



Federation of Saskatchewan Indian Nations

November 10, 2009

FSIN OFFICES

Head Office

Asimakaniseekan Askiy Reserve
Suite 100 – 103A Packham Ave
Saskatoon, SK S7N 4K4
Business (306) 665-1215
Fax (306) 244-4413

Regina Sub-Office

490A Hoffer Drive
Regina, SK S4N 7A1
Business (306) 721-2822
Fax (306) 721-2707

Honourable Minister Chuck Strahl
Minister of Indian and Northern Affairs
House of Commons
Ottawa, ON K1A 0A6

Dear Minister Strahl;

The Federation of Saskatchewan Indian Nations (FSIN) acknowledges your invitation to participate in an “information session” regarding the federal response plan to the *McIvor* decision. Our position is that the scope of discussion as set out in the Indian and Northern Affairs “Discussion Paper” and the proposed Engagement Plan are unacceptably narrow and do not create the framework for meaningful consultation on a matter of significance to our constituents. The *McIvor* case is part of a broader issue concerning who is or is not an Indian, who should make that determination and on what basis.

The FSIN Chiefs-in-Assembly met at a Special Legislative Assembly held in Prince Albert, Saskatchewan on July 15, 2009 to review the *McIvor* decision and assess the broader issue of determination of Indian identity and First Nations Citizenship. The Chiefs of Saskatchewan take the position that the “status” provisions of the *Indian Act* defining who is and who is not an Indian are unconstitutional and a violation of Treaty. Determination of who is or is not an Indian and thereby who has the right to exercise aboriginal and Treaty rights is properly that of the various political bodies of Indians (First Nations) as it was at the time of taking Treaty and not that of Canada. Such right of determination is an “existing” aboriginal and treaty right and is entrenched in section 35 of the *Constitution Act, 1982*.

Bodies of Indians (bands) took Treaty on behalf of their people who received their Treaty rights not because of a classification by Canada but because of the inclusion by political bodies of Indians (Chiefs and Headmen) as part of their people. The terms of Treaty did not change this reality. The actions of Canada to take away such rights of self determination through the creation the notion of “status Indians” came much later in history. The first definition of who was an “Indian” is found in 1850. Since

*Protecting and
enhancing
Treaty Rights for
First Nations of
Saskatchewan*

then, the definition was unilaterally and materially changed by Canada on multiple occasions over a hundred years. What is occurring now is a continuation of such unilateral actions.

Canada has unconstitutionally given itself effective control over First Nation Citizenship through the “status” provisions in the *Indian Act* which control has been exercised in a manner that amounts to an infringement of “existing” aboriginal and Treaty rights. Such infringement demands a level of consultation that goes beyond the scope of discussions and the processes and timelines determined by Canada to address the *McIvor* court directive which is only part of a large infringement issue. The actions of Canada to involve First Nations on the issue of who is or is not an Indian are inadequate and are effectively a unilateral action. The issues associated with “status Indians” and its disenfranchisement consequence is an infringement issue for aboriginals generally and Treaty Indians particularly. Both are protected by section 35 of the *Constitution*.

The position of the FSIN and Chiefs of Saskatchewan have been consistent and clear on this matter. The Chief of the Federation of Saskatchewan Indian Nations has met with the Minister on April 12, July 13, and August 12, 2009, respectively to table the FSIN proposal to develop a Legislative Citizenship Framework as an alternative to the archaic, discriminatory and disenfranchising “status” provisions of the *Indian Act*. We again invite Canada to work together to create a framework for meaningful discussion on these issues fundamental to the exercise of aboriginal and treaty rights. Information sessions alone fall short of dealing with the magnitude of the issue of who is or is not an Indian. The *Constitution* of Canada and respect of Treaties calls for and demands a meaningful dialogue between Canada and Treaty First Nations.

There are legal, constitutional and moral imperatives for undertaking a broader approach and response to the *McIvor* decision than is currently being proposed. FSIN and the Chiefs of Saskatchewan are preparing a detailed position paper on the subject and will be providing the same to Canada in the coming weeks. In the meantime, we strongly urge Canada to take this opportunity and seek a broader and meaningful dialogue with First Nations across Canada and work constructively with our First Nations Governments.

We will be also be strongly urging the Members of Parliament, in particular the Standing Committee on Aboriginal Affairs and Northern Development (AANO) and the Senate Standing Committee on Aboriginal Affairs, to strike a “Special Parliamentary Committee” to examine the Federal Governments response to *McIvor*. The BC Court of Appeal stated at paragraph 66, that “it seems likely that, at least for some purposes, Parliament’s ability to determine who is and who is not an Indian is circumscribed [by aboriginal and treaty rights].” We challenge the Parliament of Canada to examine the implications of the underlying constitutional issue here, that is, the inherent and Treaty right to determine our own citizens. Such an dialogue will necessarily include an examination of the relationship between s.91(24) of the *British North America Act* and sections 35 and 52 of the *Constitution Act 1982*. Furthermore, we strongly recommend that any proposed amendments introduced in the House of Commons be sent to the “Special Parliamentary Committee” after first reading so we might have the opportunity to have the proper dialogue on the McIvor impacts and the federal response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Guy Lonechild', written in a cursive style.

Chief Guy Lonechild

FEDERATION OF SASKATCHEWAN INDIAN NATIONS
Indian Governments of Saskatchewan

cc. Her Majesty in Right of Great Britain, Ireland, Scotland and Wales
Governor General of Canada
All Members of House of Commons
All Members of the Senate of Canada
Auditor General of Canada
United Nations Experts
National Chief Shawn Atleo, Assembly of First Nations
Executive Council