Turtle Lodge Gathering - September 17 & 18, 2010
Minutes

Present: Elders Dave Courchene Jr., Morris Littlewolf, Betty Ann Littlewolf, Harriet Prince, Stephen Augustine, William Easter, Gordon Lee, Frances Guerin, Doris Pratt, Marge Friedel, Harry Bone, Tobasonakwut Kinew (Peter Kelly), and Elders of the Treaty 3 (Paa Ba Ma Sa Ga) Drum (Sherry Copenace, Hazel Copenace, Josie Kipling, Sheila Copenace, Clifford Skead, Joe Morrison, Tommy White, Howard Copenace, Teddy Copenace, Mervin Paypompee, Steve Joseph Jr.); Chief Justice Allan Lutfy, Justice François Lemieux, Justice Leonard Mandamin, Prothonotary Roger Lafreniere, Justice Robert Mainville, Justice Harry Slade, Chief Judge Ken Champage, Grace Auger, Catherine Twinn, Professor Brenda Gunn, Aimee Craft, Kathy Ring, Ron Stevenson, Julie Blackhawk, Veda Weselake, Jen MacGillivray, Dr. Sabina Ijaz, Jamie Wilson, Andrew Baumberg & others

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September 17

Mr. Courchene opened the meeting, welcoming those present and speaking of the vision behind Turtle Lodge.

A smudge and sacred pipe were passed, and the **Paa Ba Ma Sa Ga Drum from Treaty 3** rendered important spirit songs to support good deliberations.

Mr. Courchene noted that this is an historic opportunity for Elders and members of Court to meet at a sacred site in the centre of the continent. He expressed hope that those present would work together for the good of all and greater justice.

The **Chief Justice** thanked the Elders and expressed appreciation for the invitation.

Justice Lemieux explained how members of the Court had come to Turtle Lodge and the work to date regarding practice guidelines, the goal being to meet litigants' needs. He noted Supreme Court cases indicating that Court practice must adapt to aboriginal perspectives. This is our task, to better understand the Elders' perspective.

Justice Mandamin added that if the Court was to discuss issues involving Elders, we need to hear the Elders. He noted two types of court cases, the first involving aboriginal peoples and the Canadian government, for which hearings are getting ever longer. We need help to understand the best way for the Elders' perspective to come through so their experience in Court is positive. The other type of hearing involves different groups of aboriginal peoples with an internal dispute. He gave an example, in a provincial Court, where First Nations took back authority to find their own resolution, with respect by the Court of their process. He asked the Elders how the Court can assist this process.

Prothonoary Lafreniere noted the Court's efforts to be open and ascertain what works and what doesn't work, and to incorporate best practices in guidelines. He asked the Elders to tell the Court what they need, and the Court would try to accommodate them.

Justice Mainville noted that when an expert gives testimony, it is normal for the other party to have procedures to ensure a fair hearing (e.g., the right to know in advance what will be said, to challenge the expert's right to speak as an expert, and to cross-examine the expert). We are trying to find a solution that is neutral and does not favour one party over another. We have limited ability to change the constraints on the Court – otherwise, the judge will be overturned on appeal.

Chief Justice Lutfy noted the Court's history back to 1875, and how in 2005 the Court was told it did not deal properly with aboriginal issues, how it did not have aboriginal law clerks or aboriginal judges. This as a turning point, to be in the Elders' house.

Justice Slade briefly explained the role of the Specific Claims Tribunal. He noted the need for mutual recognition, before which it is not possible to have reconciliation.

Chief Judge Champagne expressed appreciation for the invitation. He saw the meeting as a tremendous step forward: the justice system needs to hear aboriginal voices.

**** Lunch Break ****

The Elders and other members of the circle introduced themselves.

In response to the Elders' request, **Ms. Ring** expressed appreciation for the opportunity to participate in this forum over the past five years, noting the committee's difficulties the last couple years with discussions involving Elders' evidence. She looked forward to hearing the Elders' views on these issues.

Ms. Blackhawk provided some recent case examples regarding receipt of Elders' evidence, noting that after discussion among parties they were able to reach an acceptable agreement on the procedure to be followed.

Mr. Stevenson reiterated his hope that we can address the cross-cultural issues that arise in litigation, and noted that we are here to listen to the Elders this week-end.

Ms. Craft also noted that we are here to listen to the Elders. In response to the request by the Elders, she provided examples of issues that have come up, though noting there are different types of Elder testimony, some dealing with historical treaty interpretation and historical facts, and others dealing with broader matters. Some examples:

- one key issue is with **cross-examination** – it is difficult both for the Elder and for the person doing the cross-examination, which gives the impression that you are questioning the truth of Elders' statements.
- another key issue is **advance disclosure** – it is difficult to anticipate what is going to be said at trial - counsel can't always tell in advance.
- a third issue is **protocol** – in some cases the Elders most able to provide evidence want to do so outside the courtroom, following a different protocol.

Ms. Twinn noted that there often is misunderstanding by the Crown / judge of what the Elders say. She gave examples of Elders' frustration with this, and noted that interruptions of an Elder are also problematic. The courtroom is adversarial, leaving winners and losers. She referred to an earlier comment that we can't be seen to be 'favouring one side over the other', yet there is a huge power imbalance between the Crown and aboriginal litigants, where the Crown is fully funded, but aboriginal litigants are not. She looked to inspired judges to engage these issues at a fundamental level. She gave an example of the judge in the *Paulette* case, who went into the community to listen to the Elders and make findings based on all the evidence. She agreed with Mr. Lee: *things have gotten worse over the years*. She gave the example of the Federal Court of Appeal overturning a case based on reasonable appreciation of bias, but the only remedy was to start over: *death by process*. The second trial cost *eight times* the cost of the first trial. She hoped that the Court would work with indigenous law keepers to engage in resolution of side issues, with adjudication of the narrow issues that are really in dispute. The Court needs to do this to provide balance. Not only is there a power imbalance, but also cultural imbalance (where the judge is unaware of community history and implications of the Court's decision).

Elder Tobasonakwut Kinew spoke of his initiation process into four different societies – these are the foundation of what the Anishnabe truly are. In Canada, English and French are protected, but no Aboriginal language is protected under the Constitution. 'My language is on its way out – how is it possible to convey fundamental concepts to a grandson who does the sun-dance?' He described how the birds will begin to flock in six to eight weeks and migrate, after which time the story-telling season of Anishnabe begins. Each night, Grandmother tells a story, until such a time when she no longer wants to talk. One must then give an offering of tobacco and song. The stories will then continue, night after night, and the listeners must try to find the thread that ties them all together - like lawyers in law school. The key is to understand the underlying pattern of the stories. 'This is what the residential schools and the Catholic Church wiped out.' He noted that the Anishnabe have very different way of thinking – so it is not possible for other participants to listen here for 15 minutes and then understand his perspective. Elder Tobasonakwut Kinew also spoke about the challenges sacred modes of consciousness face in a monoculture of consciousness that favors the rational, task-orientated thought process over spiritual, intuitive, innovative thought processes. He went on to emphasize plurality and diversity of consciousness, and hence perspective, as necessary for survival, peace, well-being, innovation (including scientific innovation) and true equality, including constitutional balance and justice. He noted, also, that the Elders have no money to do research and provide consultation – it is not a level playing field.

Mr. Bone reiterated his concern over loss of language. He went on to speak of the honour of the pipe – the sacred dimension of the pipe ceremony. He also noted, in particular, the problems with translation of Elders' testimony, again speaking to the challenges different forms of consciousness face in trying to understand one another and not do violence to the authentic space of the other.

Mr. Wilson, Treaty Commissioner for Manitoba, was asked by Mr. Courchene to speak about the relationship between the Crown and First Peoples. He noted that all Canadians are really signatories to the treaties. The treaty and the treaty *relationship* are both important. Giving the analogy of a marriage, he noted that the treaty relationship requires constant work.

Ms. Friedel noted that our meeting is trying to resolve questions that have arisen from cases in the Supreme Court, which gave direction regarding litigation process. Her key question: *what is the understanding of the Courts / Bar regarding the Supreme Court direction to consider the aboriginal perspective?*

Justice Lemieux noted a few core principles enunciated by the Supreme Court:

- there must be reconciliation between aboriginal peoples and other peoples;
- the trial judge must deal with the evidence, but is subject to restrictions;
- in aboriginal cases, much of evidence is oral evidence – one must listen to the Elders and adapt the rules of evidence to the aboriginal perspective as appropriate, with a balanced approach that is fair.

It is important to avoid surprises at trial - we are concerned with practical examples of accommodation, such as testimony in a group or agreement with the Crown before trial to have no interruption of the witness.

Prothonotary Lafreniere spoke about amendments to the rules in the 1990's to implement case management, alternative dispute resolution, etc. The Court took the best rules from across the country. These were to provide procedure for a fair and expeditious resolution of the matter, as set out in Rule 3. The rules are flexible and not binding on the judge. We are asking: *what can we do to make you feel comfortable?* E.g., "come to your house." We want rules to reflect fairness and flexibility.

Mr. Lee spoke about treaty: 'Canada doesn't honour the treaties, but sees them simply as domestic agreements.' In response to the request for recommendations, he referred to Treaty 6: the treaty is supposed to give a uniform that signifies authority, and the Chief can bring to justice anyone who violates the Treaty. Canada should recognize First Nations' authority to deal with such problems. The problems are much greater than simply language or lack of understanding, but also due to poverty, racism. These can be resolved by honouring the Treaty.

Mr. Augustine provided some historical perspective of the relationship between the MicMac and the British – two pillers were established, a Treaty of peace and friendship, and they entered the agreements as equals. He spoke of his role speaking as an expert in many different court cases – he did this as a responsibility to the MicMac people, without being paid except for travel / food. He provided oral history testimony in court, and then he was cross-examined by experts who were paid almost $80K to challenge him. The federal government hires expert witnesses who are paid simply to discount the aboriginal perspective, but Indian Affairs gives no money to the band to defend its rights. After six court cases, he felt his dignity as a hereditary chief was undermined, as if the court found there were no MicMac people in Eastern Canada at all. It is difficult to reach

reconciliation – there is no accommodation. He had been told that the aboriginal party's lawyer could not speak with him, and so he was isolated in hotel room, yet on the other side the Crown and expert witnesses were able to speak with each other to clarify issues. 'The problems in our house and the problems in your house are separate – we need to build a new house together.' He went on to ask an important question: *on what legal basis does Canada assert sovereignty today?*

Justice Slade acknowledged that there is no satisfactory answer to this question, providing some historical perspective of the assertion of sovereignty and the outstanding issues regarding the interpretation of treaties. He described the different areas of authority at the federal and provincial level and also of the courts. "We are just judges." He described the evolution of the admission of hearsay evidence, which until recently was not permissible. Now, oral history evidence, though technically hearsay, can be admitted. He also provided some review of the process of cross-examination and how this can defeat the attempt to hear the evidence due to cultural factors, because it exposes the Elder to indignity. He added that many of these issues should not be left to Courts – they are too important for a Court, which usually leaves only a winner and loser. Instead, the Courts should provide a decision that assists the Crown and aboriginal peoples to reach a satisfactory agreement.

Mr. Littlewolf noted that it is important not to leave this problem for our children to fix – *we should fix this*. At the time of treaty, no-one spoke the language of the English people. Interpretation is a key issue. He also spoke of his work resolving disputes.

Mr. Courchene gave an example of the Manitoba Teachers Society many years ago regarding a dispute concerning the jurisdiction of the Court over labour board issues. They did not accept the Court's jurisdiction and were sent to jail as a result. He asked a question of the judges: *will the Court proceed with its process if it does not have the support of the Elders, who will state their position tomorrow?*

Chief Justice Lutfy noted, on his own behalf, that he has learned a great deal from these discussions, and he looked forward to hearing the Elders' position tomorrow. He was still hopeful that it would be possible to develop positive guidelines that make the Court easier to use for aboriginal litigants. He also noted that the Court traditionally was described as a *bi-jural* Court, referring to the civil / common law, but there is also space for indigenous law, and so he no longer describes the Court as bi-jural. He described the Court as tri-jural, thereby including indigenous law on an equal footing with British and French law as sources of law the Court will recognize and take account of.

Justice Slade noted that judges take an oath to apply the law. He added that Canadian sovereignty does not exclude all other sources of law-making authority – there is room for aboriginal law. In modern treaty-making, for example, there is extensive definition of aboriginal law-making authority. There are opportunities to provide for much greater levels of self-government, though these are very time-consuming and costly. The best resolution is one negotiated by the parties.

Justice Lemieux gave some additional perspective on the Committee process – we were developing guidelines, but were told to pause to hear the perspectives of the Elders. There is no final decision on where it will lead.

Elder Tobasonakwut Kinew provided an anecdote from 1966 regarding the American Indian Movement – 'we could not advocate a position based on the Black Power movement, but consciously decided to take a more peaceful approach, with work on the treaty and aboriginal research project, which allowed for resolution of many issues.' He noted that Canadian aboriginal peoples have always taken a reasoned approach on the issues that grate at their spirit – there is a need to keep talking. He noted the difficulties of the residential schools, but added that there was also a great deal of difficult discussion there – *how can we make this work?* We must do this for our great grand-children. He mentioned that he was at the Sun-dance this Summer, and something important happened: the Arch-bishop was there for four days participating in the gathering. What can we do *here* to make progress – how are we going to do this?

The **Paa Ba Ma Sa Ga Drum from Treaty 3** rendered a closing song for the day, and participants then sat down together for a traditional dinner offered by Turtle Lodge.

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September 18

The day was opened by the **Paa Ba Ma Sa Ga Drum from Treaty 3**, which provided a blessing for the message to be presented by the Elders.

Mr. Courchene noted that the Elders had deliberated at length before preparation of a position to be communicated this morning to the Court. He added that although there are disagreements, the Elders looked forward to a positive understanding and continued dialogue with the Court. He then went on to read the prepared position, a copy of which has been provided for the minutes:

> **SUMMARY: ELDERS' STATEMENT TO THE FEDERAL COURT OF CANADA**
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> **Turtle Lodge, September 18, 2010**
>
> In the spirit of kindness and respect, we welcome the Federal Court to our lodge, to our home. We are enthusiastic to sit together, think together, talk together and do things together **for peace, in the spirit of partnership and in recognizing the value of our two systems of justice that both carry unique strengths.** We believe that in coming together we can create a system of justice second to none in the world.
>
> The Elders of our nations are keepers and interpreters of Indigenous laws. Our justice system is based on spiritual laws, founded on values which include love, kindness and respect for each other, Mother Earth and all of creation. Our nations look to us for leadership and guidance, therefore it is important for us to proceed with integrity, and to remain sovereign in our dealings with the Canadian government and Federal Court. For the sake of all our children, we are interested

in setting the foundation for a new kind of relationship with the Federal Court of Canada. We wish to engage in a more respectful quality of discussions, as unique and distinct peoples whose sovereignty, autonomy and self-determination for many of us is protected by Treaty, Section 25 of the Canadian Charter of Rights and Freedoms, and Section 35 of the Constitution Act, 1982. As one federal judge stated yesterday, Canadian sovereignty does not displace Indigenous sovereignty.

Yesterday the Elders heard from judges of the Federal Court and Specific Claims Tribunal, as well as representatives from the Indigenous Bar Association, the Canadian Bar Association and Department of Justice. We are very encouraged by what was stated as your desire "to learn, to be educated and to act," and by your openness in engaging in ongoing dialogue with us as keepers and interpreters of our laws. We are willing to share the richness of our way of life, our knowledge and our concept of justice with you. Our knowledge helps us to be reminded that life is sacred and that we are all connected to each other and to the land as unique peoples. We believe that bringing together the strengths of our system with yours will enhance justice and bring us all into a closer relationship of respect with each other and the land we share.

With all due respect to the Federal Court, after careful deliberation, we the Elders submit that we cannot support the present court process with respect to oral history evidence as it is presently outlined by the Federal Court. We cannot continue to allow our Elders to be put in a position where their oral history testimony is subjected to cross-examination and extensive analysis. We therefore recommend that for now, oral history testimony be excluded from the court process. This does not mean that we cannot continue to advance the position of Indigenous people in this country. Engaging in this process is leading us to a positive opportunity to share the richness of a knowledge that we have evolved from as a unique and distinctive people in America.

Oral history testimony for us represents something very sacred. When we use our words, especially in our own languages, we are in effect praying. We are calling upon and invoking the spirit through our words, our songs, in our acknowledgement of nature and through the stories we share. When we share our oral history we believe that it awakens the spirit of life through acknowledgement of whatever we are speaking of that is alive. When you spend time with us you will find that Indigenous people spend a great deal of time speaking words and singing sacred songs that acknowledge the Creator and nature – the sun, the moon, the stars, the mountains, the forests, the trees, the animals, the water, our mothers, our fathers, and all our relatives in nature. That is our way of invoking and connecting with the spirit of life, which nurtures our own spirit and keeps us connected in sacred balance and harmony with all life. Justice Mandamin and others offered respect for the sacredness of word in oral history testimony, in their understanding yesterday that Elder evidence should not be interrupted.

There are often concepts of such depth that we express in our own languages that we are unable to translate into English. As the Persian poets well-understood, "translation to English is like looking at the reverse side of embroidery."[1] When

[1] Well-known Persian expression.

an Elder is passed tobacco, he or she will share oral history to give inspiration, guidance and direction to an individual's life. It then becomes the responsibility of the individual to choose to accept and follow the guidance given, or not. The Elders honour the spirit of freedom, that each person has a sovereign right to make decisions about their own life. It is considered unheard of in our communities to cross-examine or challenge the sacred teachings carried by an Elder. For us to endorse this practice in the courts would be in total opposition of how we treat our Elders.

We suggest, furthermore, that the written word as the 'source and fountain of truth' is no more reliable than the spoken word: it is perfectly capable of slanting perception, censorship and falsifying the expression of history through omission, distortion, misrepresentation and outright lies. There is one difference: the written word, where it manages to survive, has the ability to extend itself to large numbers of diverse peoples separated by vast differences over time and place. While universal literacy is an admirable goal, it lends itself to attempted universal control of thought and mind formation. At least one educator has pointed out that students must not only learn to read but *how* to look critically at what they read.[2]

We are very encouraged by the statement made yesterday by the Chief Justice, regarding the concept of Canada having a tri-juridical system, supported by Sections 25 of the Charter and 35 of the Constitution Act, which incorporates not only elements of both common and civil law (with English and French origins), but also Indigenous law. We see this acknowledgement as an opportunity for us to work with you, and to educate you further on what Indigenous law. It is also an opportunity for us to eliminate racist perceptions of who we are as a people, which we believe are influencing the current court process. What we believe is key here is that we ourselves must be the guiders and interpreters of our own non-adversarial laws and system. We cannot simply express or describe our system then hand it over to an adversarial system to administer, rather we need to remain involved procedurally in the ongoing guidance and interpretation of our own perspective, in close cooperation with you.

We propose two things. Firstly, in response to your desire to learn, to be educated and to act, we propose the creation of environments where we can teach you. One and a half days is not enough for us to share our understanding with you. In order to better understand the tri-juridical system you are a part of administering, you must be prepared to spend more time with us, to feel the spirit of our understanding, to become educated in our ways and our laws, and in our shared history. If you are prepared to learn, we are willing to teach you and work together for justice. We propose the creation of regular structured cross-cultural environments that become part of the education of all judges of the Federal Court, open to other members of the bar and judicial system, and lasting one to two weeks. We propose that these environments begin to be created across the nation, such that you may experience the uniqueness and diversity of Indigenous laws which have a similar foundation of spiritual law connected to our regional natural environments, expressed through our languages and oral history.

[2] Said, Edward. *Culture and Imperialism.* New York: A. Knopf, 1993.

Secondly, we propose that resources be put into place in order to prepare these environments of teaching Indigenous law to you and implementing it through the Federal Court process. Like no other community in Canada, our people experience poverty and great socioeconomic challenges. We are prevented from enjoying the richness of our homeland, engaging in economic initiatives within our own communities, designing our own educational curriculum for our children and having the resources to design and create our own initiatives, including our own systems of justice. We have survived an attempt through forced assimilation and government- and church-administered residential schools to destroy our knowledge that brings spirit and allows us to walk in a sacred way. Two years ago there was a public apology made by the Prime Minister of Canada, Stephen Harper, acknowledging that what the Canadian government did to us was wrong. That apology is an important first step, but what is missing has been the support for the restoration of a way of life that was almost destroyed.

The Federal Court can help us with accessing the resources to support education of the tri-juridical process that identifies the Indigenous perspective. We need to have resources on our side so that we can carefully present our understanding, so that the Federal Court and others can appreciate our uniqueness and richness as a people. For example, we would like to create the environments for Elders to get together more often, to plan and to share, as we currently face great struggles and challenges finding the resources to get together. Key as well is ensuring that the resources are there to bring forward our gift of the drum, who carries our voice and whom for us is integral to the success of this process. We also need resources to hire a team of people to properly protect what the Elders wish to share with the Federal Court, and as already stated, create opportunities for members of the Federal Court and Canadian judicial system to take part in our ceremonial and cultural environments so as to become more appreciative of our way of doing things. An offer is also made to the Federal Court for our Elders to work with the Federal Court judges applying these laws and processes. Again, resources and a team of people would be needed for us to be supported to do this.

We look forward to engaging the members of the Federal Court with respect, openness, honesty and reciprocity in a process where we as Elders of sovereign Indigenous nations may share our ways with you, and you share yours with us, with our desire that real justice leading to the greater good for all of us will be better served.

Signed September 18, 2010 at Turtle Lodge, Sagkeeng First Nation.

The Elders also wish to acknowledge the help and support of the gift of the Paa Ba Ma Sa Ga Drum from Treaty 3, who carries our voice, and without whose support this process would not have been possible.

Justice Mandamin thanked the Elders for their work. He noted that judges are each independent, and litigants decide what evidence they want to put before the Court. The judge then decides based on this evidence. No judge can decide for another what evidence can be put before the Court. *In sum, the Elders' position requires thought and reflection.*

Justice Lemieux also thanked the Elders for their work and efforts to reach out to the Court and noted the need for continued work.

Chief Justice Lutfy endorsed the comments of his colleagues and thanked the Elders for their serious, substantial comments. He reiterated his commitment to keep open this dialogue.

Prothonotary Lafreniere made particular reference to the comments yesterday by Mr. Augustine regarding the very negative experience with the Courts, adding that "we are trying to make things better."

Justice Slade expressed the hope that he and his colleagues at the Specific Claims Tribunal will receive a similar invitation from the Elders.

**** Break ****

After review of the Elders' position with other members of the Court, **Justice Mandamin** noted in response that this is an opportunity that has not been presented before: to come to the Elders' house. The Court appreciated the Elders' effort, time and thought, and the support of the Treaty Three Drum. He indicated that the Court was committed to continue working together as the Elders directed. Judges are asked to take an oath to perform their duties and observe the law. The answer in part to what the Elders have put forward has been stated by the SCC in *Delgamuukw* – the Court is not the place to decide important questions of aboriginal rights. These should be resolved by the process of reconciliation and agreements by the parties. We take that seriously, and we have in the Federal Court the tools that we have been working on developing ourselves to move matters away from trial to negotiation, mediation, reconciliation. We are looking to further and better developed tools that can be used for original matters that come before the Court. He noted that it was his belief that the process of *agreement*, fully understood and undertaken by both sides, is of the utmost importance. As judges, over the years, the focus has been on the conduct of trial, and perhaps there has been paid insufficient attention to find ways for the parties to find agreement on the issues that are before them. We look to continue to develop those tools and processes of reconciliation in a way that is satisfactory to all parties. We acknowledge how short this learning experience has been – a day and a half is not enough. More education is required, not just for the committee members but others on the Court as well. That type of educaton should be longer, and over a longer period of time. We commit ourselves to finding a way to make that kind of teaching available to our judges, properly resourced. We cannot rely on the tools available for this meeting to make that happen. So, it will take work, on the Court and its administration, but also work of the Elders, parties, and practitioners, both on the aboriginal side and the government side.

Mr. Courchene thanked the Court for the very positive response, and was very pleased to hear that the Court is committed to continue working together. He acknowledged the support of the Great Creator in allowing this to happen. He thanked the IBA for their work to make this event happen and to facilitate dialogue with other participants, noting

that the Elders would seek the support of the IBA lawyers as they continue. More people must be brought into this process so that they know what is happening here – this is a historic moment, here inside the Turtle Lodge. We must now go back into the world and bring this spirit. He then spoke of the purpose of the staves at the Drum, representing the authority and the spirit of the ancestors.

The **Paa Ba Ma Sa Ga Drum from Treaty 3** rendered a song to honour the leaders with high understanding present around the table.

Chief Justice Lutfy thanked Mr. Courchene for his vision for Turtle Lodge. He thanked the Elders for their welcome in this house, making the judges feel very much at home.

The **Paa Ba Ma Sa Ga Drum from Treaty 3** rendered a closing song of thanks and then finally a travelling song, to protect those who were returning home.

ADDENDUM

At the April 11, 2011, meeting of the Committee, it was agreed that an addendum be added to the minutes with the final written version of the statement.

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others offered respect for the sacredness of word in oral history testimony, in their understanding yesterday that Elder evidence should not be interrupted.

There are often concepts of such depth that we express in our own languages that we are unable to translate into English. As the Persian poets well-understood, "translation to English is like looking at the reverse side of embroidery."[3] When an Elder is passed tobacco, he or she will share oral history to give inspiration, guidance and direction to an individual's life. It then becomes the responsibility of the individual to choose to accept and follow the guidance given, or not. The Elders honour the spirit of freedom, that each person has a sovereign right to make decisions about their own life. It is considered unheard of in our communities to cross-examine or challenge the sacred teachings carried by an Elder. For us to endorse this practice in the courts would be in total opposition of how we treat our Elders.

We suggest, furthermore, that the written word as the 'source and fountain of truth' is no more reliable than the spoken word: it is perfectly capable of slanting perception, censorship and falsifying the expression of history through omission, distortion, misrepresentation and outright lies. There is one difference: the written word, where it manages to survive, has the ability to extend itself to large numbers of diverse peoples separated by vast differences over time and place. While universal literacy is an admirable goal, it lends itself to attempted universal control of thought and mind formation. At least one educator has pointed out that students must not only learn to read but *how* to look critically at what they read.[4]

We are very encouraged by the statement made yesterday by the Chief Justice, regarding the concept of Canada having a tri-juridical system, supported by Sections 25 of the Charter and 35 of the Constitution Act, which incorporates not only elements of both common and civil law (with English and French origins), but also Indigenous law. We see this acknowledgement as an opportunity for us to work with you, and to educate you further on what Indigenous law. It is also an opportunity for us to eliminate racist perceptions of who we are as a people, which we believe are influencing the current court process. What we believe is key here is that we ourselves must be the guiders and interpreters of our own non-adversarial laws and system. We cannot simply express or describe our system then hand it over to an adversarial system to administer, rather we need to remain involved procedurally in the ongoing guidance and interpretation of our own perspective, in close cooperation with you.

We propose two things. Firstly, in response to your desire to learn, to be educated and to act, we propose the creation of environments where we can teach you. One and a half days is not enough for us to share our understanding with you. In order to better understand the tri-juridical system you are a part of administering, you must be prepared to spend more time with us, to feel the spirit of our understanding, to become educated in our ways and our laws, and in our shared history. If you are prepared to learn, we are willing to teach you and work together for justice. We propose the creation of regular structured cross-cultural environments that become part of the education of all judges of the Federal Court, open to other members of the bar and judicial system, and lasting one to two weeks. We propose that these environments begin to be created across the nation, such that you may experience the uniqueness and diversity of Indigenous laws which have a similar foundation of spiritual law connected to our regional natural environments, expressed through our languages and oral history.

Secondly, we propose that resources be put into place in order to prepare these environments of teaching Indigenous law to you and implementing it through the Federal Court process. Like no other community in Canada, our people experience poverty and great socioeconomic challenges. We are prevented from enjoying the richness of our homeland, engaging in economic initiatives within our own communities, designing our own educational curriculum for our children and having the resources to design and create our own initiatives, including our own systems of

[3] Well-known Persian expression. -

[4] Said, Edward. *Culture and Imperialism.* New York: A. Knopf, 1993. -

justice. We have survived an attempt through forced assimilation and government- and church-administered residential schools to destroy our knowledge that brings spirit and allows us to walk in a sacred way. Two years ago there was a public apology made by the Prime Minister of Canada, Stephen Harper, acknowledging that what the Canadian government did to us was wrong. That apology is an important first step, but what is missing has been the support for the restoration of a way of life that was almost destroyed.

The Federal Court can help us with accessing the resources to support education of the tri-juridical process that identifies the Indigenous perspective. We need to have resources on our side so that we can carefully present our understanding, so that the Federal Court and others can appreciate our uniqueness and richness as a people. For example, we would like to create the environments for Elders to get together more often, to plan and to share, as we currently face great struggles and challenges finding the resources to get together. Key as well is ensuring that the resources are there to bring forward our gift of the drum, who carries our voice and whom for us is integral to the success of this process. We also need resources to hire a team of people to properly protect what the Elders wish to share with the Federal Court, and as already stated, create opportunities for members of the Federal Court and Canadian judicial system to take part in our ceremonial and cultural environments so as to become more appreciative of our way of doing things. An offer is also made to the Federal Court for our Elders to work with the Federal Court judges applying these laws and processes. Again, resources and a team of people would be needed for us to be supported to do this.

We look forward to engaging the members of the Federal Court with respect, openness, honesty and reciprocity in a process where we as Elders of sovereign Indigenous nations may share our ways with you, and you share yours with us, with our desire that real justice leading to the greater good for all of us will be better served.

Signed September 18, 2010 at Turtle Lodge, Sagkeeng First Nation.

The Elders also wish to acknowledge the help and support of the gift of the Paa Ba Ma Sa Ga Drum from Treaty 3, who carries our voice, and without whose support this process would not have been possible.

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Dave Courchene (Nii Gaani Aki Innini)

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Morris Littlewolf

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Betty Ann Littlewolf

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Gordon Lee

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Stephen Augustine

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William Easter

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Frances Guerin

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Marge Friedel

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Harry Bone

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Doris Pratt