for not addressing the “cultural appropriateness” issue are cost and time. However, cost and time are the persistent considerations for addressing any issue. The resistance of the law-makers to considering “cultural propriety” as a factor in effective dialogue between Canadian “officials” and Aboriginal people rests, it seems, on prioritization. “Officials” tend not to see a need to give priority to anything described or connected with “culture”. This attitude or approach suggests that officials or law-makers are somehow positioning

themselves outside of any “cultural” aspects of Canadian society or they are denying that Canadians live as “cultural” beings. This reluctance to deal with the cultural aspects of societal issues suggests that there is a way to be a society or an individual without a culture – to be “a-cultural”. It suggests human interactions without cultures. Or, it grants one group of people an unstated cultural privilege of superiority and takes away from another group of people the basic right to live out their culture.

The language used in this subterfuge is that both parties to the dialogue will simply recognize that each of them must respond to the other and to the situation with “objectivity”. Unfortunately, in this dyad, “objectivity” is a trait usually reserved for and attributed to the “white officials” while “subjectivity” is the “cultural” trait ascribed to Aboriginal people. This “subjectivity” is also usually interpreted as “biased” and a deficiency in intellectual reasoning capacity. The possibility that the “objectivity” of officials is equally culturally “biased” does not enter into the process for issue resolution.

The difficulties then of establishing productive dialogue between law-makers and law-enforcers and Aboriginal peoples are extremely complex and subtle. Any attempts to establish positive relationships between government representatives and Aboriginal peoples are dependent upon the open recognition and effective address of the cultural and linguistic bases of most communication issues.

In Canada, these types of “cross-cultural” communication issues are addressed by policies and resources in various ways. In the areas of “language and culture preservation” or “heritage” and “recreation”, financial resources are usually available in small to large amounts from the different levels of government. In the context of Aboriginal traditional harvesting, laws and policies, however, where land usage, resource access, environment and Aboriginal rights are all aspects of the dialogue, there have been few resources allocated directly towards clarifying the multiple, complex “cultural” considerations that are embedded within these interactions. Expenditures that support communication and appropriate two-way knowledge transfer processes would result in more accurate and explicit exchanges with deeper mutual understanding. These results would offer benefits to every citizen, but for the Aboriginal peoples whose

societies are rarely depicted in any negotiation or record with accuracy, it could mean the first time that their words are actually “heard”. This is especially true for those Aboriginal people who are living the traditional ways and who are not usually on the front lines engaging with governments in the “negotiations” process.

Without a willingness to invite and meaningfully involve Aboriginal people in dialogues about those laws that impact on their lives and their living environments, Canadian and provincial law-making will continue to take place within a model and a process that creates and maintains a tension between Canadians and Aboriginal peoples. One outcome of this tension is a false dichotomy that places racialization at its core. On the streets, it says, “ If the Aboriginals benefit, then we lose”. “We” is almost always “white”. If this perception is to change, accurate information must be available to the officials as well as to every other person in the Canadian public.

With the wide range of available media by means of which the Canadian public can be informed, it is likely not inflammatory to suggest that the public longevity of such a racialized perception must in the end imply some form of permission and promotion from influential members or representatives of that public. In other words, if the perception continues, it does so because it is “allowed” to continue. Those who have authority over law-making and therefore over Aboriginal and other lives also have authority over the resources that can help or hinder public awareness and knowledge. They can help to build or break communications and relationships between Aboriginal peoples and other Canadians. For the authorities to keep silent and not engage in improving relationships through information and opportunities for dialogue is to promote this dichotomy where the right for an Aboriginal person to catch a fish or kill a moose is interpreted as a threat to another person’s well-being. Ultimately, this positioning places Aboriginal people by default on one side of a divide that they have never advocated nor would ever advocate – Aboriginal people against non-Aboriginal people.

One part of the community discussions and interviews of this project revealed that Aboriginal people have been portrayed and accused by non-Aboriginal people as taking benefits that belong to other Canadians in order simply to satisfy their greed and sense

of possession. Ongoing personal experiences of Aboriginal harvesters continue to validate this claim. In the contemporary scene of Aboriginal harvesting, formally negotiated provincial agreements that permit certain groups of Metis people to hunt legally for subsistence purposes are being re-interpreted at the 'street' level into daily interactions of racial hostility. In addition, and perhaps fueling this type of interaction, the Fish and Game associations and the Alberta Outfitters Society have lodged formal petitions and objections against this agreement and political position in Alberta.

In addition, and as another part of the objection to Aboriginal traditional harvesting practices and rights, Aboriginal people are portrayed as being anti-Canadian because they do not wish to "submit" to Canadian laws. Two contradictory implications surface with this commonplace objection: firstly, that as Canadians, Aboriginal peoples ought to accept the laws that "they" have helped to make, and secondly, that Aboriginal peoples have been "conquered" and are *not* Canadians and therefore have no contribution to make to Canadian laws. This implication is usually extended to point out that they (Aboriginal people) need not necessarily benefit from Canadian laws and resources since they have everything "given" to them anyhow.

This perversity that is being attributed to the Aboriginal people or Metis who are now exercising their rights to hunt without a "license" and "out of season" is in fact observable in the officials who are permitting such ill-informed opinions to be expressed in public and to go unchallenged and unaddressed. These officials are after all those who are recognized formally to be in positions of power and knowledge. By their silence, they acquiesce and that interpretation is often acted upon by more public remarks signifying even deeper prejudice and resentment by these Canadians who have aligned themselves against Aboriginal people.

The significance and functions of the laws, as well as of the law-makers and the law enforcers, in relation to traditional Aboriginal harvesting practices are becoming more obvious to more people in the present tensions between Aboriginal and non-Aboriginal people over the right to practice these traditions. Although much of the tension is based on lack of information and/or misinformation, there are no efforts being made by those in

authority, those who helped to create the historical stage for this scene, to address this need for open communication and dialogue between the two groups. Where tensions like these are permitted to escalate into racialized struggles that are fuelled on the Aboriginal side by years of resentment and anger over past abuses and on the non-Aboriginal side by hatred and resentment based on beliefs of innate “white” superiority and the greedy “Indian” taking over the “white” resources, the people who are on the sidelines of this battle watch carefully to see what those in authority will do. What the officials and government leadership choose to do in addressing this tension tells every observer what these people believe, think and value: important questions for everyone’s future. The ordinary people in the battle lines have made their positions clear, but the rest wait to know where the authorities will stand.

It is after all a matter of strategy; in the Aboriginal world imprisoned within a larger society created to serve the interests of the state, we have all been here before. The innocents, those who believe in the power of the democracy, stand wide-eyed, waiting with the expectation that the authorities will show the “right” way out of the problem. They struggle to believe in justice and democracy while observing the unimpeded growth of a social situation with an inevitable end. The “white” guys can’t lose because they represent the non-Aboriginal side of Canada. In the context of the racialized tensions, the scenario must be staged to justify the “saving” of the many (Canadian) at the price of the interests of the few (Aboriginal). What are to be saved are resources and economic benefits.

The “greater good” argument will carry weight with the public trained in this familiar argument and overshadow the fact that this scenario is after all only a mirage of the real political and legal situation. There is no substantiated evidence anywhere to suggest that loss of resources for Canadians or Albertans will occur if Aboriginal people are “permitted” to engage in their traditional harvesting practices without criminalization and punishment. It is however an argument that feeds and keeps alive the existing tensions around “rights” in relation to Aboriginal peoples, tensions that exist primarily because most members of the non-Aboriginal public remain uninformed about the historical context and legal bases of Aboriginal rights. As long as this ignorance persists, a variety

of social tensions between Aboriginal people and non-Aboriginal people will continue to fester with racialization as the core point of visible and “common” differentiation.

Since these tensions and hostilities that divide Canadians generally cannot be seen to offer benefits to any group, it remains a question then as to why the public is not being educated in such a crucial area of the nation’s history. Logically, the state as the responsible agent for public education would be expected to make accessible accurate information and knowledge about Aboriginal histories, cultures, rights and to directly promote this information as a way of addressing racialized tensions between its’ own citizens. Since it does not, the next point of consideration must be the reasons for this seeming neglect of state duty. While there are other perspectives from which to view the question, the one that seems to make the most sense is economics. Throughout the history of European colonization, the guiding principle underlying the establishment of relations with Indigenous peoples was consistently one of economics with economic benefits directed towards the colonizing nations and then later, with independence from the “mother country”, to the emerging “new” nation. The experiences of North American Aboriginal peoples have been no exception.

Applying this guiding principle to the question of why Canadians remain virtually ignorant of the histories, cultures and issues of the Aboriginal peoples whose lifestyles and practices preceded their own on these lands may connect to an analysis of the economic benefits that have likely accrued to the state from the laws and policies that have historically criminalized Aboriginal traditional harvesting and gathering practices. It is difficult to imagine that a nation like Canada, where the general populace is taught to value and espouse such democratic ideals as justice and freedom, will pursue its own state interests of economic advantage at the cost of the destruction of the ancient Indigenous peoples within its prescribed boundaries. At the same time, it is also betraying its own “settler” populations through a public education approach that ensures and perpetuates ignorance and dependence on state policies and state appointed authorities in any area of life that touches on those Indigenous peoples.

State-controlled public ignorance about Aboriginal peoples has almost guaranteed that the lives of the Aboriginal peoples will lie in the hands of the state. The maintenance of this type of control has been an ongoing state agenda in this country. The negotiations for which levels of government will assume responsibility for what aspect of "Indian" lives and for how much money, for example, continues to be a primary topic of concern at federal-provincial tables. As long as the Canadian public believes and accepts that it has no need to be informed about state decisions in regards to the lives and ways of Aboriginal peoples, and it is, at the same time, convinced that it has the right to give loud voice to its uninformed views on these same decisions, the struggles of Aboriginal peoples to live out their lives in their own traditional ways will be effectively neutralized as they strike against that shield of public ignorance behind which the state hides the bases for its Aboriginal laws, policies and practices.

There is a relatively well-known but disturbing history where federal and provincial laws affecting traditional harvesting and gathering by Aboriginal peoples in Alberta were enacted and enforced with no involvement from the Aboriginal peoples themselves. This research project reveals however, in a mirror fashion noted by Durkheim over 100 years ago, that the participation of the Aboriginal peoples themselves in the fulfillment of the laws was significant and necessary for the actual legitimization of the laws. Without the fulfillment, albeit enforced, of the Aboriginal person's functions/roles as the "criminal" and the "punished", the necessity of the laws for the well-being of the larger society would have been open to public challenge. Without the laws, the Aboriginal peoples would have continued to live their lives according to the ways of their own traditional societies. Their children would have learned in traditional ways and their cultures and communities would have remained strong, providing the collective vitality needed to support the men, women, and children that comprised them. The lands and resources would have been shared with the 'newcomers' under different systems of respect because all of the peoples would have come to the meeting table under different conditions and in different relations to each other, especially in regards to status and power. The question then remains: is there a way to measure or make observable to the non-acculturated eye of the non-Aboriginal, the weight and types of human impact that accrue to Aboriginal societies, families and individuals after years of legally sanctioned abuse permitted through the criminalization of Aboriginal traditional harvesting practices? This project is

one small attempt to make that impact known through the words of the Aboriginal peoples themselves.

B. Background

This research project attempts to provide a more comprehensive knowledge base and therefore a deeper understanding of the harvesting practices of Aboriginal individuals, families and communities in northern Alberta. The work is carried out with the underlying premise that Aboriginal populations across the northern parts of each province share a history of similar experiences in relation to traditional harvesting and gathering practices in their traditional 'home' territories. According to the oral histories handed down through the generations, the Cree and Metis people in particular, along with their cousins the Ojibwa and the Saulteaux, have maintained continuous ties with each other through the centuries into the present. In support of these oral histories, ethnographers and anthropologists whose works focused on the lives of the Aboriginal peoples living in northern parts of "provincial" territories support the notion that Aboriginal groups traveled widely and shared their cultures, languages, and ways with each other across the land mass of Turtle Island.

Aboriginal people tend not to attach the same meaning as foreign or 'settler' societies to the geographical boundaries imposed by political decisions of national and provincial bodies elected by those same societies. Aboriginal peoples have different histories of personal and collective experiences in association with those boundaries. The "new" boundaries are known, however, and recognized in a formal sense by all Aboriginal people as part of the historical process of Canada that entailed a claim to ownership, including jurisdiction, over Aboriginal territory westward. The people who participated in this research project shared their personal and familial histories in ways that were bound to traditional harvesting and gathering territories. The rivers, lakes, creeks, hills, muskegs, meadows, ranges – all were described as inseparable from the lives of the persons themselves. The passion of relationship and spiritual connections with the land, its natural forms and the life these supported was the elemental force behind these narratives. Harvesting and gathering were not activities to be carried out with motions and prowess for purposes of physical survival. They were the sources of life, the

expression of human being and spirit. For Aboriginal people, understanding this way of life and relationship makes it difficult to imagine the creation and reasons for unnatural boundaries just as surely as it is difficult to understand the existence and reason for unnatural laws to govern the lives and practices of human beings.

One objective of this work is to provide policy makers and enforcement officers as well as public officials and ordinary citizens with a stronger base of information in relation to traditional harvesting and gathering practices. Research participants spoke clearly and shared their stories openly to inform law-makers and other Canadians about their views and experiences in this area. The hope is that this information base will lead to higher levels of understanding of the overall circumstances surrounding Aboriginal peoples' harvesting of wildlife, fish and plants as means of subsistence. This enhanced understanding and knowledge will carry with it the potential to positively affect future definitions and legal responses to these traditional Aboriginal practices.

This work is premised on the position that formal consideration of hunting, trapping and gathering behaviours, especially in relation to Aboriginal peoples, must be viewed from a perspective outside the realm of criminal law. While criminal law is often used as a default means of securing social control, it is only one available strategy. Alternate methods may include co-management arrangements, mediation, formal or informal agreement, self-regulation and codes of conduct, and education and awareness. Each of these formal responses to traditional Aboriginal "behaviours" has distinct personal, social and legal consequences.

Given the broad range of options available for state management and "social control" of Aboriginal behaviours, especially with respect to traditional harvesting practices, this project addresses the question: was/is it necessary that these particular "behaviours" be criminalized? Further, since these traditional behaviours were criminalized for some Aboriginal people, is there any way of determining the legal, social and cultural factors that influenced the decision to criminalize or not criminalize specific behaviours for specific Aboriginal peoples? The final question bears significance both historically and contemporaneously: what are some of the personal and social consequences of the

criminalization of these certain behaviours? In all aspects of this project, the gravity of Aboriginal responses to these questions was obvious, consistent and predictable. The intention of this work is to broaden the knowledge base and increase public understanding about the issues that continue to surround and underlay these questions. An appropriate process to invite responses from those directly impacted by these questions is at least as important as the answers themselves. The framing of those responses and the responses themselves are crucial to several generations of Aboriginal peoples in the past, present and the future. Nor can it be denied that the answers implicate all Canadians.

In order to ensure validity and credibility for the substance of this work, following recommended qualitative research procedures, the research project invited the participation of people most directly impacted by such criminalization. Research participants were asked to speak to the issues by sharing their experiences as Aboriginal people who have lived and continue to live in ways that rely on traditional forms of harvesting and gathering, even where such activities have been historically considered illegal and their practice left them open to criminal charges and severe penalties under state laws.

Pimatsiwin Weyasowewina considers the harvesting and usage of wildlife and other natural resources by Aboriginal peoples for subsistence and related cultural purposes and the legal categorization of criminality that has tended to accompany these practices and activities. Traditional Aboriginal harvesting practices are often portrayed through public education and popular media as primitive and outdated or as exotic and frivolous. In either case, their significance in contemporary society is often not understood, whether that society is Aboriginal or not. An unfortunate consequence of this is the development of ignorant and/or ill-informed attitudes in mainstream society about Aboriginal peoples, their beliefs, customs, values and traditional practices.

Many Aboriginal persons, families and communities rely on hunting, fishing and/or trapping as an important means of subsistence. In addition to subsistence, people hunt, fish and gather for reasons that relate to their own and their children's psychological and

spiritual well-being and to the long-term vitality of the cultural group to which they belong. This well-being is guaranteed through the intergenerational transmission of values, customs and traditions that evolved from and are embedded within these traditional practices.

In most instances, these practices and values related to traditional harvesting are maintained in both rural and urban settings. Research on migration patterns and movements of urban Aboriginal peoples points out that connections with the home territories are often maintained by Aboriginal peoples for purposes of cultural identity.² The fact that this cultural identity is connected to hunting and gathering practices in the home territory and to the related “illegal” transportation of the natural “products” of this harvesting into the urban setting for sustenance purposes is not mentioned in the research noted.

In the context of the law, traditional Aboriginal harvesting practices are often “criminalized” through the enactment of federal and provincial laws and the implementation of federal and provincial policy. Despite the intention of these rules and laws to prohibit or prevent traditional harvesting practices, Aboriginal people continue to hunt fish and gather for physical as well as cultural survival reasons. Their basic need to live and **be** human according to the ways in which they have ancestrally known themselves to be human is reflected in the manner of response that they have made to the legal processes and practices that lead them continuously into criminality. Aboriginal peoples, as individuals and as groups, continue to practice their traditions, holding to their values and customs despite provincial and federal rules and laws that criminalize directly and indirectly both them and their practices.

A prevalent view within Aboriginal communities is that law enforcement techniques are tantamount to abuse of power and authority. Because these views are substantiated by personal experiences, interactions between law enforcement officials and Aboriginal

² Graham, K. & Peters, E. (2002) Aboriginal Communities and Urban Sustainability. Discussion Paper F/27, Family Network. Canadian Policy and Research Networks.

peoples are tenuous at best and often hostile and openly antagonistic at worst. In many Aboriginal communities, the potential for developing any sense of mutual understanding is negligible. Unfortunately, this lack of understanding between the two parties has a negative and lasting impact on the quality of life of the Aboriginal peoples involved, particularly because of the power relations in effect in this situation. Where power resides with the one who holds the breadbasket, or in this case, the moose license, the one who is hungry offends at grave personal risk. To live in fear that personal and communal traditional ways of living and being are endangered places the whole people in severe mental, physical and emotional distress. This is the place assigned to Aboriginal peoples as individuals and as collectives by existing provincial and federal laws and policies that govern their harvesting and gathering practices.

The cumulative effect of these situations in the long term is the broad criminalization of Aboriginal cultures and peoples. This criminalization is evident not only from a legal perspective and in the courts, but is also observable in the attitudes and related actions of law enforcement officials. Further, and perhaps of more serious note, is the damage that such criminalization is likely to cause in the lives of the Aboriginal peoples themselves. From this perspective, legal and attitudinal positioning has represented, and continues to represent, huge barriers to the survival and well-being of Aboriginal societies.

The long-term personal, cultural and social impact of this criminalization has never been fully and impartially investigated. The personal narratives collected during this work are a beginning and described a negative impact clearly and repeatedly, from every region. The following section exemplifies the many similar stories that described the negative aspects of the criminalization process brought to bear on Aboriginal people in northern Alberta. No comment has been taken out of its context. The speaker is referring to the negative attitudes and actions of the law-enforcement officials and referring to one experience that took place over a period of time.

You know they have a job to do but I think they could do it in such a way that they don't make you feel like such a criminal. When we got charged, they came in at seven o'clock in the morning. It was still dark in October. Why couldn't they have come at a decent hour when we were up? There must have been seven Fish and Wildlife vehicles out there. We had trespassing signs on

our property – we had them there for a reason – because we couldn't drive over the water lines. They ignored everything. They barged in and went straight to my bedroom. I don't have a habit of keeping fish in my bedroom. That's what I mean about the way they do things. They could have done the same thing in a different way.

When we went to court, we had no lawyer. We were refused Legal Aid and we couldn't afford our own lawyer. The way that was set up with the undercover cop – he still has my net – he came and borrowed from me so he could fish in the river – he befriended the family and the community – he just lived there and he's the one who supplied the transportation, he supplied the ammunition, he supplied the guns and the young people with dope and we tried to get them to admit that this is entrapment. They said, 'He's not the one who is being charged, it is you guys...' There was not a whole lot we could do – even a lawyer can't do anything.

I didn't fish and I didn't sell fish. I accepted money for someone else who had arranged to give the undercover cop some fish. The way the undercover cop talked, we were outlaws, we were thieves.

Like he said in court, the people he stayed with didn't have to go fish to make a living because they had a coloured TV. Now what does that have to do with food in your cupboard?

When we went to court, I was fined two thousand dollars. They also said, "Even though you are a Treaty Indian, you have to report when you pick up your license for certain lakes, you have to report 24 hours before you set the net, where you set the net, what lake you set it in, and you have to report in 24 hours after you lift the net exactly how many fish you caught". (Individual B)

One thing I don't like, I am a Bill C-31 now, and I used to be Métis. Now I can't even give this old man some fish or moose meat or I will get charged. How do the old people survive? That's how we survived. Young people went and hunted and fed the old people. That's how we survived. Now I am told I can't give you a chunk of moose meat.

We were told, 'You're a Treaty. If you need help to get your moose out of the bush, you have to pay these people (Métis) in cash. But that has always been our way of life, you know, to share our meat'.

My grandfather was sick. He can't hunt so I give him moose meat and fish because that is the only way and that's how the old people survive. I set a net and I drive around and give them fish. I still do that. I was taught that by the elders. I spent a lot of time with my grandfather. (Individual C)

These narratives provide a fairly clear social and cultural backdrop for the rest of this paper. Like most of the contributions from the community gatherings and interviews, these support the view that law- and policy-makers commonly display a general lack of understanding and appropriate respect for traditional Aboriginal harvesting practices. This may be based in part on the fact that these people often have minimal or no

information to offset or bring balance to their perspectives. It is difficult to develop understanding or respect if there is no basic information or knowledge base on which to build such understanding. Unfortunately, the question of who is responsible for the lack of information or knowledge on the parts of law- and policy-makers remains unaddressed and the significance of the question itself tends to be regarded as superfluous to the more important tasks of law and policy-making for the unidentified general “public”.

At the same time, and probably of more significance, is the fact that Aboriginal people and communities have generally lacked opportunities to interact with officials and policy makers in ways that can best fulfill federal and provincial governments’ obligations to protect the resources that have sustained Aboriginal peoples for centuries. State systems of conservation and protection are relatively recent in comparison to the many ancient Aboriginal forms of sustainability and resource protection that are usually not considered in law and policy development processes. A primary goal of this research is, therefore, to contribute to a better understanding of many of the issues that are related to the criminality of Aboriginal harvesting practices through the voices of the harvesters themselves. The intention is also to propose solutions that lie outside the context and formal structures of criminal law. To continue using a foundation of criminal law and its enforcement to manage those natural resources that have traditionally been the life source of Aboriginal societies is to purposefully structure the demise of these ancient cultures.

Fish and Wildlife laws are assimilation policies. The aim is to have Aboriginal peoples live as the “other” Canadians. Canadian laws so we can’t practice our traditions. Whose values do the laws reflect? (Individual D)

C. Description and Methodology

Consistent with the Law Commission of Canada, through its “What is a Crime?” project, the following questions directed the research plan for this work:

- *Under what conditions and why are traditional Aboriginal harvesting practices defined as “unwanted” or criminal?*
- *What response mechanisms have been used or are being considered in Canada to deal with situations where Aboriginal harvesting practices and*

activities have been defined or identified as “unwanted” or criminal behavior?

- *What has been the impact of intervention strategies identified and discussed in this research? On Aboriginal people and communities? On law enforcement agencies? On government?*
- *Are there or could there have been other response strategies employed to deal with the “unwanted” behavior?*

Responses to these questions have not been presented in a sequential and linear fashion. To honour the voices of the Aboriginal community participants, and to better reflect an Aboriginal perspective, the document must be read and considered in its totality as a response to each separate question. This type of reading will support most accurately the responses that evolved from the project.

The research process unfolded as a rich community experience of knowledge creation. The readers are asked to follow the text and to “listen” to what is being shared. They are advised not to listen for answers to a question in their minds. An important teaching from a Cree elder will help to situate the reader in relation to the text. The teaching points out that in a dialogue of any sort, the listener has as much responsibility as the speaker. The listener is totally responsible for what s/he hears and for any actions that ensue from what has been heard. The speaker is responsible for what s/he says but not for what is heard. The caution is that the text is not *merely* a response to the questions cited above. The text does respond but in a manner that is much broader than the usual direct address of a question. It offers as well an opportunity for a deeper understanding of how Aboriginal people actually see the issues that surround Aboriginal harvesting and gathering practices.

The research design for this project was comprised of several components. First, literature-based research was conducted through available and accessible written records of traditional harvesting practices of Aboriginal peoples in northern Alberta. A part of this research was completed by graduate students working under the guidance of the principal researchers at the University of Alberta.

Second, a significant component of the research project involved semi-structured and formal interactions within selected communities.³ These dialogues and community workshop sessions supported the collection of personal narratives from Aboriginal community members, representing the primary data-base of Aboriginal voices speaking to their own perspectives on historic and contemporary traditional harvesting practices, including their attitudes and beliefs towards these practices. As such, this record forms an important body of new knowledge related to the research topic.

The community-based research component involved participation by approximately 100 First Nations, Métis and non-status Aboriginal persons.⁴ This diverse representation provided an excellent opportunity for academic professionals, law- and policy-makers and Aboriginal community members to discuss a broad range of issues affecting traditional Aboriginal harvesting practices.⁵ As the research process unfolded, however, no government representative or law enforcement official ever attended a community gathering. Complying with requests from the community participants, the research team did not extend formal invitations to the official representatives of the law.

With respect to the research process, one-on-one interviews were conducted intermittently throughout the research period. Group sessions and formal workshops involving the community participants and the full research team were held in central locations. Planning the fora involved careful consideration of the various Aboriginal peoples' traditional protocols governing respect and group dialogues. Simultaneously, the research team had to consider the requirements around standard research ethics as well as the technical aspects of recording data and facilitating group processes in settings that did not necessarily appeal to some of the traditional Aboriginal people who were key participants of this research inquiry. Culturally sensitive planning and

³ See Appendix C for the list of communities.

⁴ A list of individual community participants who gave consent to their names appearing in this report is attached as Appendix D. Given the nature of the data, and possible threat to research participants, ethics requires that no name be attached to any particular quote in the text.

⁵ During the planning stages of the project, representatives of the provincial government had been invited to attend sessions, either in the communities or as separate meetings. Research team representatives did have opportunity to meet independently with Crown representatives and Alberta provincial government department representatives.

adherence to local traditional protocols, however, led to many valuable opportunities for discussions about Aboriginal harvesting practices with community people in safe and non-adversarial environments. These environments permitted the community research groups to identify, describe, and interpret the complexities of the legal characterization of Aboriginal harvesting practices, including the appropriateness of defining and treating some Aboriginal harvesting behaviors as criminal.

The research plan also considered intervention strategies that might have been implemented in order to deal with traditional harvesting practices outside of the context of the law. The community-based participation approach to the research process facilitated open discussion in the communities about intervention strategies that have been explored in the various regions. These discussions enabled the research team to compare the appropriateness and effectiveness of intervention strategies that were known to the community participants with those strategies that had been identified by the research team through traditional research methods, including legal research and literature reviews.⁶

In all contexts, community activities and processes were designed and carried out in a way that supported the collection of information, and simultaneously enabled the research team to “give back” to the communities through the provision of information relevant to the topic, as well as the facilitation and participation in the sharing and co-creation of new knowledge amongst the whole group. The principle that research will benefit the community in which it is conducted is a critical element of Indigenous research methodology, as well as a strongly recommended ethical practice in contemporary social science research.⁷ In order to ensure that the research content and findings would be grounded on information and shared experiences as described by Aboriginal peoples, community members from each of five regions in Northern Alberta were invited to serve as community representatives on the research team.

⁶ All research sources are fully referenced in the footnotes of this report. A bibliography of sources is also included at the end.

⁷ Weber-Pillwax, Cora (1999) “Indigenous Research Methodology.” *Journal of Educational Thought*, Winter 1999

The regional representatives attended workshop sessions in each other's regions and assisted in the facilitation of ongoing discussions in their own regions. By their presence and active participation in the work, they provided valuable endorsement of the process and the content that would otherwise have been difficult, if not impossible, to achieve on such a short timeline. The representatives are significant and respected persons in the communities and their participation served as statements of trust on behalf of the research team in general as well as for its objectives and its methodology.

The community sessions that were conducted during the project validated the report as evolving from Aboriginal community discussions and narratives. The substance or essence of most of the narratives were repeated in each of the regions, as individuals talked about their experiences with law enforcement officials, policies and practices and how these had taken and continue to take from them the right to live their cultures and values and to pass these ways on to their children, without fear and criminalization.

The significant connection and direct relationship between cultural identity and harvesting practices of Aboriginal peoples has not been investigated or explored in any significant depth by any researcher, including the Aboriginal people themselves. In the world of formal research and scholarship, especially in the social sciences, it is becoming less and less likely that such investigation would be conducted by non-Aboriginal researchers. As the numbers of Aboriginal scholars increases, questions of representation and cultural appropriation of "voice" begin to make sense in the context of research and scholarship. This principle of scholarly enlightenment supports the claim of Aboriginal scholars and community members that the elucidation of issues embedded in the relationship or connection between cultural identity and traditional harvesting practices needs to be carried out by Aboriginal scholars who have lived the traditional experience of that connection. There nevertheless continue to be few Aboriginal scholars, and the articulation of the specific, subtle and complex nature of that connection is rare. This reality makes the contributions of the community participants, including the Aboriginal researchers, particularly significant, in that they are the living expression of that relationship or connection and their words speak directly from that position.

At a final workshop involving the research team and the community participants (with some new people), the final draft report was presented and more narratives were shared in response to it. As had occurred in previous sessions, the report itself seemed to serve as a significant catalyst, inspiring and inviting community members to share their stories and to give voice to their thoughts on the topic of traditional harvesting and gathering. This last workshop re-iterated through additional narratives and powerful metaphors, stories and arguments that displayed how the criminalization of traditional harvesting practices is simultaneously both an historical and a contemporary phenomenon. While the people recognized and expressed their concerns regarding the long-term impact of such criminalization on themselves and their children, they left no doubt that they would not – could not – give up their rights to practice their ways of living. These practices were described and explained as the sources of their beliefs and their values. The practices themselves were represented as key elements of expression for Aboriginal cultures and, as such, were experienced and described as critical aspects of Aboriginal identities as individuals and as collectives.

No participants ever described an identity that was separate from his/her traditional harvesting activities. Further, every participant throughout the whole project articulated clearly a belief that no one had the right to prevent people from engaging in traditional harvesting practices in order to provide food and sustenance for their families. The people themselves never understood or described these activities as criminal. However, there was certainly a strong awareness and a solid understanding that officially, such actions were often considered “criminal” acts by the authorities. Stories involving prison and harassment were common. A shared vocabulary was evident in the workshop sessions that further demonstrated the common breadth and depth of such experiences. The vocabulary also reflected the nature of the relationships between the official “authorities” over wildlife, birds, fisheries and plants and the Aboriginal peoples who relied on these resources. Many participants referred to the criminality involved in preventing persons from living their traditions and providing for the needs of their families.

The following section of commentary and narratives exemplifies or supports the above statements:

Throw the fish back in the lake is only destroying them. I don't know who makes those laws. If I wanted to fish now, I would have to buy another fisherman's license. In the past, when things were tough, you went out and bought a fishing license and you made a living out of that.

When I come along to fish, I was scared all day long because they made a criminal out of you. If they sell you a license, they look all over your boat, your nets little bit tighter, not enough ice, get tickets for this, for that. If your buoys not painted right, give you a ticket for that. Harassment – they could jump into your boat just like you were nothing, open the vents. I felt violated – used to be scared when I saw the fish and wildlife coming with their boat. My brother used to say, 'a person has to be scared of that big window' referring to the windshield of their boat.

I did do some trading of moose meat for potatoes with other Aboriginal communities. It was a crime – I had to eat, my kids had to eat.

A crime can be anything. It is the way they use you – the way they read it. To me, it is not a crime to go out and kill a duck to eat, but to them, it is a big crime. They are forever looking in your vehicle, sneaking up to you, they're there like flies. I said once 'All you have to do is buy a commercial license and you become a criminal'. That is the way it was. It's not nice.

They would come and look in the slop piles to see if there were any deer bones. If they saw bones, they would take you to court and pinch you. "Where did those bones come from?" I know of people charged because of bones in the slop pile.

In the South, if Fish and Wildlife find feathers, you go to court. You have to burn the evidence.

Park Wardens kill buffalo to feed dogs but people hunting and killing buffalo are charged.

The Parks are using laws to push us out of our territories. There are large parks areas held by government. Will these be opened up gradually to industry? Parks areas lead to restrictions on our use and we get criminalized. Classifying land as government land in parks areas gives them rights over land areas. This has an impact on traditional territories and rights to harvesting practices.

Selling furs is an issue here, too. Aboriginal people need permits and licenses to sell fur if they have no registered trap line, yet Hutterites and farmers sell fur as "protecting home".

You can get permission in writing to hunt on private land because they (Fish and Wildlife) can turn around and make the white person a criminal. Without permission, you are the criminal.

Racism is on the increase against Métis since the Métis of Alberta and the province have an agreement in place for hunting and fishing for subsistence, without licenses from the province. Stories about the Métis stripping all the resources of hunting and fishing, destroying moose and elk and big horn sheep rampantly. Family members are being accosted with racial remarks in public places.

Fish and Wildlife remarks are not helping the racism reaction from the public: "Métis hunters shot and left it" and "No more hunting draws".

D. Research Participants and Communities

Aboriginal participants in this research project self-identified as Aboriginal, Cree, Chipewyan, First Nation, and Métis. Community representatives participated from each of the following four geographical areas in Northern Alberta: Calling Lake/Wabasca/Sandy Lake, Grouard/Gift Lake/East Prairie, Lac La Biche/Conklin/Fort McMurray/Kikino, Fort Vermilion and Paddle Prairie.

The research communities were selected on the basis of the principal investigators' personal knowledge of the unique experiences of traditional Aboriginal harvesting practices in these particular regions. This knowledge was based on years of contact and engagement with these communities, so the trust required between researchers and community members that would enable people to speak freely and safely on this topic was well established. Further, as Indigenous researchers, the opportunity to facilitate and participate in an intense and productive research process with people and communities where relationships of trust had already been established was a logical decision. Standards of ethics and community protocols were in place and the work could begin almost immediately. Finally, the participants from these communities could benefit greatly from the research process in that they represented, as Metis people in Canada, the population of Aboriginal people most highly criminalized. To be given an opportunity to speak and be heard and respected is in itself a recognition that brings healing and energy to people who have suffered greatly for living in their traditional ways.

As stated earlier in this document, the traditional territories of these communities usually extend beyond the government-established boundaries of municipal districts, or in the

case of First Nations, of federal Indian reserves. It is typically on these traditional lands that harvesting activities take place, whether or not these activities fall into the category of criminality.

While there are often similarities between communities that lie within the boundaries of Aboriginal traditional territories, it is important to acknowledge that there are also fundamental distinctions between the people themselves that will require elaboration in the interests of accuracy and clarity of understanding. One such important distinction is the one of legal identity that effectively defines and discriminates between the harvesting practices of persons who are categorized as First Nations or Indian and those persons who are categorized as Métis or non-status Indian.⁸ These legally ascribed definitions and identities of persons affect and determine the bases for the criminalization of traditional harvesting and gathering practices. The most common list of Aboriginal identifiers at present includes: “First Nations”, “Indian”, “Bill C-31”, “non-status”, “Metis” and “Inuit”. Only those persons who are legally identified as “Indians” under the *Indian Act*, including but not limited to members of an Indian band that is signatory to a formal treaty with Canada (or Britain), are permitted to harvest and gather in traditional ways, but always within the parameters of location and practice established by a treaty or the *Indian Act*.

Several individuals involved in the community interviews and gatherings pointed out that they referred to themselves as “Indian” in response to a question about how they self-identified. Notwithstanding the basis of their application of self-identity, in many instances, these same individuals were not legally recognized as being “Indian” under the federal *Indian Act*, the sole authority on who is and who is not entitled to be identified legally as an “Indian”.⁹

⁸ Examples of these types of occurrences will be elaborated upon in this report where appropriate.

⁹ Two men in particular responded in this manner, using the self-identifier Indian. Both were former members of a Metis Settlement, now card-carrying members of the Metis Nation of Alberta, a political organization representing Metis persons within the province of Alberta. Although it is beyond the scope of this project to address the complexities of this legal and political situation, its occurrence is worth noting. The Metis settlements in Alberta were lands set aside in 1938 for use and occupancy by Metis peoples. The settlements are known as “the only Metis land base in Canada”, suggesting a foundation based in Aboriginal rights entitlement. Similarly, the Metis Nation of Alberta is said to represent the interests of Metis people in Alberta. Membership in the Metis Nation is dependent on one’s ability to demonstrate ancestral connection

This reality is reflective of the fact that the term *Indian* is usually accepted in Aboriginal communities as a social identifier. This is particularly true where the person is not involved in any significant way with the political processes through which such definitions are determined and ascribed formally and legally to Aboriginal persons in Canada. People who use the term Indian as a social identifier often live traditional Aboriginal lifestyles and do not differentiate amongst themselves on the basis of the Aboriginal categories that are recognized by Canada, namely Indian, Inuit, and Métis.¹⁰ In many informal settings of Aboriginal peoples, the term “Indian” is used much like the formal term “Aboriginal” is used by non-Aboriginal people. It describes generally all of the people collectively. It is also the term used by many people of the oldest generations. In these contexts, it has no or little political significance. Yet, the basis for many cases of “illegal” harvesting can be traced back to the common usage and meanings of these specific terms and identifiers. If the people self-identify as “Indians” and are referred to as “Indians” by an uninformed public, how are they to know that they are, in fact, not “Indians” for purposes of the laws of the land? Who is responsible to inform that Indigenous segment of the public on the more subtle points of the externally and legally ascribed identifiers that are impacting on and determining their rights to traditional ways of living and being?

Part Two: Aboriginal Traditional Harvesting Practices as Crime

A. Traditional Aboriginal Harvesting Practices

Aboriginal harvesting practices is the general term used to refer to the traditional hunting, fishing, trapping and gathering practices of the Aboriginal people and communities involved in this study. In Northern Alberta, the subsistence activities of

to a historic Metis community. Membership by Indians is explicitly prohibited. In theory, politically and culturally, card-holding Metis Nation members do not identify as Indian, only Metis.

Aboriginal peoples are well documented with hunting, fishing, and gathering of plants and other naturally occurring resources from the land, cited as the main traditional occupations.¹¹ This finding was substantiated on a number of occasions throughout this research project.¹²

For the purpose of this report and based on prior community knowledge, the research team identified the following four activities as the core traditional practices of the Aboriginal communities to be included in the study: hunting, fishing, trapping, and gathering. Each of these practices implied unique considerations and issues relevant to the project.

1. Hunting as Traditional Practice

Hunting has for millennia been and continues to be one of the principle harvesting activities of Aboriginal peoples and communities in northern Alberta. Moose, deer, bear, and, to a lesser extent, caribou are the primary big game animals that support cultural resource harvesting. Most of these species are considered indigenous to the region and are widely used by local Aboriginal populations for subsistence purposes. Water-fowl, depending on species and seasons, community locations and circumstances, also continues through time as an important staple for subsistence as well as a recognized delicacy and known healing source.

Even one moose a year, a deer, a bunch of ducks – this was all a part of our living. My sister did the tanning of the hides. All parts of the moose were used.

There was usually one person who hunted for the family. One uncle, the oldest one, did most of the hunting. All the brothers supplied him with shells and the gun. He could walk and run better than the others. I recall one

¹⁰ As set out in Section 35 (2) of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (U.K.), 1982, c. 11: 35. (2) In this Act, "aboriginal peoples of Canada" includes Indian, Inuit and Métis peoples of Canada.

¹¹ R.C. Daniel, *Indian Rights and Hinterland Resources: The Case of Northern Alberta* (M.A. Thesis, University of Alberta, 1970) [unpublished] at 18. This was further confirmed in the community research sessions conducted as part of this project.

¹² For example, people spoke of the following upland game birds native to northern Alberta which continue to be a food source: Willow ptarmigan, Spruce grouse, Ruffed grouse, and Sharptail grouse. In a similar context, big game species included Mule deer, White-tailed deer, moose, Woodland caribou, Barren Ground caribou, Grizzly bear, and Black bear. In Wood Buffalo National Park only, bison are noted. See Pattison, *supra* note 2 at 8.

winter, he killed and we ate nineteen deer, a bear and three moose, and we butchered a steer. There were big families to feed. Everything was shared. That was the way it was. In those days, Fish and Wildlife didn't bother you. You could skin (game) outside and not be scared.

The importance of hunting and the continuing opportunities to hunt and to transmit traditional knowledge about hunting practices extends beyond meeting subsistence needs. The ability of one generation of harvesting practitioners to pass these traditions on to the next generations facilitates and ensures the cultural survival of most Aboriginal groups. The significance of hunting has been described as that which constitutes the distinct cultural elements of a group, contributing to its existence as a unique entity or people.

Hunting is something that we value, and we always want to maintain It's part of being Indian. Hunting means a lot to us as our life depends on animals around us, the wildlife. We want to make sure that it is protected in the future. Hunting is something that makes us Indian and it is something that we feel strongly about... we don't want to lose our traditional way of living.¹³

Hunting, fishing and trapping are more than physical subsistence activities. They are an educational and spiritual process. We all have a responsibility to our children to teach them this whole process. If we don't have the land, we can't do that.

2. Trapping as Traditional Practice

Commercial trapping of fur-bearing animals continues to be a traditional harvesting activity for many Aboriginal people and communities. In the mid-1980s, at least half of the registered trappers in Alberta were identified as being Aboriginal.¹⁴ During the 1970s, Métis and Treaty Indians in the Wabasca-Desmarais area were still actively trapping and maintaining registered trap lines, despite negligible economic returns.¹⁵ Reports from the Department of Indian Affairs regarding northern Alberta Indian bands in the late 1970s similarly indicate small numbers of individuals participating in trapping activities

¹³ "Al-Pac Environmental Impact Assessment Review Board, *The Proposed Alberta-Pacific Pulp Mill: Report of the EIA Review Board*. (Edmonton, Alberta Environment, 1990) at 45 (quoting Chief Walter Janvier).

¹⁵ R.L. Piepenburg *et al.*, *Wabasca-Desmarais Land Tenure Research Project – Report of Community Survey* (Wabasca-Desmarais: Resident Workers of Wabasca-Desmarais, 1974). at 99 and 102.

on a regular basis.¹⁶ These findings would suggest that the continuation of trapping as a traditional harvesting activity is not likely related to subsistence.

Input from the community members involved in this project confirmed that trapping is being sustained as a traditional cultural activity and for reasons other than subsistence. Trap lines continue to be handed down from one generation to the next.¹⁷ Trapping is experienced and described as a valued way of life. It is perceived as one of the few remaining avenues permitting Aboriginal peoples to live out traditional ways and relationships with the land and the animals and other forms of life sustained by the land.¹⁸

We used to pick berries there, too, and cut hay, wild grass in the summer. We had a trapper shack along the lake where we stayed in the winter, trapping, and where we cut and hauled wood on weekends. I was young.

That trap line had been ours from the beginnings of time, my great grandfather and all them. If they didn't trap the furs themselves, they bought it from others. All the brothers, even my mother trapped there. Brothers on both sides. There were five cabins there, some had barns, too.

3. Fishing as Traditional Practice

Hunting, fishing and trapping was my family's life. Selling fish was one way to make money – certain species like pickerel and white fish. There were a lot of fish then. Nowadays, there are more Fish and Wildlife officers than there are fish. We don't need all them guys.

Commercial and sport fishing developments have had serious implications for traditional Aboriginal fishing practices in northern Alberta. It has contributed widely to the decimation of fish populations in northern Alberta lakes, making subsistence fishing difficult, and even impossible, in some areas. Perceptions shared by community participants indicate that traditional harvesters believe that, in some locations, it is the regulation of the fishery itself that is having a detrimental impact on the vitality and survival of the fish populations. In other cases, they pointed out that the fish populations

¹⁶ Canada. Department of Indian Affairs and Northern Development, *Socio-economic Profiles for Northern Alberta Indian Bands for 1977* (Ottawa: Department of Indian Affairs and Northern Development, 1981).

¹⁷ Community Consultations, Lac La Biche, Alberta. Community members from the Conklin area confirm this practice.

are intact and strong but Aboriginal peoples are being prevented from harvesting by provincial regulations that favour sport or commercial fishing. A commonly stated theory in the community sessions was that there are species of fish that are on the brink of destruction from pollutants such as mercury or from “over fishing”. Unfortunately, the ability to pursue validation or proof of these claims is often restrained by lack of financial or legal resources. Consequently, communities are left with a situation where a once stable and reliable food source has deteriorated or is deteriorating into a precarious resource.

In the late 1970s, Lesser Slave Lake was “fished out”,¹⁹ preventing the local Indian bands from relying on this resource, either commercially or for subsistence purposes.²⁰ Around the same time, Utikuma Lake was also “fished out” and was restocked in order to support a commercial fish industry run by the local First Nation.²¹ Madeline Bird recalls the dramatic decline in fish populations in Lake Athabasca:

*There was lots of good fish in Fort Chipewyan. The fish was so good and plentiful in Lake Athabasca. Even the dogs were treated with trout. Big tubs of trout for them until the commercial fishermen came and they soon emptied the lake of good fish.*²²

Today, fish remains a staple in the diet of most Aboriginal peoples who grew up and continue to live in communities alongside northern lakes and rivers. Despite the degradation of the northern Alberta fishery, many Aboriginal people in these areas still rely on fish as a staple food source.

¹⁸ Strong, Hall & Associates, *Wabasca and Pelican Projects: Community Impact Assessment* (Gulf Canada Resources Inc., 1980) at 69

¹⁹ This descriptor “fished out” refers to the depletion of the species that had customarily been relied upon as a food source.

²⁰ D.I.A.N.D., *supra* note 10, “Sucker-Creek Band”.

²¹ *supra*, “Utikuma [Whitefish] Band”.

²² M. Bird & A. Sutherland, *Living Kindness – The Dream of My Life: The Memoirs of Métis Elder, Madeline Bird* (Yellowknife: Outcrop Ltd., 1991), at 69.

4. Gathering as Traditional Practice

There were seasonal activities and we knew what those were. There were berries every year in those years: we would start by picking gooseberries, then wild strawberries, then raspberries, saskatoons, blueberries, cranberries. These were good all winter.

Knowing these seasons, and where the berries were, when they were available, how much to pick. These were our conservation systems.

In this project, gathering refers to the picking of berries, roots, eggs, plants and herbs. The gathering of herbs or plants, shrubs, or parts of trees and plants are not limited to those items that support food or medicinal purposes. Some gathering activities are related to spiritual practices and needs of the people. In such cases, threats to the environment involve more than endangering specific plants and herbs; it also means threats to the survival of the people themselves at a very deep level of their individual and collective identities. Where such activities are prevented or prohibited because of the destruction of particular ecological systems, the people themselves face the threat of extinction or genocide of whole systems of thought and meaning tied directly to the vitality of specific plants and plant-life.

Use of plants and other naturally occurring resources from the land has been profoundly affected by government-designed and monitored forms of health care and education. The availability of prescription medicines and store-bought remedies and products has affected the once widely practiced traditional gathering of medicinal plants for health and wellness. Notwithstanding, most Aboriginal people, especially medicine people of all Aboriginal groups, continue to gather and use plants in traditional ways that support health and wellness. The term “medicine people” is used to refer to those who have acquired, hold and use the traditional knowledge related to physical, emotional, psychological, and/or spiritual health and wellness of the individual or the collective.

The training for such responsibility and knowledge takes a lifetime for the learner. In most contemporary settings, this knowledge and these practices continue to be protected by the practitioners as sacred. That is, the knowledge itself as well as the practices are understood to be directly and integrally connected to the divine both in

source and in their concrete forms or expressions. Medicine persons regard their knowledge and “powers” of healing as being “given” to them by the Creator and hence, carrying a sacred trust and heavy personal responsibility not to abuse such knowledge or power with wrong actions.

Gathering plants and herbs or other items for healing purposes entails a long apprenticeship to learn the “correct” and respectful way to gather or collect. Without this knowledge, there will be no healing from the plants. Without a formal recognition of the sacred in the gathering activities themselves, the healing aspects of the plants and herbs are no longer effective. This points clearly to the significance of gathering practices as sources of teaching and learning for the transmission of cultural values and ways of knowing and being. With nothing to gather, or worse, a diminishing number of persons who know how and what to gather, this form of knowledge itself is lost to the people. Unfortunately, this process of loss is ongoing and there are no signs that the flow will be stopped in the near future.

This process places precious plant resources as well as the related Indigenous knowledge base at critical risk for destruction or loss partly because of the esoteric nature of its practice. Often those persons with the highest degree of knowledge about plants as crucial resources for Aboriginal and other people’s wellness are those persons who are the farthest removed from mainstream society. Protection for medicinal and other plant resources and support for those persons who hold pertinent knowledge about such plant resource uses require an informed and sophisticated advocacy movement. Both are threatened with extinction. Most Aboriginal peoples, including those who participated in this project, recognize this threat to a significant part of traditional Aboriginal knowledge systems. Nonetheless, they remain largely reluctant for important reasons to discuss it openly, especially with those whom they perceive as representing the greatest threat, including government and educational researchers.

Most members of the Canadian public remain uninformed about Aboriginal peoples in general and certainly have no idea that Aboriginal knowledge systems exist and Aboriginal peoples still value, hold, teach and live according to these systems, albeit with

great difficulty and much oppression. This situation of ignorance contributes to the enduring nature of the oppression that Aboriginal peoples continue to face in their attempts to live their lives in what they consider to be the morally correct and respectful way to be human. The right to live and be a cultural being is the primary issue that needs address here. The criminalization of traditional practices and ways of being and knowing is removing that right from some Aboriginal peoples.

B. Factors Affecting Traditional Harvesting Practices

The *Report of the Royal Commission on Aboriginal Peoples* noted that Aboriginal peoples have lost control of and access to resources that they historically managed.²³ Regarding the extent to which this has occurred, the Commission noted that in many instances, First Nations people have less than equal terms of access compared to non-Aboriginal Canadians, notwithstanding the entrenchment of Aboriginal and treaty rights in Section 35 of the Canadian Constitution.²⁴

While it would seem that constitutional entrenchment of Aboriginal and treaty rights would ensure Aboriginal peoples increased access to their traditional lands, and therefore continuation of traditional practices, research demonstrates that they continue to experience countless instances of criminal prosecutions, civil proceedings, police and enforcement accusations and harassment relating to traditional land use. Multiple and diverse examples of these experiences were identified by research participants in this case study. In particular, the following factors were consistently identified in the various regions as contributing to loss of use and criminalization of traditional practices: natural resource development, Aboriginal economic development and employment incentives and programs, provincial land tenure, conservation laws and policies, abuse of

²³ Ottawa, Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples, Volume II, Part II, Restructuring the Relationship* (Ottawa: Minister of Supply & Services Canada, 1996)

²⁴ *Supra*, at 453, where the Commissioners' Report reads: In all parts of Canada... land, timber, minerals, fisheries, fur and game – First Nations... not only lost control of resources on what are now considered public lands, but were denied even the same terms of access as non-Aboriginal people. In the process, governments unwittingly – and in some important instances, consciously – violated treaty and Aboriginal rights. The net effect was to force increasing numbers of Aboriginal people onto government relief or other forms of public assistance."

enforcement discretion by Crown representatives, Indian land claims, and environmental pollution. In the next sections, each of these factors is discussed.

1. Natural Resource Development

Indigenous peoples throughout the world have experienced profound changes in their land use and occupancy as a result of resource development and exploration occurring on their traditional lands. In northern Alberta, oil and gas development and exploration and industrial-scale forestry have impacted the economy and traditional land use of Aboriginal communities to the greatest extent. These industries were noted to be increasingly disruptive and destructive to trapping practices, wildlife habitat, and wildlife populations,²⁵ thereby negatively impacting harvesters' ability to maintain their traditional practices.

Twenty-two years of mining operations has destroyed our trapping area. Now the claim is being made that the land, the water, the medicine plants will be restored to their natural original states. I see fish floating down the river. You cannot put the land back to what it was.

Now they are experimenting with air injection into oil wells and lighting fires down in the wells. This is very scary to even think about what could happen. The threat to wildlife and humans has to be there. I have no information – I don't know how this works but it can't be too safe or good for the environment.

Trap lines have been destroyed by oil and gas industry. Talking compensation doesn't usually solve anything. Even here they will use tactics to avoid addressing the long-term impact of their presence on the trap lines. There is always more than damage to snares or traps but they don't want to recognize that. The trails that are destroyed for example have been in use for many decades and generations of trappers and animals' movements. To change these through industrial actions is permanently disruptive to the trapping potential for unpredictable lengths of time into the future.

²⁵ A. A. Espiritu, "Aboriginal Nations': Natives in Northwest Siberia and Northern Alberta" in E. Alden Smith & J. McCarter, eds., *Contested Arctic - Indigenous Peoples, Industrial States, and the Circumpolar Environment* (Seattle & London: University of Washington Press, 1997) 51-57; M.M. Ross, *Aboriginal Peoples and Resource Development in Northern Alberta* (Calgary: Canadian Institute of Resources Law, University of Calgary, 2003) 1-2. Northern Alberta Development Council, *Research Report: Trapping in Northern Alberta* (Peace River: Northern Alberta Development Council, 1984) [hereinafter "Trapping in Northern Alberta"].

When traditional harvesters are refused access, or their access is restricted due to third party interests, their continuing or insistent presence is often characterized as illegal. Although provincial regulations and policies require consultation with all interested parties, Crown-granted leases and licenses are often issued on the understanding that the licensees will conduct consultation with affected stakeholders. Stakeholders can include nearby landowners, municipalities, Aboriginal communities, recreational land users, other industries, environmental groups, governments and regulators. It has become standard industry practice for licensees to advertise in local regional newspapers their intent to develop the lands in question. Sometimes, the company will also hold an "open-house", where corporate business plans are made available to attendees. The environmental, socio-economic impact of these developments is often presented in the form of highly scientific and formal environmental impact assessment reports, which are not readily available to the traditional land user. Moreover, consultants who have no real connection to the land in question, but who may have attended the area for the sole purpose of drafting the assessment report are the persons who often complete these reports. In most instances, there will have been little or no involvement by Aboriginal traditional land users and particularly those who oppose such development. This means that Aboriginal perspectives in relation to the land are not usually included in these formal environmental impact assessments.

It is a safe conclusion from our discussions that most Aboriginal traditional land users do not accept a local newspaper notice of hearing to be adequate consultation regarding land development.²⁶ Neither do most users accept an environmental impact assessment report filed at a distant corporate head office as adequate or meaningful consultation. Notwithstanding Aboriginal peoples' non-acceptance of these industry practices, when they challenge industry or the Crown on the issue of land development and lack of consultation, the company's conduct is often recognized as having met the accepted standard for consultation purposes.

Consultations ought to be an ongoing part of the plans to deal with trappers. In most cases of development, plans have been in place long before the trapper is notified. There is no excuse for not meeting with the trappers. Even then the

²⁶ See Appendix "A" of this report for a same Notice of Hearing, Canadian Natural Resources, 2002.

notice to the trapper about scheduled and already approved and government-licensed activity is usually late.

If you ask questions about proposed developments to Aboriginal traditional territories, you get sent a huge box of books and papers to read. I am not trained in what I have to read so I cannot respond. This is frustration and helplessness.

Once a lease or license has been issued, the presence of third parties on that land can be legally characterized as trespass. Accordingly, traditional land users who continue to hunt on their traditional hunting territory, now legally and formally approved as a Forest Management Agreement area,²⁷ or as an oil sands development project, can be (and often are) considered trespassers.

We are muzzled against industry – have to keep quiet and follow the rules. How do we get around this is the question? This will get worse.

Who keeps the big industries “in line”?

Alternatively, many Aboriginal groups have attempted to use the legal system to protect their interest in traditional lands.²⁸ The nature of such a claim must typically be raised in the context of a breach of treaty and Aboriginal rights to the land in question, or, at the very least, a claim based on lack of consultation. In the alternative, or additionally, the claimant group may allege breach of fiduciary obligation on the part of the Crown. These types of claims are very complex. Typically they involve lengthy, complicated and expensive legal proceedings. When prompted by land development disputes, legislative and administrative schemes are often in place that require compliance with statutorily mandated hearing processes. The role of the court will be to determine, through judicial review, whether these administrative procedures have taken place. If, after the judicial review, the court determines that it, in fact, has jurisdiction to hear the complaint, only then will its function be to resolve the substantive matters relating to breach of obligations.

²⁷ See Appendix “B”, map of Forest Management Agreements in Alberta. There are currently 20 management agreements in effect in Alberta. This map effectively illustrates how all of the province’s natural forest area has been licensed to the pulp industry.

²⁸ Here, “legal system” refers to both administrative law mechanisms, such as environmental control authorities such as the Alberta Energy and Utilities Board (AEUB), as well as standard civil litigation through the courts.

In light of these processes, Aboriginal peoples feel that their interests have little, if any, priority in the resolution of these matters. Even if they are aware of these mechanisms, and have the financial means to support bringing the matter before the courts or an administrative tribunal for determination, they are often left with a sense of frustration and distrust in the system.

I have seen that it is the same people who are working together with industry and government. In one case, we had our lawyer and industry and government each had their lawyers present. During the break, the government lawyers and the industry lawyers were socializing, laughing and touching, obviously together. Our lawyer was excluded. Even with such poor examples of professionalism, it was obvious that the government regulators were simply a part of the whole 'development' system. How could they regulate to address environmental and Aboriginal concerns?

If you challenge the AEUB, you get branded. Government and industry talk and you get black-listed.

Aboriginal people and communities throughout Alberta have generally accepted that natural resource development is an inevitable occurrence. Often, this development will occur directly in their traditional use areas and in the face of active political and sometimes legal opposition. Recognizing this fact, Aboriginal communities will often take strong political positions with these third parties who may have a duty to consult with the local Aboriginal populations. Their demands may include compensation for damages to traditional harvesting areas. More often than not, these demands will serve to guide negotiations for increased levels of employment and training and more and improved opportunities for economic advancement.

2. Aboriginal Economic Development and Employment Initiatives

Since the latter portion of the twentieth century, some Aboriginal people and communities have benefited from the employment opportunities²⁹ created by the

²⁹ Although not the subject of this report, these positions tend to be seasonal, temporary and not at the managerial level. Accordingly, the sustainability or long-term benefit of such employment opportunities is tempered.

development of their traditional lands. Spin-off opportunities have also been created by industry developments in neighbouring areas.³⁰ These mainstream means of earning a livelihood held out much promise to local Aboriginal communities in northern Alberta, especially in the early 70's and 80's. However, it soon became evident that there would be minimal benefits to Aboriginal peoples from the increasingly intense oil activity in their regions.

Although resource development has accelerated at unprecedented rates, many Aboriginal communities in northern Alberta continue to experience low employment and extensive reliance on various forms of government assistance. It has been suggested that in communities with high rates of unemployment, reliance on traditional harvesting practices increases.³¹ In these instances, hunting and fishing activities are often conducted for subsistence purposes, with no direct generation of monetary income. Indirectly, however, monetary gains are made in that families are able to redistribute money that would otherwise have been spent on the purchase of food. It is important to note for context that this conduct is, for the purpose of provincial legislation, illegal activity,³² effectively criminalizing an important community value and practice.

The long-term effect of resource development and related employment opportunities on the ability of Aboriginal peoples to maintain their traditional practices has been negative. The structure and time commitments required by a wage-labour economy have affected people's ability to spend time on the land practicing traditional activities. Consequently, Aboriginal employment and economic development initiatives while "legal" and indeed sought out by many Aboriginal people and communities, contributes to the criminality of traditional harvesting practices.

Government forced adaptation with criminalization of who we are.

³⁰ D.I.A.N.D., *supra*, note 10; Northern Alberta Development Council, *Profiles of Regions and Communities in Northern Alberta* (Peace River: Northern Alberta Development Council, 1991).

³¹ Strong, Hall & Associates, *supra* note 12 at 55. This was confirmed by many research participants interviewed in the northern communities as well.

³² See, for example, s. 55 of the *Wildlife Act*, R.S.A. 2000, c. W-10, which states: 55(1) Subject to this Act, a person must not be in possession of a wildlife or controlled animal. Examples of federal and provincial legislation affecting traditional hunting activities, which includes sharing and distribution of these resources amongst family and community members is discussed more in-depth at part D, *Federal and Provincial Laws Relating to Harvesting Practices* herein.

We need jobs, but we want to continue our practices, and to teach our kids. As leaders, we're under great pressure to get jobs for our communities. What are we supposed to do?

3. Provincial Land Tenure System

Alberta's system of land tenure in the north complemented industry's massive influx of oil and gas exploration in the region. Introduced in the 70's and 80's, the land tenure system opened up many northern lake communities to land speculators just as it claimed to open up possibilities for government-sponsored land and home ownership programs to people who had no source of "income", in the usual sense of that word. The land and home ownership program included a relocation package that provided opportunities for northern Aboriginal families to be 'relocated' from their traditional territories and into nearby towns where they were promised training and employment opportunities. Very few of these promises were ever collected or brought to fruition. Since there was also no regular and stable source of employment in these new communities, many found themselves unable to pay monthly mortgage payments and property taxes and thus faced eviction from their new homes and properties.

The provincial land tenure system and land registration system in general has impacted on traditional Aboriginal harvesting practices. Many families, once removed from their traditional lands and stripped of opportunities to practice their traditional harvesting activities and live out their values in relation to the land, succumbed to the prisons of enforced housing and social organization in their ghettos within the 'white' town. In particular, community participants shared their experience in losing family trap line areas as a result of "the law":

We lost them all. This mooniyaw came one year and my dad let him hunt and stay with us. The next year, he was there already, had signs up, it was his now. He applied with his ten dollars and the government gave it to him. Not only us, a lot of Métis lost their trap lines here. One uncle fought it and got his trap line back. That line is still in his family, his son has it.

But that's the way: the white man came and the old man (grandfather) was easy going – he couldn't read anyway so he just left it (the land) go. They said, 'You just go home, we paid the registration - this is our place'. So we went home. I was about thirteen or fourteen at that time. What are you going to fight with if you have no money?

It is not within the scope of this study to elaborate and trace the development of land tenure in northern Alberta. However, the foregoing is sufficient to demonstrate that Aboriginal peoples in northern Alberta have struggled to maintain their connections to the land and to practice their traditional harvesting practices against almost overwhelming odds. In hundreds of cases, whole families have given up their traditional ways of living as the removal of their rights and opportunities to practice these ways and being were taken away through legislation, policies and regulations.

Harvesting and cultural practices are not separable, and within these are embedded the cultural values and beliefs of the people. The threats and the impact of the law through state-sanctioned resource development relate to the destruction of the relationship between the Aboriginal people and the land. Without this relationship, the people will not survive. Is this then not an issue that moves beyond land control, ownership and development? If the right of a people to live is taken away from them for financial benefits to another, will or does this not constitute a crime against humanity in some definition, in some generation, in some location, in some future?

4. The Legal Assault on Aboriginal Societies and Cultures: Federal and Provincial Laws Relating to Harvesting Practices

Look at statistics to see who is actually killing off the moose? In 1985, with Bill C-31, many Indian people came back with rights to hunt but since then moose numbers have increased. Calculate that there were 30,000 Aboriginal men in Alberta. 10,000 of these are Indians and of these 2,000 can legally hunt. Yet, in Alberta, 10,400 licenses were sold in Alberta in 1985.

Legislation and regulations which have a direct effect on Aboriginal peoples' harvesting practices have become the subject matter of numerous cases heard by the Supreme Court of Canada since the constitutional entrenchment of Aboriginal and treaty rights in Section 35 of the *Constitution Act, 1982*.³³ It is apparent, in consideration of many of

³³ The majority of cases heard by the Supreme Court of Canada since 1982 involving Aboriginal defendants have involved claims based on unextinguished Aboriginal and/or treaty rights pursuant to s. 35 of the

these cases, that implementation of the commitment reflected in this constitutional provision continues to be prompted by Aboriginal peoples' actions. More importantly, for the purpose of this report, it is significant to note that this "action" tends to occur in the context of alleged criminal conduct by Aboriginal persons. Thus, notwithstanding the legal standard of "innocent until proven guilty", Aboriginal persons seeking recognition of their Aboriginal practices, practices which are integral to the continued existence of their communities, enter into this arena as criminal.

From the data-gathering process and workshop settings we were able to discern two common legal situations affecting traditional Aboriginal harvesting practices – hunting without a valid provincial license and being in possession of wildlife without a valid license to possess it.

Who has the right to determine what my rights are?

Laws are like cobwebs dropping on us and we can't move.

I. Hunting Without a Valid License

The procedure and requirements for acquiring a subsistence-hunting license from the province are very stringent. As an example, the following sections of the *Alberta Wildlife Regulations* effectively illustrate the predicament that occurs in the context of Aboriginal hunting practices.

Sections 39 (1) and 40(1) of *Alberta Regulation 143/97* state:

39(1) A person is eligible to obtain or hold a subsistence hunting license if and only if

(a) he is an individual who resides outside the boundaries of a city, town or village and in the subsistence hunting area described in subsection (2), and

(b) the Minister is satisfied that he is in dire need of sustenance for any of his family members, including his adult interdependent partner.

Constitution Act, 1982. These include: *R. v. Sparrow*, [1990] 3 C.N.L.R. 160; *R. v. Van der Peet*, [1996] 2 S.C.R. 507; *R. v. Badger* [1996] 1 S.C.R. 771; *R. v. Gladstone* [1996] 2 S.C.R. 723; *R. v. Powley*, [2003] 2 S.C.R. 207; *R. v. Blais* [2003] 2 S.C.R. 236

40(1) A subsistence hunting license authorizes its holder, if any of his family members, including his adult interdependent partner, is in dire need of sustenance,

to hunt one animal (and one only) from among the following kinds of animals,

namely, moose, mule deer and white-tailed deer

during the period, and in the area, specified in the license.

Aboriginal people continue to move to urban centres at unprecedented rates. In many instances, this migration is for employment, educational and/or health reasons and commitments. Notwithstanding this fact, traditional practices are usually maintained, implying significant and regular connections with the home community. Often the person who relocates to the urban centre is the primary provider and even from that location, he or she remains the primary provider in terms of traditional hunting practices. Section 39 of the *Regulations* would prevent this person from applying for and obtaining a subsistence-hunting license. Notwithstanding the continuing connection to their home community and traditional territory, the applicant would be considered a resident of the urban centre, and therefore not eligible.

Section 40 restricts the license holder to harvesting one animal for subsistence purposes. This restriction flies in the face of the needs of many Aboriginal families and communities and their cultural practices where it is common practice for specific individuals to be the hunters and providers. These individuals will hunt and kill numerous animals to meet their own subsistence needs, as well as those of their extended families, community elders, and others who may otherwise not be able to hunt. The restriction of one animal per license implies that these traditional hunters and providers live alone or with a nuclear family, not in a social and cultural context of extended familial interdependence, and that they are committing a criminal act by meeting these societal needs and expectations.

In our family, I hunt and share meat with about thirty-five people.

ii. Transport and Possession of Wildlife

The *Alberta Wildlife Regulations* specify the document requirements for transporting wildlife that has been legally killed. Section 138 of the *Regulations* states:

S. 138: The documents prescribed for the purposes of section 57(1) of the Act are all of the following so far as they are applicable in the circumstances:

(a) in the case of a person transporting dead wildlife who is the person who killed the wildlife, the document that authorizes possession of the wildlife;

(b) in the case of a person transporting dead wildlife who is not the person who killed the wildlife, a bill of lading signed by the person who did kill it or by the person who consigned or otherwise has lawful possession of the wildlife, setting out the type and control number of the license or permit under which the wildlife is possessed or the control number of the fur farm license, as the case may be,

(ii) a description of the wildlife,

(iii) the points of origin and destination of the wildlife, and

(iv) the dates on which the wildlife is to be transported;

(c) in the case of wildlife that is the subject of an export permit issued by a jurisdiction outside Alberta, that export permit;

(d) if the wildlife is a falconry bird possessed under a falconry permit, that permit;

(e) if the wildlife is

(i) a live lynx possessed under the authority of the Fur Farms Act, or

(ii) any other live wildlife animal, except such a falconry bird and except an animal that is not a lynx and that is so possessed under that Act, a completed wildlife manifest in the form set out in Form WA 285 of Schedule 16.

Provincial and superior courts have decided numerous cases involving allegedly illegal conduct in the context of Aboriginal harvesting practices, most often in relation to hunting without a license and possession of wildlife that has been killed for subsistence purposes. In many instances, the facts of these situations would have supported a legitimate defence based on Section 35 of the *Constitution Act, 1982*. However, for circumstantial reasons, most notably the financial burden of carrying a constitutional

legal defence through the court system, and the emotional stress of facing stringent criminal penalty, many Aboriginal accused elect to resolve these cases by way of a guilty plea, or through plea bargaining by counsel at a lesser charge. The overall consequence then is the criminalization of these traditional harvesting practices and the accompanying social debilitation of Aboriginal persons pursuing their own ways of life – *pimatsiwin*.

They tell me that the Treaty people, they are not supposed to give away anything- not even a fish. There was a case where a Treaty man was selling fish door to door. In this community, a Métis man with a large family bought one of the fish. But it is illegal to buy fish from the Treaties ("Indians"). The man was charged with a big fine. He bought this fish to feed his family probably because he could get it at a reasonable price but he was slapped with a fifteen hundred dollar fine.

5. Abuse of Discretion by Law Enforcement Representatives

I was sixteen when I was charged for killing a moose with no license. I had a criminal record from then on. I got other charges since then. One was for tagging a moose on the antler instead of the hock. The officer stood there and watched me put the tag on the moose and then charged me.

They (Fish and Wildlife) made laws themselves to suit themselves. I bet now we would be told, it is left to the discretion of the Fish and Wildlife officer. They know everything. They would confiscate nets when you were charged so even if you won in court, you lost time and money.

In many communities hunting and fishing are primary subsistence activities. Where regulations and legislation are enacted and enforced in relation to these practices, the effect is a restriction on these traditional practices that have sustained cultures and indeed peoples' survival for millennia. These restrictions cause fundamental shifts in lifestyle including dietary adjustments and diminishment and loss of cultural practices. Moreover, these laws and policies are preventing whole populations of Aboriginal peoples from living out their values and ways of life.

Much of the community discussions pointed to the negative impact that laws relating to wildlife and fish have on human physical health and well-being. One young woman shared the story of how her mother's health had deteriorated so quickly and devastatingly when she could no longer include wild meat and fish in her diet because her sons could no longer legally hunt or fish. They had been refused licenses and permits to hunt and fish after the father, a man with Indian status, had passed away.

Another woman told how her doctor had prescribed a diet of wild meat and fish intended to prevent heart problems for her. To fulfill the diet, she required a fishing license/permit. When she went for her license from Fish and Wildlife with the doctor's letter, the officer filled out her license and was prepared to hand it to her. He asked her who was going to set the net for her. She named her husband, whereupon the officer ripped up the license, saying, "I know those people from Mariah River, they are all Métis and poaching all the time." He refused her the license. Her heart condition worsened and she ended up needing major heart surgery. She attributes at least some of that to her inability to sustain her health with traditional foods.

With respect to law and policy enforcement, participants discussed numerous and varied experiences of alleged abuse by conservation officers. Investigations were often interrogatory in nature, they reported, resulting in verbally and sometimes physically abusive exchanges between the parties. It is obvious when one considers the number of provincial and superior court decisions involving harvesting practices that most of these inquiries do not result in any criminal or civil proceeding against the harvester. In any event, abusive conduct by Crown representatives is unwarranted and is, in itself, criminal conduct.

When Fish and Wildlife first came out, they would open fishing in spawning season. You could catch so many fish and store them. Then they would close the season. If you had more fish than what you were supposed to have, they burnt them. You were allowed so many fish according to the size of your family. If you got caught with more fish than you were allowed to have, you were pinched. You would go to court and pay a fine. Lots of people who could not pay fines ended up in jail. I was convicted of setting a net in too shallow water.

Abusive interrogations by enforcement officials often leave harvesters and their families with a sense of criminality and apprehension of authority figures. People begin to feel that by their mere presence on their traditional lands, they are guilty of some illegal act, that they are criminals.

In many instances, it is the inter-generational impact of such abuse of authority that is of great concern. In one community, the abuse became evident when an officer's son taunted a harvester's son at school, claiming, "My dad's going to come to your house and arrest your dad". The harvester dad, a Métis man from northern Manitoba, had shot and killed an elk to feed his family for the winter. The animal had been shot and killed on unoccupied Crown land. One week after the school taunting, at exactly the same time of day as the school bus arrived to pick up the Métis children, Fish and Wildlife officers and representatives of the local RCMP arrived at the family residence to charge the man for killing the animal. They roared into the yard in front of the school bus and marched in to the house uninvited. They seized all of the meat that had been properly wrapped and frozen in the family freezer.

The impact of this incident was intensified by the involvement of the sons. The school taunting discloses the officer's breach of professional conduct and confidentiality in

relation to an ongoing investigation. The arrival of the investigating team at the family residence at the same time as the school bus, while perhaps coincidental, effectively “confirms” to the son and to his school peers, that the father is guilty of “criminal” conduct and is, in effect, a criminal.

The impact that this incident has had on the man as provider for his family, and on the family as a collective carrying on its traditional practices is devastating and irreparable. Notwithstanding this fact, the conduct of the officers may technically be considered legal in terms of existing law and policy enforcement. From another, more humane perspective however, the criminality of this situation is in the conduct of the enforcement officers. From the perspective of a teacher or a children’s counsellor, the psychological damages to the children in this case are a form of child abuse, likely with long-term damaging effects to learning capability and self-esteem, trust and general school and societal achievement. The professional and ethical conduct of the authority figures is obviously open to challenge. None of these perspectives is likely to enter into a legal consideration of the case.

Ironically, the Manitoba government has made reference to respecting Métis rights to hunt for subsistence purposes. At an annual general assembly of the Manitoba Métis Federation (MMF) in September 2004, Premier Doer pledged that his government would follow the Supreme Court of Canada decision in *Powley* and respect the Métis right to hunt for sustenance purposes. Notwithstanding this undertaking, Métis people in Manitoba continue to be charged for practicing their traditions.

"I was chair of the MMF³⁴ annual general assembly. I was within ten feet of the premier when he promised to respect Métis rights and follow the Powley decision," said Goodon, chairperson of one of the local Métis organizations. Goodon was subsequently charged with illegal possession of a migratory bird for not holding a valid provincial hunting license. His gun and the carcass were seized by the Department of Conservation and he was charged under the Migratory Birds Act for being in possession of the bird.

"After hearing his message to the Métis people, I didn't think I would have to skulk in the bush like a criminal. Métis hunters have the right to feed their families in our traditional ways. The minister has no right to play games with the lives of our people."³⁵

Specific reference was made to situations in a number of northern Alberta communities where individuals would be charged with illegal possession and/or selling of meat and fish derived from traditional hunting practices. In these instances, undercover officers would approach the harvester, requesting meat or fish for sale. Incidents were also reported where enforcement officials reportedly offered substances such as drugs and alcohol to Aboriginal harvesters in their investigations of illegal harvesting activities.³⁶

Even taking the kids out snaring in the creeks and rivers in the spring time, the Fish and Wildlife will be there watching and waiting, stopping the children and questioning them about what they are doing at the river. Everyone knows and everyone is watching and waiting too, to see where the officials go and what they do. Why do I have to teach my kids to hide what they enjoy and what they know we do as native people? What am I teaching them?

Now, as Métis, we have to teach our kids how to hunt legally; we are not poaching. We need to re-program our kids. But because of the law and how it is enforced, we can't take our children out to teach them. They don't know enough. They don't have the foundations to learn.

It is a humiliating experience to have to hunt at night to feed your family.

³⁴ Here, MMF refers to the Manitoba Métis Federation, a quasi-political organization representing persons of Métis ancestry in Manitoba who meet the membership qualifications of the organization.

³⁵ Cited in First Nations Drum, "Métis Fighting over Implementation of Right To Harvest", Dolha, Lloyd. Website: <http://www.firstnationsdrum.com/Win04-05.html>.

³⁶ This information was shared at the final Edmonton roundtable by workshop participants who requested that their identity not be disclosed.

6. F. Indian Land Claims Settlements

When a claim is settled between Canada and a First Nation, the traditional territory of that group is identified and becomes a central component to the final agreement. Often, the traditional territory will form part of a co-management area between Canada and the First Nation. Where there are overlapping traditional lands between different Aboriginal groups who may not be party to the agreement, this can cause problems relating to the continuation of traditional practices of the non-party Aboriginal group. As an example, lands near the Cold Lake Air Weapons Range in northern Alberta were subject to a claims settlement made by the Cold Lake First Nation against Canada.³⁷ Finalized in 2002, this agreement compensated members of Cold Lake First Nation for loss of access to traditional territory as a result of the Air Weapons bombing range. The agreement included \$25.5 million in cash compensation, additional reserve land and access agreements to the Primrose Lake Air Weapons Range which straddles the Alberta/Saskatchewan border. The Cold Lake agreement enables Cold Lake Band Members access to lands within the air weapons range, a part of the Band's traditional territory.

Although the Cold Lake-Canada Agreement was a positive one for that particular Aboriginal First Nation, there are numerous other Aboriginal persons and communities that have used this same geographical area as their traditional territory. However, the Cold Lake Agreement is not binding on Canada *vis-à-vis* non-band (Cold Lake First Nation) members, as they are not party to the land claim agreement. Consequently, non-band member harvesters are detrimentally affected by the land claim agreement in that

³⁷ See http://www.indianclaims.ca/download/AR2001-2002_eng.pdf for description of the Cold Lake Primrose Lake Air Weapons Range claim.

they are legally refused continuing access to these lands. Non-band members also do not benefit from the \$25.5 million in cash compensation, nor from additional reserve land. Consequently, Aboriginal people who also have an ethical claim to that land as a part of their traditional territory will now find themselves in a situation where their presence on these lands will be considered illegal, particularly given that the land is used as a military air weapons test range.

The bombing range scared our people away from their traditional territories. The Métis families scattered across the province, leaving their homes, trap lines, etc. They were threatened with bombs if they remained in the area. The planes would fly low to terrorize them.

7. Environmental Pollution

In various areas throughout Canada, health research seems to focus on warning and educating the Aboriginal peoples on how to live without their relationships to the land and its resources that have sustained them for millennia. Notwithstanding this scientific “knowledge”, fish, for example continue to be eaten as a staple food even though there is an increasing emphasis on communicating to the women of child-bearing ages the dangers that inhere in continuing to eat the fish and meat that accrue from traditional harvesting activities. The underlying message is that the animals, the land and the water will die, but “you can still live if you live ‘our’ educated way”. From the stories relayed by the community members in northern Alberta, they seem to be receiving a similar message in relation to their traditional activities and relationships with the environment.

Elders teach us that in the old days, the animals ate all kinds of plants. When we eat the animals, we receive the sources of the minerals, vitamins, etc that the animal has eaten. In this way, our health is maintained. However, today the animals are suffering and cannot find healthy food for themselves. They are diseased and sick because of the contaminants in the environment.

Farming “wild” animals and fish farms are leading to sickness amongst the animals.

Our doctors are recommending moose meat instead of beef, but the environment is impacting on the quality of wild meat today.

The taste of wild game has changed drastically and I don't eat deer meat anymore. It just doesn't taste that good, it tastes different. The deer are eating different food, too. There is nothing really solid in meat these days. The deer go out and eat in the fields and they are just as bad as cattle. They are not eating natural foods either.

PART III - INTERVENTION STRATEGIES

In Canada, “the law”, that is the entire justice system - legislative and regulatory regimes, law enforcement, prosecution and sentencing - is the default means of securing social control. It is important to critically consider whether or not the law is necessarily the best strategy for dealing with behaviors that are considered unwanted.

In the previous section, we discussed traditional Aboriginal harvesting practices as criminal or unwanted behavior. With the support of community-based research, we have demonstrated how state laws and policies have effectively criminalized traditional ways of living and being. Alternative and arguably more effective methods of controlling Aboriginal harvesting practices are available and have been implemented in certain instances. Many of these strategies involve mechanisms outside of the context of the civil and criminal law. In this section, some of these alternative strategies are discussed.

A. Bilateral Harvesting Agreements

For the most part it has been Métis persons who have experienced the most severe and recurring instances of investigatory harassment and criminal charge for exercising traditional harvesting practices. Until 2003, there were no common law principles to

guide the courts, policy-makers, or enforcers in the application of provincial and federal laws relating to Métis harvesting practices as Aboriginal rights. As a consequence of the Supreme Court's decision in *R. v. Powley*,³⁸ it is arguable that governments have a fiduciary duty to recognize the rights of Métis people to hunt for subsistence purposes, and it is apparent that in a number of regions, provincial governments have taken steps to implement the principles espoused in that case.

One common intervention strategy has occurred in the form of bilateral agreements between Alberta and two quasi-political organizations representing Métis people. The purpose and intent of the harvesting agreements is to provide certainty. The agreements enable Métis persons to harvest fish and wildlife for sustenance purposes on all unoccupied Crown land. The agreements recognize traditional practices of food sharing and mobility of families between traditional areas and urban centres, and include provisions for distribution amongst family and community. While provincial justice departments maintain prosecutorial discretion with regards to the laying of charges in certain instances, the agreements do represent and provide an alternative to the criminal law.³⁹

³⁸ *Supra*, *Powley*, note 11. It should be noted the Court in *Powley* did not provide any concrete definition of Métis. Consequently, if litigation is the context, the courts would need to determine on a case-by-case basis whether certain communities constitute Métis communities, and *then*, whether or not the practices constitute rights to be accorded constitutional protection. This discussion is beyond the scope of this report but is covered extensively in L. Weber, *Metis Aboriginal Rights in a Post-Powley Era*, LL.M. thesis, University of Manitoba. Forthcoming October 2005.

³⁹ For example, see Alberta government website at <http://www.aand.gov.ab.ca/PDFs/IMHA> to view the Interim Métis Harvesting Agreements made between the Métis Nation of Alberta and Alberta and the Métis Settlements General Council and Alberta. In other jurisdictions, interim agreements have similarly been negotiated and entered into. Visit the Métis National Council website at http://www.Métisnation.ca/Harvest_Guide_04/splash.html to view developments happening throughout the Prairie Provinces with respect to Métis harvesting practices. Note however, that the enforceability of these agreements is questionable. None refer to the arrangements being based on recognition of Aboriginal rights. It follows then that in the absence of substantive changes to legislation to reflect the terms of the agreements, provincial discretion will prevail. This concern was noted by participants at the roundtable discussions. See Appendix C Recommendations for reference.

B. Co-management Agreements

Co-management of wildlife and/or traditional lands is another mechanism that has been used as an intervening strategy against increased criminalization of traditional harvesting practices.

It is common practice in northern regions where outstanding Aboriginal land claims exist for specific wildlife harvesting rights and guaranteed participation in wildlife and environmental management to be a negotiating factor. It is typically pursuant to claims settlements that co-management boards are created, enabling Aboriginal peoples to directly participate in wildlife management and conservation issues in specific areas. Consequently, Aboriginal views and philosophies relating to wildlife conservation will have an impact on the management of these resources.

Although these management authorities typically arise in the context of land claims settlements, there is no apparent reason why this concept could not be applied to regions where there is no ongoing claim. Co-management regimes can be implemented within existing wildlife management areas. Government could make sound policy decisions to restructure the existing system to enable increased Aboriginal representation and involvement. This would in turn have a positive effect on the relationships at multiple levels – at the political level, between Aboriginal political representatives and federal and provincial representatives; at the grassroots level, between enforcement officials and Aboriginal traditional harvesters. In this context, co-

management as an alternative to the criminal and civil law as forums for resolving disputes relating to Aboriginal harvesting practices makes sense.

C. Domestic Legal Mechanisms

The common law of Aboriginal rights is based on the fact that Aboriginal peoples historically existed in Canada as distinct Aboriginal societies prior to European contact and assertion of sovereignty. Where the traditional practices of these distinct Aboriginal groups continue to exist in the present day, the doctrine of Aboriginal rights requires that these practices be reconciled with the assertion of Crown sovereignty. This requirement is contemporaneously reflected in section 35 of the *Constitution Act, 1982*, which states:

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

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreement or may be so acquired....⁴⁰

It is beyond the scope and intent of this report to provide an in-depth discussion of the common law regarding Aboriginal and treaty rights. However, specific elements of the common law tests relating to Aboriginal and treaty rights will be identified and elaborated on as these relate to traditional harvesting practices.

1. Aboriginal Harvesting Practices as Aboriginal Rights

While section 35 recognizes and affirms existing Aboriginal and treaty rights, it does not delineate the nature and scope of these rights. Accordingly, Aboriginal peoples must prove the continued existence, nature and scope of their traditional practices in order for

these practices to receive constitutional protection as Aboriginal rights, not treaty rights. The test for proving the existence of unextinguished Aboriginal rights is set out in the 1996 Supreme Court of Canada decision in *R. v. Van der Peet*, where the court stated that “in order to be an Aboriginal right an activity must be an element of a practice, custom or tradition integral to the distinctive culture of the Aboriginal group claiming the right”.⁴¹

Prior to 1982, Aboriginal and treaty rights could be extinguished by the Crown in a number of ways. However, with the enactment of s. 35, extinguishment can now only occur if a “clear and plain intent” by Parliament is demonstrated.⁴² Notwithstanding this restriction, Aboriginal rights are not absolute and may be justifiably infringed upon. For example, conservation and resource management have been upheld by the courts as valid legislative objectives for infringing upon Aboriginal rights.⁴³

I. Priority Of Interests

The hierarchy of interests noted by the Supreme Court in *R. v. Sparrow* clearly gives priority to traditional Aboriginal harvesters who harvest for sustenance purposes over sports fishermen and commercial users. In that case, the appellant, Sparrow, proposed that the order of priority be as follows: (i) conservation; (ii) Indian fishing; (iii) non-Indian

⁴⁰ *Supra, Constitution Act, 1982.*

⁴¹ *R. v. Van der Peet, supra* note 21, at para. 46. With respect to the claims of Métis people for protection of their traditional practices (which are often the same as First Nations or Inuit people), the test set out in the 2003 Supreme Court decision, *R. v. Powley* applies.

⁴² The Supreme Court of Canada first contemplated the meaning of s. 35 in the landmark decision, *R. v. Sparrow, supra*, note 21. Speaking for the Court, Dickson C.J., (as he then was), held that the Crown must prove a “clear and plain intention” to extinguish an Aboriginal right and that Aboriginal rights were not to be interpreted as frozen in time.

commercial fishing; or (iv) non-Indian sports fishing. The court agreed with the general tenor of Mr. Sparrow's argument, noting that the Aboriginal right to fish for food purposes was a constitutional entitlement second only to conservation measures that may be undertaken by federal legislation.

Aboriginal persons who engage in hunting and fishing are, in many instances, keenly aware of the hierarchy of interests that was proposed in the *Sparrow* decision. This knowledge therefore exacerbates tensions in Aboriginal communities and is a source of frustration and anger for community members who must deal with officials who enforce provincial policies that seem to ignore the Supreme Court's direction and place commercial and sport fishing in a priority position over Aboriginal hunting and fishing for sustenance purposes.

II. Fiduciary Obligation and the Duty to Consult

With respect to the extent of infringement, the court in *Van der Peet* reinforced its earlier decision in *Guerin v. Her Majesty the Queen*, that infringement of Aboriginal rights must be minimal and in accordance with the Crown's fiduciary relationship with the Aboriginal group in question:

The constitutional recognition afforded by the provision therefore gives a measure of control over government conduct and a strong check on legislative power. While it does not promise immunity from government regulation in a society that, in the twentieth century, is increasingly more complex, interdependent and sophisticated, and where exhaustible resources need protection and management, it does hold the Crown to a substantive promise.

⁴³ supra, per Dickson C.J. and La Forest J.: "The nature of government regulations cannot be determinative of the content and scope of an existing aboriginal right. Government policy can however, regulate the exercise of that right, but such regulation must be in keeping with s. 35(1)."

*The government is required to bear the burden of justifying any legislation that has some negative effect on any aboriginal right protected under s. 35(1).*⁴⁴

Recent Supreme Court of Canada decisions have strictly characterized the fiduciary obligation of the Crown to consult with affected Aboriginal peoples where claim to Aboriginal title and rights have been stated, but not yet determined by the courts. In *Haida Nation v. British Columbia*, the Supreme Court concluded that the Crown has a legal duty to consult, that these consultations must take place in good faith and, in certain instances, extend to an obligation to accommodate the needs and interests of the claimant group.⁴⁵

As an intervention strategy, community-based knowledge of the physical environment, wildlife species and fish and the law as determined by cases like *Sparrow* can substantively bolster the bargaining position of Aboriginal groups. Given this vast knowledge base, it is justified that there be increased involvement by knowledgeable Aboriginal people in policy-making, regulating, and indeed law-making regarding fishing and wildlife matters.

The combined effect of the Supreme Court decisions in *Sparrow*, *Haida Nation* and *Taku River Tlingit* is that Aboriginal people whose traditional practices or Aboriginal rights are being infringed by government regulations, laws or policies have legal grounds to have their interests protected and in certain instances, accommodated. At the very minimum, Aboriginal peoples who have relied on these traditional practices as a means of

⁴⁴ *supra*, at para. 1111.

⁴⁵ Originating in the province of British Columbia, the Haida Nation and Taku River Tlingit First Nations sought injunctory relief against the Province of British Columbia to stop logging activities on their traditional territory. In November 2004, the Supreme Court of Canada rendered their decisions in these two cases.

sustenance must be consulted within a meaningful manner prior to these interests being destroyed by state action.

D. International Legal Mechanisms

There are numerous international law mechanisms that are available to Aboriginal peoples to bring their grievances forward. Indeed it is often through political pressure exerted by other nation states that a domestic state is pressured into dealing with its indigenous populations in a more equitable manner.

In this section, various international fora are described for the purpose of identifying avenues accessible to Aboriginal claimants with grievances relating to state actions (or inactions). Where Aboriginal peoples have sought recourse to these fora, decisions are described herein.

In general terms, and for the purpose of this discussion, it will be presumed that the right of self-determination encompasses all other rights – civil, political, social, and cultural rights – and inherently includes the right to continue one's traditional harvesting practices. These rights, collectively referred to as the right of self-determination, have been specifically described as an inherent right accorded to all peoples of the world, guaranteeing cultural security, self-governance and autonomy, economic self-reliance, effective participation at the international level, land rights and the ability to care for the

Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73; *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)* 2004 SCC 74.

natural environment, the right to spiritual freedom in its various forms that ensure the free expression and protection of collective identity in dignity.⁴⁶

Self-determination may exist in different forms and be expressed in a manner considered appropriate and acceptable by the peoples concerned. This reality epitomizes the significance of the right of “self-determination” which inherently includes the liberty to determine, as a people, what the scope of self-determination will be and what form it will be expressed in.

Self-determination may make some people think of the right to vote, or the right to belong to political parties or the right to self-government. And those are all political aspects of self-determination and the right to democratic governance. But when I think of self-determination I think also of hunting, fishing, and trapping. I think of the land we have lost. I think of all of the land stolen from our people. I think of hunger and people destroying the land. I think of the dispossession of our peoples of their land.”⁴⁷

Claims and grievances expressed by Aboriginal peoples of violations of their rights of self-determination may therefore be presented in the context of land use violations, treaty and Aboriginal rights infringements, civil and political rights violations, loss of

⁴⁶ As cited in M. C. van Walt van Praag and O. Serro (eds.), *The Implementation of the Right to Self-Determination as a Contribution to Conflict Prevention* (Barcelona: Centre UNESCO de Catalunya, 1999), pp. 19-20, at 19. Note that the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, when read together with the *Universal Declaration of Human Rights*, form what is referred to as the “International Bill of Human Rights”. Articles 1-3 of the Covenants state:

Article 1: All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 2: All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

Article 3: The State Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

⁴⁷ T. Moses in *Operationalizing the Right of Indigenous Peoples to Self-Determination*, Pekka Aikio and Martin Scheinin, eds. Institute for Human Rights. Abo Akademi University, Turku, 2000.

culture, or loss of livelihood.⁴⁸ All of these elements or “grounds” fall within the general ambit of the right of self-determination accorded to peoples in international law.

The right of peoples to protect and enjoy their culture, including language, beliefs, values, spirituality, ecological knowledge, and sacred sites, is a preemptory norm recognized in international law.⁴⁹ Included in this recognition of Indigenous peoples’ right to self-determination is their right also to determine the methods and means by which they can assure that these aspects of their heritage continue to exist.⁵⁰ This particular aspect of Indigenous rights is often not understood or is disregarded. Related to this, and that which is often the root of conflict between Indigenous peoples and the state is the right to protect their knowledge and their cultural practices from infringement, exploitation and extinguishment.

III. United Nations Human Rights Committee - Reporting

International consideration of indigenous peoples’ claims to rights recognition (or violation thereof) is typically considered in the context of human rights violations. Two human rights regimes will be discussed here – the United Nations Human Rights Committee and the Inter-American Commission on Human Rights.

⁴⁸ This is by no means an exhaustive list but rather reflects some of the more commonly articulated concerns of indigenous peoples within Canada.

⁴⁹ Article 12 of the Draft Declaration on the Rights of Indigenous Peoples states:

Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual performing arts and literature, as well as the right to the restitution of cultural, intellectual, religious and spiritual property taken without their free and informed consent or in violation of their laws, traditions and customs.

⁵⁰ In this section, reference is made intermittently to “indigenous peoples” and “Aboriginal peoples”. In international law, the word “indigenous” is used to refer to those peoples who historically existed as distinct societies with their own cultures, values, traditions, and usually lands – “Aboriginal peoples” in Canada fall

The UN Human Rights Committee was established pursuant to the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).⁵¹ Ratification of these international treaties established for the first time in history, a universal code of human rights that all nations of the world could be bound by. This codification of human rights, which nations adhere to as parties to the treaties, creates legally-binding obligations on state parties to the *Covenants*. In addition to demonstrating compliance with the treaties, State parties must also demonstrate efforts made domestically towards realization of the human rights set out within the treaty terms.

Demonstration of the meeting of these obligations is made through the mandated reporting procedure. Corresponding comments and recommendations regarding the reports are set out in the Committee's Concluding Observations. Responding to Canada's most recent report, the Committee criticized the state for its failure to meet obligations set out in the *ICCPR*. The Committee accordingly "urged" Canada to report, in its next periodic report its concept of "self-determination", emphasizing that the right of self-determination requires that *all peoples* (including Indigenous peoples) must be able "to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence".⁵²

within this technical description used. Accordingly, throughout this section, both terms are used – no legal distinction is intended.

⁵¹ Specifically, Article 28 of the ICCPR provides for the establishment of the Human Rights Committee.

⁵² Concluding Observations of the Human Rights Committee: Canada. CCPR/C/79/Add. 105, 7 April 1999, at paragraphs 7 and 8. Next report due 30 June 2004.

Indigenous groups who disagree with submissions made by the state party may submit counter-reports for consideration by the Committee. Particularly where there is evidence counter to that provided in the state's submissions, counter-reporting can effectively create checks and balances within the UN reporting system itself.

Canadian Aboriginal groups have effectively used counter-reporting as an opportunity to demonstrate the state's failure in meeting obligations under the Covenants. For example, in 1998, the Grand Council of the Crees of Quebec ("the Crees") filed a counter-report to Canada's Third Periodic Report on the *ICESCR*. The Committee's Concluding Observations made note of the conditions reported by the Crees, which effectively demonstrated Canada's failure to meet its obligations under the treaty:

The Committee is greatly concerned at the gross disparity between Aboriginal people and the majority of Canadians with respect to the enjoyment of Covenant rights. There has been little or no progress in the alleviation of social and economic deprivation among Aboriginal people. In particular, the Committee is deeply concerned at the shortage of adequate housing, the endemic mass employment and the high rate of suicide, especially among youth in the Aboriginal communities...

In its Concluding Observations of Canada's Fourth Periodic Report under the *ICCPR*, the Committee went further in questioning Canada's fulfillment of its obligations under the Covenant, providing explicit and unsolicited criticism of Canada's Aboriginal policies. Specifically, Canada was criticized for the use of "extinguishment" language in its contemporary claims settlement policies. Such requirements have been interpreted as incompatible with article 1 of the *Covenant*:

The Committee views with concern the direct connection between Aboriginal economic marginalization and the ongoing dispossession of Aboriginal people from their lands, as recognized by RCAP, and endorses the recommendations of RCAP that policies which violate Aboriginal treaty obligations and the extinguishment, conversion or giving up of Aboriginal rights and title should on no account be pursued by the State Party. The Committee is greatly

*concerned that the recommendations of RCAP have not yet been implemented, in spite of the urgency of the situation.*⁵³

Provisions of the ICCPR relating to the inherent right of self-determination accorded to peoples were also noted in the context of Indigenous peoples within Canada.

7... while taking note of the concept of self-determination as applied by Canada to the aboriginal peoples, [the Committee] regrets that no explanation was given by the delegation concerning the elements that make up that concept, and urges the State party to report adequately on implementation of article 1 of the Covenant in its next periodic report.

*8...the Committee emphasizes that the right to self-determination requires, inter alia, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence.... The Committee also recommends that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the Covenant.*⁵⁴

2. United Nations Human Rights Committee – Complaints Process

In addition to monitoring state compliance through the reporting process, [provided the State party in question has ratified Optional Protocol I], the Human Rights Committee (HRC) may also receive complaints from individuals or groups claiming violations of rights set out in the *Covenants*.⁵⁵ Applicants seeking to have their grievances heard by the Committee must demonstrate through the submission of “communications” to the HRC that they have exhausted domestic remedies and that, notwithstanding these efforts, they have not been able to resolve the issues through domestic processes. Complaints submitted under this HRC hearing process involve putting the home government on notice of the complaint received by the Committee. Additionally, the complaint will be brought to the attention of other member governments of the Human

⁵³ *Ibid.*

⁵⁴ *ibid.*, at paras. 7-8.

⁵⁵ Optional Protocol I to the ICCPR enables individuals or groups to submit complaints to the HRC for determinations of rights violations. The Optional Protocol to the ICCPR can be found at http://www.unhcr.ch/html/menu3/a_opt.htm.

Rights Commission, thereby creating pressure from these entities for State compliance. Although the HRC issues decisions on its findings with respect to human rights violations alleged in communications, these decisions are not legally binding but only persuasive in nature.

IV. Bernard Ominayak and the Lubicon Lake Band v. Canada⁵⁶

Indigenous peoples have consistently maintained that if they are to survive as distinct societies, intact with their unique cultures, identities, and institutions, their ability to use the land, to practice their traditions, to indeed protect the land, must be assured. The UN *Rapporteur* on indigenous land rights aptly noted this inherent connection:

A profound relationship exists between Indigenous peoples and their lands, territories and resources; (ii) this relationship has various social, cultural, spiritual, economic and political dimensions and responsibilities; (iii) the collective dimension of this relationship is significant; and (iv) the intergenerational aspect of such a relationship is also crucial to indigenous peoples' identity, survival and cultural viability.⁵⁷

No single issue affects the survival of indigenous peoples as much as state appropriation of land and its resources. To remove or fundamentally alter Indigenous peoples' access to the land and its resources, which for many goes to the core of their existence as distinct peoples, is to strip away their identity, their religious beliefs and practices and their means of survival.

In cases of human rights claims where domestic processes have proven ineffective in addressing conditions that are contrary to the concept of self-determination as *that*

⁵⁶ *Bernard Ominayak and the Lubicon Lake Band v. Canada* Communication No. 167/1984: CCPR/C/38/D/167/1984.

concept is accepted and defined at international law, the matter will become one of international concern and therefore no longer essentially within the domestic jurisdiction. In such instances, state sovereignty may be made to yield to an appropriate level of international scrutiny. It was within this context that the Human Rights Committee considered the submission of the Lubicon Cree.

Chief Bernard Ominayak first communicated the claim of the Lubicon Cree to the Human Rights Committee in 1984. Ominayak claimed that Canada had violated the Band's right of self-determination under the ICCPR. Specifically, Chief Ominayak cited article 1, violation of the right to self-determination, the right to dispose of natural wealth and resources and the right to have a traditional means of subsistence protected.⁵⁸

The Human Rights Committee received statements from both the federal government and Ominayak over a period of six years before rendering its concluding comments in 1990. Much of the extensive record in this matter related to two main points of contention:

1. *whether or not the Lubicon Cree were "a people" as that term pertains to the right of self-determination; and*
2. *whether or not the Lubicon Cree had exhausted all domestic remedies available to it, thereby enabling submission of a communication to the Committee.*

With respect to the right of self-determination, Canada maintained that the Lubicon Cree were not a people within the meaning of article 1 of the *Covenant*. Canada further

⁵⁷ *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Mr. Rodolfo Stavenhagen, submitted pursuant to Commission resolution 2001/57. UN Doc. E/CN.4/2002/97.*

⁵⁸ *supra*, *Bernard Ominayak and the Lubicon Lake Band v. Canada*, at para. 2.1.

maintained that Chief Ominayak did not have standing to bring a communication before the Committee under the Optional Protocol, which stipulated that communications were only to be brought by individuals or groups of individuals claiming a breach of their individual rights. In this instance, Chief Ominayak had submitted the Lubicon communication as representing the collective interests of the Band as a people. Canada maintained that the complainant lacked standing before the Committee.

With respect to the exhaustion of domestic remedies, Canada maintained that the Lubicon could and were party to actions in domestic courts seeking substantive recognition of their aboriginal and treaty rights, and that such a determination would resolve the issues at bar. To the extent that they offer any meaningful redress of the claims concerning the destruction of its means of livelihood, Ominayak (on behalf of the Band) maintained that in fact all domestic remedies available had been exhausted. Ominayak maintained that any domestic processes available had proven ineffective in ensuring the continued ability of the Lubicon Cree to maintain itself and its survival as a people.

The recognition of aboriginal rights or even treaty rights by a final determination of the courts will not undo the irreparable damage to the society of the Lubicon Lake Band. [It will] not bring back the animals, will not restore the environment, will not restore the Band's traditional economy, will not replace the destruction of their traditional way of life and will not repair the damages to the spiritual and cultural ties to the land. The consequence is that all domestic remedies have indeed been exhausted with respect to the protection of the Band's economy as well as its unique, valuable and deeply cherished way of life.

In its final decision, the Committee stated that whether or not the Lubicon Cree constituted "a people" for the purpose of the ICCPR was not an issue to be considered

under the Optional Protocol.⁵⁹ However the Committee did note that article 27 of the *Covenant* would enable a group of individuals similarly affected by breaches of individual rights to submit a communication alleging breach of their rights. The Committee went further in applying article 27 to the claim of the Lubicon Cree, stating that the provision could be interpreted as including the right of a group of persons to engage in economic and social activities, which are part of the culture of that community.

The situation of the Lubicon Lake Indian Band is an example of how, notwithstanding constitutional recognition of the aboriginal and treaty rights of Aboriginal peoples in Canada, Indigenous peoples continue to experience violation of their human rights as such rights are defined in international law.

It is arguable then that land and resources, subsistence and participation rights of Indigenous persons are protected by article 27 of the *ICCPR*. Although these rights may be defined as individual rights in international law, they may be exercised by individuals living in community with other members of the group, thereby providing some measure of protection of the collective rights of Indigenous peoples to continue their traditional harvesting practices.

⁵⁹ *supra*, para. 32.1.

V. Organization of American States - Inter-American Commission on Human Rights

The Organization of American States (OAS) is a regional international organization encompassing 34 member states, including Canada and the United States. The human rights component of the OAS is the Inter-American Commission on Human Rights (ICHR). The primary mandate of the ICHR is to promote respect for and defense of human rights in the Hemisphere.⁶⁰ This mandate is fulfilled through a number of functions including advisory services to the member States, preparation of reports and studies pertaining to human rights issues, and through various mechanisms, including on-site visits and oversight of member state conduct with respect to progressive measures taken to uphold human rights. Most notably for the purpose of this paper, the Commission may also receive complaints, conduct hearings, and render decisions regarding complaints of human rights violations by OAS member states.

The Commission has recently had opportunity to hear matters pertaining specifically to claims by Indigenous peoples of violations of their collective human rights. The most recent example, the *Case of Mary and Carrie Dann* is set out herein and effectively illustrates how Indigenous peoples' grievances in relation to land use and occupation can be addressed in the context of human rights violations.

⁶⁰ In addition, the OAS is currently drafting an American Declaration on the Rights of Indigenous Peoples, to which member States will be subject upon adoption and ratification.

i. Case of Mary and Carrie Dann v. United States⁶¹

Mary and Carrie Dann are members of the Western Shoshone peoples, who have historically and continuously used and occupied a vast area of land in the state of Nevada for traditional purposes.⁶² In 1951, the Dann's property was appropriated by the United States and subsequently developed for mining purposes. Notwithstanding that a "land claim" had allegedly been settled on behalf of the Western Shoshone, the Dann's claimed, pursuant to a number of Articles set out in the *American Declaration on the Rights of Indigenous Peoples*, that the expropriation of their lands constituted violation of their human rights.⁶³ In particular, the Dann's claimed that the state had deprived them of the use and continued occupancy of their traditional lands in the absence of full informed consent and that this was a violation of their individual and collective interests as Indigenous peoples.

Consideration of the Dann's claim in the context of the human rights system and the rights of Indigenous peoples is promising. Based on its factual and legal analysis of the Dann situation, the Commission concluded that there had indeed been a violation of the Dann's rights, and that in order to rectify this violation, an effective remedy would include respect for their right to property through legislative amendments. More generally, the Commission also directed the State to conduct a review of laws, procedures and

⁶¹ Case of Mary and Carrie Dann v. United States (Inter-American Commission on Human Rights, Case 11.140, Report 75/02, Annual Report of the IACHR 2002).

⁶² Mary Dann is now deceased, having passed away as a result of an accident in Spring 2005

⁶³ Proposed American Declaration on the Rights of Indigenous People, approved by the IACHR at its 1333rd sess. On Feb. 26, 1997, OEA.Ser.L/V/II.95, doc. 7 rev., 1997, The Declaration has not been finalized and is still in the negotiation phase.

practices to ensure that the property rights of Indigenous persons were determined in accordance with the Declaration.

E. The Challenge - State Sovereignty Immunity

The rights of peoples set out in the *ICCPR* and *ICESCR* must be given effect domestically by those States that are party to the *Covenants*. This is made explicit in Article 2 of the *ICCPR*, which states:

2 (1) Each State Party to the present Covenant undertakes to respect and ensure that all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status.

2 (2) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps in accordance with its constitutional processes and with the provisions of the present Covenants, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

In practice, and reflective of the concept of state sovereignty, State parties are generally free to choose implementation processes suited to it. For example, although many states have laws that allegedly recognize and protect Indigenous peoples' rights, these laws are often violated. This was made evident in the case of the Dann's where, notwithstanding the positive decision of the Inter-American Commission, the Dannels' continued to experience violation of their rights to their lands because there are no mechanisms to enforce the findings or judgments of the Commission. Petitioners therefore remain subject to the discretion of the state.⁶⁴

⁶⁴ In the case of the Dann's, the United States has reportedly refused to implement the findings of the Commission, and instead, has proceeded to develop the traditional lands. To make matters worse, the State has taken steps against the Dannels and other Shoshone for trespass, and have seized and sold livestock without compensating the Dannels.

Moreover, these violations are often justified according to state law.⁶⁵ When international human rights law is considered in the context of the rights of Indigenous peoples as peoples, it becomes apparent national laws are often inconsistent with the binding obligations of states at international law.

This reality is consistent with the approach taken by Canada which is that regardless of findings or determinations in international law regarding the violation of rights of self-determination (or other grounds), Aboriginal rights (and consequently traditional practices) are not absolute and infringement is often justified according to the common law tests that have been set out by the courts. Claimants like the Lubicon Cree therefore have little recourse available to them.

Part IV: Conclusion

Aboriginal peoples shall be recognized as a permanent voice in fish and wildlife and natural resources management everywhere. The strict interdependence of Aboriginal peoples and the land with all its resources is a relationship that needs to be formally built into the process of land and resource management. The survival of the Aboriginal peoples is not assured without an assurance that the land itself and all wildlife, fish and natural resources will survive. The gravity of this relationship is not outside the knowledge of Aboriginal community members.

Societal norms are a projection of the behaviors expected of members of a given society. "Crime" can only exist where there are two sets of normative ideologies that conflict with one another, and where one ideology is being promoted by a body that has the power to enforce its ideology over the second body. The law (criminal or otherwise)

⁶⁵ See, for example, *R. v. Sparrow*, Canadian authority that sets out the justification test for infringing upon Aboriginal and treaty rights otherwise established.

is the standard means by which these societal norms and morals are regulated and enforced.

This research provided an opportunity to consider and record social norms as they relate to traditional harvesting activities in particular Aboriginal communities. The work effectively demonstrated the dichotomy that often exists between mainstream society and Aboriginal peoples and communities regarding the legal characterization of traditional harvesting practices.

The formation of social structures and mores, including those governing spiritual practices and traditions and those guiding relationships with other people and other forms of life evolved as part of Aboriginal peoples' relationships with the land and with the "natural resources" of the land. Historically these relationships were altered by an increasing emphasis on a fur trade economy and by the formation of a new society of non-Aboriginal immigrants, both driven and directed by European interests. However, most Aboriginal communities continue into the present to practice and to honour traditional hunting, fishing and gathering and the ceremonial aspects associated with these activities. As was pointed out repeatedly in the community sessions, in addition to fulfilling subsistence needs, these traditional practices play a significant role in the preservation of Aboriginal culture, values and belief systems. Their criminalization, it was suggested, represents in fact, an act of criminality in itself.

Each community group expressed the tremendous importance attached to the continuation of Aboriginal traditional practices and values. The theme that threaded

through every discussion revealed traditional harvesting and gathering as much more than physical sustenance activities. Hence, the research topic itself had to encompass much more than the issue of “criminal” behaviours as the stated subject matter.

Hunting, fishing, trapping – these are more than just for food purposes. They involve teaching, cultural preservation. Everyone has responsibility to teach the children. There is a ceremony that goes with it. It’s our responsibility to show them and to take them out on the land to practice these traditions, our responsibility to teach the human-ness of traditional education and practices. If we have no land, or if there are so many regulations governing our use of the land, how are we supposed to do that?

Ironically, however, the declared significance of Aboriginal traditions, practices and values seemed at times to transform the issue of criminality of conduct into a focus on the violation of the human rights of Indigenous peoples. The views of the community people on these issues were synonymous with those of other Indigenous peoples of the world: if Aboriginal peoples in Canada are to survive as distinct societies, retaining the integrity of their unique cultures, identities, and institutions, it is imperative that their access to the land and the ongoing opportunities to practice their traditions on the land, including traditional harvesting practices, be assured – not criminalized.

Pimatsiwin Weyasowewina provided academic researchers, Aboriginal community members, and law and policy-makers an opportunity to consider the harvesting and usage of wildlife and other natural resources by Aboriginal peoples for subsistence and related cultural purposes in the context of the legal categorization of criminality that has tended to accompany these practices and activities.

Pimatsiwin means life, within itself, with its own laws. It stands for the notion that “the law” evolves from the relationship that Indigenous peoples have with the land and its

resources. These laws are embedded in the relationship between a people and the land it survives with and are, therefore, part of the meaning of *Pimatsiwin*.

Weyasowewina refers to externally imposed laws, differentiating these from those beliefs and indeed laws that come from within (*Pimatsiwin*). Together, *Pimatsiwin* and *Weyasowewina*, describes the impact of these externally imposed laws on the way of life of a people. This research was prompted by a belief rooted in community-based knowledge and experience that the necessity and significance of traditional Aboriginal harvesting practices is not understood by most members of contemporary Canadian society. An unfortunate but logical consequence of an ill-informed public in this regard almost guarantees that the values, beliefs, customs and cultural significance of traditional harvesting practices for Aboriginal peoples will not be reflected in the laws and policies that impact directly on these practices.

The community gatherings in northern Alberta and the academic and legal review components of this project support a finding that there exists an integral connection amongst all aspects of the traditional harvesting and gathering practices of Aboriginal peoples life-ways, including ancient epistemologies and ontologies. The research further substantiates international declarations endorsed by various nations of the world that land, and the ability to live off the land, are the basis of Indigenous being and knowledge. The effective criminalization of traditional harvesting practices through alteration of access to the land and its resources strips away Aboriginal identity, traditional beliefs and practices, and means of survival.

A number of intervention strategies outside of the realm of criminal law were identified in this report. It became evident to the research team that typically these strategies remain outside of the knowledge base of Aboriginal people and communities who are directly and most seriously impacted by laws and policies relating to harvesting practices. This leads to the conclusion that onerous challenges remain in the resolution of conflicting approaches to harvesting practices themselves and the management of these practices in relation to the land and other aspects of the environment.

Pimatsiwin Weyasowewina demonstrates that reconciliation of the law and the recognition and affirmation of traditional harvesting practices, which are integral aspects of the culture of Aboriginal peoples, is only at a beginning stage. In order that true and transparent reconciliation occur between the various Aboriginal peoples within Canada and Canada itself, it is recommended that more dialogue occur with the goal of developing alternative approaches to the law. These must be alternatives that recognize the legitimacy of the laws and principles that govern the relationships between Indigenous peoples and the land from which is drawn their total sustenance. Simultaneously, the alternatives must recognize and incorporate the knowledge that these relationships are enacted through the traditional harvesting and gathering practices of the people.

The concepts that govern Aboriginal lives are embedded in Aboriginal harvesting practices and, as such, are inextricably connected to traditional lands, resources and territories. Further, Aboriginal harvesting practices emerge from and are integrally interconnected with traditional knowledge, values, beliefs and practices. Without these practices, Aboriginal people cannot relate to their past in any grounded way, nor will they

have the vehicle by means of which they pass on their traditional knowledge to the next generations. In this way, Aboriginal harvesting practices point to Aboriginal harvesting rights. The knowledge, beliefs, identities, histories of the people is carried within the practices that have continued through the generations. Surely every people have a right to maintain and access its own knowledge, beliefs, identities and histories. In the case of the Aboriginal peoples contributing to this study, they felt strongly that the repository of this ancient knowledge and a most direct route to its access lies in the traditional harvesting and gathering practices and ceremonies that they live in relation to the land.

Spirituality for most northern Aboriginal peoples is not experienced or described as separate from a relationship or connection to the land and its resources. This relationship or connection between Aboriginal people and the land therefore cannot be overlooked when discussing traditional harvesting practices.

This reliance on the resources that accrue from hunting, fishing, and gathering activities is based on an integral connection to the land and is therefore an integral part of Aboriginal knowing, being and belonging. In other words, these resources form a critical element in Aboriginal peoples' epistemologies, ontologies, and daily expressions and practices of distinct cultures and societies. It becomes obvious then that such activities and practices are foundational to the continuing survival of Aboriginal peoples in Canada. The traditional activities of harvesting must not only be legally recognized and protected but also promoted in order to ensure the survival of Aboriginal peoples.

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Appendix A:
(Sample) Notice of Hearing
Canadian Natural Resources Limited
August, 2002

NOTICE OF HEARING
CANADIAN NATURAL RESOURCES LIMITED
APPLICATIONS FOR NEW AND AMENDED PRIMARY RECOVERY SCHEMES APPLICATIONS
FOR WELL LICENCES

APPLICATIONS NO. 1086695, 1087189, 1087193, 1247164, 1247165, 1247166, 1247167,
1247168, 1247171, 1247172, 1247178, 1248249, 1248252, 1248255, 1249233, 1252711, 1252712,
1259621, and 1259622

LINDBERGH SECTOR, COLD LAKE OIL SANDS AREA

Take Notice that the Alberta Energy and Utilities Board (EUB) will hold a public hearing of these applications at the Elk Point Community Centre, 4906 – 51 Street, Elk Point, Alberta, commencing on Tuesday, November 5, 2002 at 9:00 a.m. All interveners to this proceeding must be present at the commencement of the hearing to register their appearance.

Applications No. 1086695, 1087189, 1087193 for

New or Amended Primary Crude Bitumen Recovery Schemes

Canadian Natural Resources Limited (CNRL) applied pursuant to section 10 of the *Oil Sands Conservation Act* for approval to construct and operate a new scheme, and to amend two existing schemes, for the recovery of crude bitumen from the Mannville Group in the Cold Lake Oil Sands Area.

Application No. 1086695: CNRL applied for approval to construct and operate a new scheme for the recovery of crude bitumen. The applicant proposes that

the drilling spacing units be reduced from 64 hectares to 8 hectares in a scheme area comprised of Sections 7, 8, 9, and 18 of Township 57, Range 4, West of the 4th Meridian (57-4 W4M), and

wells drilled or to be drilled within the scheme area have a minimum inter-well distance of 100 metres and a project boundary buffer of 50 metres.

Application No. 1087189: CNRL applied to amend Approval No. 8050 respecting a primary recovery scheme for crude bitumen. The applicant proposes that

Sections 20, 28, 31, 33, and 34-56-5 W4M, Sections 25 and 36-56-6 W4M, and Sections 4, 9, and 18-57-5 W4M be added to the area subject to the approval, and

the drilling spacing units for the area to be added to the approval be reduced from 64 hectares to 8 hectares, and

wells drilled or to be drilled within the area to be added to the scheme have a minimum interwell distance of 100 metres and a project boundary buffer of 50 metres.

Application No. 1087193: CNRL applied to amend Approval No. 7306 respecting a primary recovery scheme for crude bitumen. The applicant proposes that

Section 36-57-5 W4M, and Sections 4, 5, the South half of Section 8, Section 9, 19, and 20-58-4 W4M be added to the area subject to the approval,

the drilling spacing units in the scheme area comprised of the North half of Section 31-57-4 W4M, Section 36-57-5 W4M, and Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, and 21-58-4 W4M be reduced from 16 or 64 hectares to 8 hectares, and

wells drilled or to be drilled in the area where the drilling spacing units have been reduced have a minimum interwell distance of 100 metres and a project boundary buffer of 50 metres.

Applications No. 1247164, 1247165, 1247166, 1247167, 1247168, 1247171, 1247172, 1247178, 1248249, 1248252, 1248255, 1249233, 1252711, 1252712, 1259621, and 1259622 for Well Licences

CNRL applied pursuant to section 2.020 of the *Oil and Gas Conservation Regulations*, for licences to drill three vertical wells for sweet gas production. CNRL proposes to drill the wells from the following surface locations (Legal Subdivision –Township-Section-Range W4M):

Application No.	Well Location
1086165	11-18-57-4 W4M
1249233	3-7-57-4 W4M
1259622	4-4-58-4 W4M

In addition, as part of its development in the area, CNRL applied for additional well licences to drill

52 wells from 13 well pad sites for the purposes of obtaining crude bitumen production from the Mannville Group, as follows:

Application No.	Pad Location	Wells Locations to be Drilled from Pad
1247164	14-33-56-5 W4M	13-33-56-5 W4M
	15-33-56-5 W4M	
1247166	11-28-56-5 W4M	13-28-56-5 W4M
	15-28-56-5 W4M	
1247167	13-31-57-4 W4M	11-31-57-4 W4M
	12-31-57-4 W4M	
	13-31-57-4 W4M	
	14-31-57-4 W4M	

Application No.	Pad Location	Wells Locations to be Drilled from Pad
1247168	4-6-57-5 W4M	2-6-57-5 W4M
	3C-6-57-5 W4M	
	3D-6-57-5 W4M	
	4-6-57-5 W4M	
	5-6-57-5 W4M	
	6-6-57-5 W4M	
1247171	12-5-57-5 W4M	3-5-57-5 W4M
	4-5-57-5 W4M	
	5-5-57-5 W4M	
	6-5-57-5 W4M	
	11-5-57-5 W4M	
	12-5-57-5 W4M	
1247172	13-5-57-5 W4M	
	10-18-57-5 W4M	6-18-57-5 W4M

	7-18-57-5 W4M	
	10-18-57-5 W4M	
1247178	16-6-57-5 W4M	8-6-57-5 W4M
	9-6-57-5 W4M	
	10-6-57-5 W4M	
	15-6-57-5 W4M	
	16-6-57-5 W4M	
1248249	13-6-57-5 W4M	11-6-57-5 W4M
	12-6-57-5 W4M	
	13-6-57-5 W4M	
	14-6-57-5 W4M	
	3-7-57-5 W4M	
1248252	11-32-56-5 W4M	6-32-56-5 W4M
	11-32-56-5 W4M	
	12-32-56-5 W4M	
	13-32-56-5 W4M	
	14-32-56-5 W4M	
1248255	16-31-57-4 W4M	9-31-57-4 W4M
	10-31-57-4 W4M	
	15-31-57-4 W4M	
	16-31-57-4 W4M	

Application No.	Pad Location	Wells Locations to be Drilled from Pad
1252711	7-17-57-5 W4M	1-17-57-5 W4M
	2-17-57-5 W4M	

	7-17-57-5 W4M	
	8-17-57-5 W4M	
1252712	3-17-57-5 W4M	3B-17-57-5 W4M
	3C-17-57-5 W4M	
	4-17-57-5 W4M	
	6-17-57-5 W4M	
1259621	11-18-57-5 W4M	12-18-57-5 W4M

Additional Information

To obtain additional information or a copy of the applications, contact:

Canadian Natural Resources Limited
2500, 855 – 2nd Street SW
Calgary, Alberta T2P 4J8
Attention: D. Charabin
Telephone: (403) 517-6764

Copies of these applications are available for public viewing at the following locations:

EUB Information Services, Calgary Office
Main Floor, 640 – 5th Avenue SW
Calgary, Alberta T2P 3G4
EUB Bonnyville Field Centre
Northlands Development Building
4901 - 50th Avenue
Bonnyville, Alberta T9N 2G4
Elk Point Library
5123 – 50th Avenue
Elk Point, Alberta T0A 1A0

For information about EUB procedures contact:
Applications Branch, Resources Applications Group
Attention: K. Fisher
Telephone: (403) 297-8490
Facsimile: (403) 297-2474

E-mail: karine.fisher@gov.ab.ca

To File a Submission

The Board has established the following filing deadlines for this hearing:

September 16, 2002: Final date for any further submissions by CNRL

October 15, 2002: Final date for submissions by any persons having concerns respecting
the CNRL applications

October 25, 2002: Final date for any response from CNRL to the submissions filed by concerned
parties.

Any person intending to make a submission with respect to the hearing of these applications should
send a copy of the submission to the applicant at the name and address above, and a copy to:

K. Fisher, Application Coordinator
EUB, Applications Branch, Resources Applications Group
640 - 5th Avenue SW,
Calgary Alberta T2P 3G4

EUB staff note that numerous submissions have already been filed in regard to a number of the
above applications. These will be kept on file and the same submission does not need to be re-filed.
EUB staff are also aware that discussions have been ongoing between CNRL and some individuals
who have filed submissions. Where these discussions have resulted in concerns being fully
resolved, the EUB requests that the party who initially filed the objection inform the EUB that he or
she no longer has any objection to the proposed development.

Appendix B: Notes & Maps

The sections involved in the CNRL primary recovery scheme applications and the proposed CNRL
well pad site locations are shown on the attached map. As additional background, the map also
shows the sections and well locations in the same general area which are the subject of a number of
applications by Petrovera Resources Limited (Petrovera) for approval to also construct and operate
a primary recovery scheme for the recovery of crude bitumen and to drill a number of wells for the
recovery of crude bitumen. The details of the Petrovera Applications No. 1248262, 1086164,
1087064, 1087238, 1241670, 1241671, 1241672, 1241673, 1241674, 1241675, 1241676, 1241677,
1241678, 1256328, 1256330, 1256334, and 1256335 are provided on a separate Notice of Hearing.

Any submission filed shall contain information detailing:

- (i) the desired disposition of the applications,
 - (ii) the facts sustaining the position of the submitter,
 - (iii) the reason why the submitter believes the EUB should decide in the manner advocated,
- and
- (iv) how the proposed project, if approved, may directly and adversely affect the submitter.

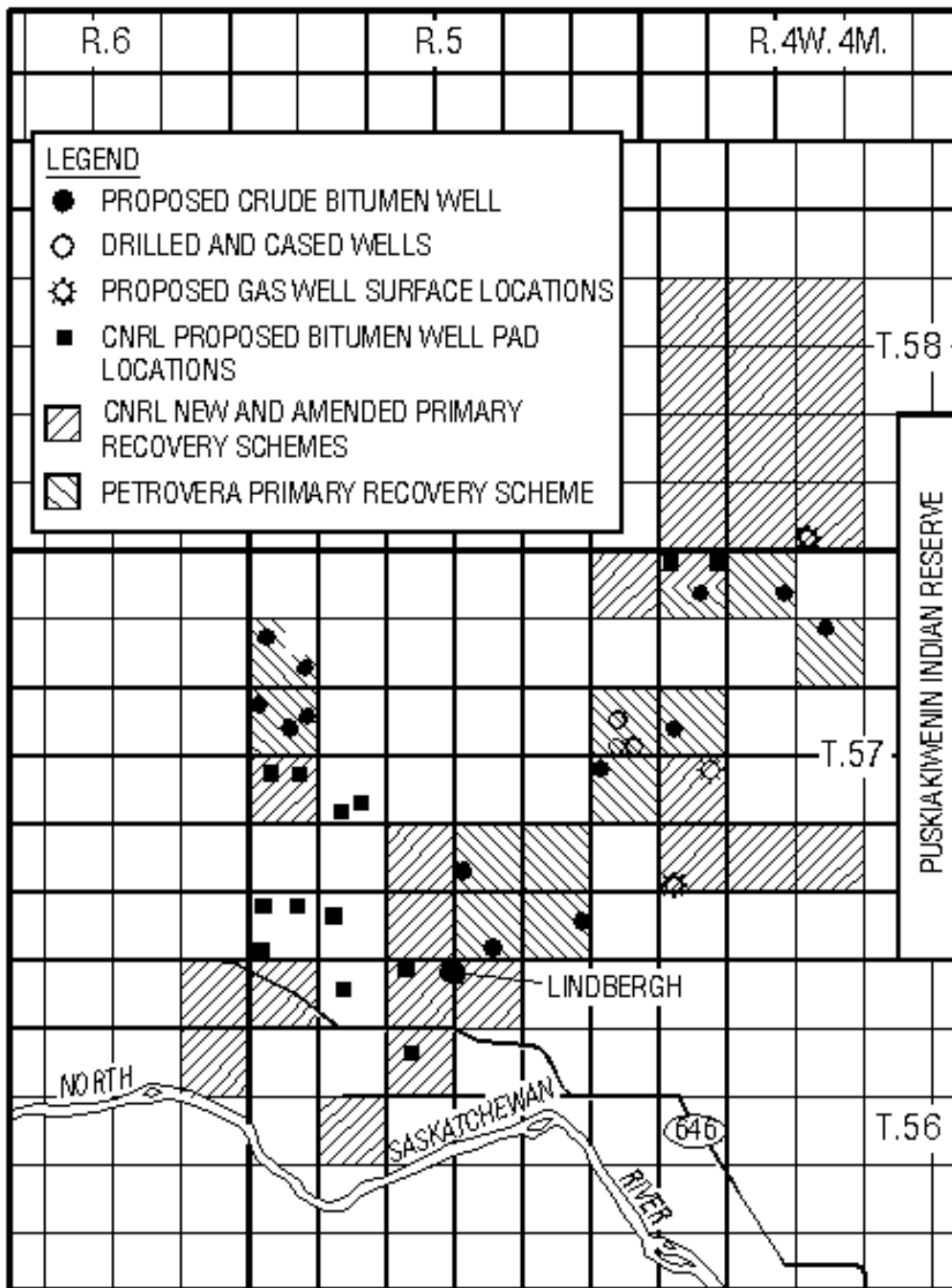
In accordance with Section 38 of the *Alberta Energy and Utilities Board Rules of Practice*, witnesses must give evidence under oath or affirmation.

Submissions relating exclusively to compensation for land usage are not dealt with by the EUB, but may be referred to the Alberta Surface Rights Board.

Issued at Calgary, Alberta on August 15, 2002.

ALBERTA ENERGY AND UTILITIES BOARD

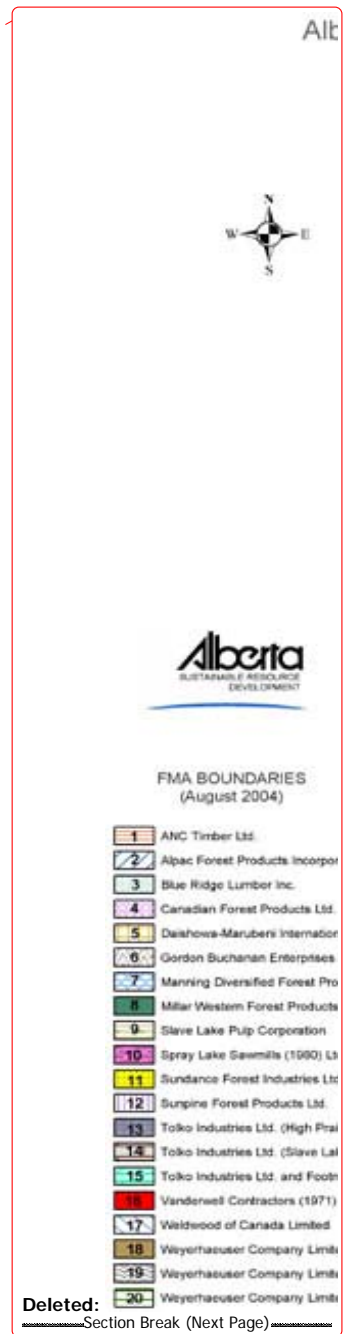
Michael J. Bruni, Q.C., General Counsel



Appendix C:

List of Alberta Communities Participating in a Workshop

1. Buffalo Métis Settlement
2. Kikino Métis Settlement
3. Wabasca
4. Lac La Biche
5. Imperial Mills
6. Lac La Biche Mission
7. Conklin
8. Grouard
9. Sandy Lake
10. Fort Chipewyan
11. Fort Vermilion
12. Bonnyville
13. Elizabeth Métis Settlement
14. Owl River
15. Philomena
16. Athabasca
17. Keg River
18. Jousard



**Appendix D:
List of Community Participants**

1. Mable Howse
2. Margaret Ross
3. Fred Pruden
4. Paul Weber
5. Gerald Cardinal
6. Robin Auger
7. Jeff Chalifoux
8. Doreen Boucher
9. Greg Calliou
10. Skipper Villeneuve
11. Hillaire Ladouceur
12. Joe Adam
13. Patrick Mercredi
14. Betty Ladouceur
15. Kenny Gairdner
16. L. Gairdner
17. Cecile Howse
18. Isadore Shott
19. George Quintal
20. George Cardinal
21. Robert Smith
22. Gloria Desjarlais
23. Karen Collins
24. Lawrence Berland
25. Adam la Tourneau
26. Jerry LaRose
27. Cindy Ladouceur
28. Ronald Johnston
29. Joe Bourque
30. Marty Howse
31. Kevin Howse
32. M. Smith/
33. Herman Sutherland
34. Melvin Goulet
35. ? Fort Vermilion
36. ? High Prairie
37. ? High Prairie
38. Conklin
39. Conklin
40. M. Chalifoux
41. Carolyn Merkle
42. Lauralyn Houle

Appendix E: Recommendations from Interviews and Workshops

The following are direct quotes provided by research project participants.

Recommendations were generated through both one-on-one interviews with participants and group workshops held throughout the duration of the project. Personal identity of the participants has not been noted here in order to protect the identity of the participants. The recommendations below have been grouped according to topic.

Impact of Law and Policy on Aboriginal Identity and Traditional Lifestyle

If we are going to retain our languages and our traditional cultural practices, accessibility to the land is imperative. If we are to keep/retain our Aboriginal identity as Aboriginal people, and not just as Canadians, we must have access to our traditional lands. Is not only about the practice itself, but is about retention of cultural values, identity as Aboriginal.

We need to educate/make our children aware that you don't need to choose to be Aboriginal or White, to live only a modern lifestyle or a traditional Aboriginal lifestyle. You can have both, and it's okay to have both. They're not being taught this. They being taught that it's criminal to be Aboriginal, to practice our traditions. That's criminal.

Sure, it's our responsibility at home to teach our kids about the law as well as what our traditional beliefs are. But poverty takes away our rights, our belief systems. The government controls what we can and can't have, especially when we're poor.

Government has historically had economic control over us. This is the contemporary problem too. They control our economy, and in doing so, take our traditional ways of earning a livelihood away..

The mainstream law-making process is distinct from Aboriginal means of law making and social control. Laws affecting Aboriginal lifestyle need to be communicated in ways that our people understand. This will lead to less criminalization of traditional practices.

Any interpretation of laws, policies, regulations needs the development of a vocabulary for shared meanings amongst the Aboriginal peoples as well as the policy and law makers. We need to come to the process with understanding of terms, including understanding the legal implications of using words like "historical" and "traditional"

When people are charged and go to court on charges for practicing their traditions, the court needs to take all factors of that person's life into consideration. This doesn't happen automatically and our people don't talk for themselves in court.

Need to have Métis hunting rights in particular recognized so that Métis can exercise their rights without fear of persecution and prosecution.

All laws and policies and regulations affecting the lives of Aboriginal peoples need to be communicated in ways that the people can understand. Processes can be written down, but Aboriginal systems tend to be oral traditionally.

Aboriginal people need to be involved in the making of laws and policies that affect their traditional ways of knowing and being.

In the administration of justice and law, when Aboriginal persons go to court on conservation issues, all spiritual and economic aspects in connection to the law must be taken into consideration.

In cases dealing with hunting and trapping infringements, there is a need for an advocacy position or a place to go for resolution besides the courts.

Why is pressure always being put on Aboriginal people to protect animals?

Who are the Fish and Wildlife, RCMP, conservation officers? Why aren't our people better represented in these positions?

Impact of Resource Development on Traditional Harvesting Practices

We are muzzled against industry – who watchdogs big industry?

We should be making a policy for future generations – conservation harvesting, negotiating with oil companies who are entering into our traditional areas.

Aboriginal peoples shall be recognized as a permanent voice in fish and wildlife and natural resources management everywhere. The strict interdependence of Aboriginal peoples and the land with all its resources is a relationship that needs to be formally built into the process of land and resource management. The survival of the Aboriginal peoples is not assured without an assurance that the land itself and all wildlife, fish and natural resources will survive. The gravity of this relationship is not outside the knowledge of Aboriginal community members.

Consultations with respect to law making and infringement of Aboriginal practices:

All Métis and Aboriginal peoples should be included in consultation processes by government. Right now, they only consult with First Nations and Indians.

Regulation of traditional practices by white society – is not practice-based, is theory

Any forum intended to discuss Aboriginal traditional land use – policy and regulations –needs the full and equal participation of Aboriginal people

Need to have more meetings with Elders and traditional teachers.

Is it more important to have the white man's education than Aboriginal education? I am starting to see it is not.

Co-management and intervention strategies:

We should encourage and promote agreements between the Métis and First Nations. In order to protect our traditional practices. We have the same practices. These are human rights, to live and take care of our families.

Aboriginal peoples together should have a Masterplan. This is important to do & to focus on.

There should be promotion of partnerships between Aboriginal peoples and the federal and provincial governments on issues relating to conservation and regulation. Co-management regimes can be entered into between and within regions, involving Aboriginal, experienced and knowledgeable representation.

We should have our own policing of harvesting practices

The harvesting agreements that the Métis are entering into with the provinces – these agreements should be reflected in legislative changes. They have not, so government can still charge and harass us as they please, can't they?

There needs to be more direct involvement by knowledgeable Aboriginal people in policy-making and law-making. This does not necessarily mean our political leaders.

There needs to be more attention and validity given to our traditional ecological knowledge. There is merit in giving equal consideration to our scientific knowledge in policy-making.

Whatever takes place in our own environment, people have to be an active part of the process of development of activities, policies, etc. If you don't want to consult with me, you are making a criminal out of me

An elder made this recommendation before he passed on: that native people take responsibility and control for the conservation of all lands north of baseline 24 degrees

We need to be involved in co-management of conservation and development in our own traditional territories.

In our communities, we know who hunts and we know the practices of our own people and our own community members. We regulated our own hunting capacity and practices.

ABOUT THE AUTHORS

At the time of this research, **Lisa Weber** was the Director of the Indigenous Law Program at the University of Alberta. In that capacity, Lisa managed research and administrative projects relating to and affecting Aboriginal peoples and provided academic support to Aboriginal students in the Faculty of Law at the University of Alberta. Lisa has a breadth of experience as an Aboriginal lawyer and has worked extensively with First Nations and Metis people, communities and organizations throughout western Canada. She has participated in research and collaborative projects relating to traditional land use and the impact of development on traditional land users. As an Aboriginal scholar, Lisa has interacted with, and presented to diverse audiences across Canada on the issues of Metis identity, community, and Metis Aboriginal rights. She recently completed a Master of Laws degree at the University of Manitoba and makes her home in Winnipeg, Manitoba.

Cora Weber-Pillwax is Assistant Professor in the First Nations Education Program, University of Alberta.