

**The Royal Commission on Aboriginal Peoples**

**Aboriginal Governments in Canada Project**

**THE HISTORICAL, LEGAL AND CURRENT BASIS  
FOR SIKSIKA NATION GOVERNANCE, INCLUDING  
ITS FUTURE POSSIBILITIES WITHIN CANADA**

A Case Study in Aboriginal Governance

In Fulfilment of a Contract with the Royal Commission  
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The Nature of American Indian Tribal Governments:

*...The power and source of Indian nations and their governments is the same today as it was before the coming of the Europeans--their inherent sovereignty. This means that the powers of tribal governments predate the coming of Europeans to this continent, the signing of the Declaration of Independence, and the adoption of the United States Constitution. The sovereignty of tribal governments has been repeatedly recognized and affirmed by the United States government through treaties, statutes and judicial decisions...*

-Native American Legal Resource Centre (n.d.)  
Oklahoma Indian Affairs Commission

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## **INTRODUCTION**

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The Royal Commission on Aboriginal Peoples ("RCAP") was established by the Mulroney government on August 26, 1991. The Royal Commission was engaged to "investigate the evolution of the relationship among aboriginal peoples (Indian, Inuit and Metis), the Canadian government, and Canadian society as a whole." The Royal Commission's terms of reference are comprised of sixteen separate but interrelated aboriginal issues and concerns. This case study on Siksika Governance deals with only one of those sixteen concerns and that is: "The recognition and affirmation of aboriginal self-government; its origins, context and a strategy for progressive implementation." This particular aspect of the RCAP's investigation into aboriginal self-government may focus upon the political relationship between aboriginal peoples and the Canadian state, with a view toward breaking the patterns of paternalism which have characterized the relationship between aboriginal peoples and the Canadian government; review models of self-government which have been developed in Canada and around the world; make recommendations concerning fiscal arrangements and economic development initiatives necessary for successful transition to self-government; and evaluate the scope, effect and future elaboration of ss. 25 and 35 of the Constitution Act (1982).

The Royal Commission's particular research project on Aboriginal Governments in Canada seeks to educate both aboriginal and non-aboriginal peoples alike concerning the diversity in philosophies, histories, experiences and institutions of aboriginal communities in Canada, including the actual practise of self-government.

Within the above mentioned research goal in mind, RCAP invited the Siksika Nation (formerly Blackfoot Indian Band #146 pursuant to the Indian Act, R.S.C. 1985, c. 1-5) to participate in the project in order to share its recent experiences with *governance initiatives and matters* as they relate to that particular First Nation.

This case study will not only highlight a number of path-breaking initiatives that have been undertaken by the Siksika Nation in the recent past, but will also show, in a historical sense, that the matter of Siksika governance is not a new phenomenon to that nation. If we define *governance* to mean the actual practise of governing a group of people holding common interests, allegiance and membership in a cultural and linguistic entity under a common identifiable leadership, whether appointed, elected, earned or assumed, it can be said that the Siksika Nation has been governing its own affairs since time immemorial.

Siksika self-governance was/is suspended or truncated by the arrival of the British settlers who transported their particular forms of government, laws, procedures and legal assumptions into traditional Blackfoot territory during the latter half of the 19th century. Right up until the signing of the Blackfoot Treaty No. 7 in 1877, the three Blackfoot tribes (Blackfoot, Blood and Peigan), including their allied Sarcees and the enemy Stoney tribes, were still self-governing. In the minds of the Blackfoot people and their leaders such as Crowfoot, Red Crow, and Eagle Tail, their ability to govern themselves under their own systems and laws was not ended by the simple act of signing a treaty with Queen Victoria's representatives. In fact Treaty 7 was an explicit recognition by the

United Kingdom of Great Britain regarding Indian land title, the political sovereignty and self-governing capacities of the Blackfoot Confederacy First Nations which remains to this day. Furthermore, the Blackfoot look upon the treaty as no more than a peace agreement for friendship, co-existence and the Queen's promise to look after them in exchange for their lands. Hugh Dempsey, the noted historian of the Blackfoot tribes states,

Only Crowfoot understood the treaty in his own way. To him, it simply was a pact of faith between the Indian and the whiteman. The buffalo were disappearing and the settlers were coming in; nothing could stop them. But the Mounted Police had proven to be honourable representatives of the Queen, and now the treaty would give the Blackfeet all the protection and help they would need for years to come.<sup>1</sup>

Therefore, any examination of the contemporary meaning of Siksika Governance would be incomplete without looking at it within its historical context. For purposes of this study, the historical context will include: the historic British - Blackfoot dealings before and after Treaty 7 of 1877; the Blackfoot reputation of being one of the most redoubtable and powerful tribes within the Blackfoot Confederacy; the Blackfoot politics of consensus building among its most powerful leaders whether they be of the military, spiritual, or religious societies, or the elders; and finally, the Blackfoot economics of once having a fully self-sufficient life style based on a hunting and fur trade economy, and later to be reduced to a survival economy totally dependent upon White-government relief and wardship after (circa.) 1877.

Defining *governance* within Canada today poses a particular challenge to First Nations such as the Siksika Nation. The task is challenging not only because it means different things to different First Nations, but also due to the fact that non-aboriginal Canadians and their governments do not understand it. Educating non-aboriginal Canadians and their governments poses a larger challenge because it is they who control the political agenda, the purse strings, and the political process in Canada. Most importantly, it is their government institutions that will ultimately decide the extent and quality of participation by Canada's aboriginal peoples in this country's future economic prosperity and political life. Canada's aboriginal peoples are willing and are now attempting to propose long-term political, economic and jurisprudential solutions to solve many long standing First Nation socio-economic problems. However, if the political will is absent in the mind-set of non-aboriginal Canadians and their political masters, no Royal Commission will change their minds and attitudes. Ovide Mercredi states this challenge in a succinct way as follows:

...our struggle is not only to rebuild our societies, which is very important, but to re-structure Canada, to alter the fundamental thinking of the legal and the political systems of this country....There is absolutely no way that First Nations governments can meet the needs of First Nations peoples without the help of the provinces or the federal government. What we are asking is to become partners working towards the same future.<sup>2</sup>

For purposes of this study, *governance* will be taken to mean: the *actual* practise of governing one's own people within the parameters of First Nation traditions, values, priorities, structures,

procedures and laws as they have existed from time immemorial, including their modern adaptations to the exigencies of modern political Canada. The term *self-government* will be taken to mean: the overall political, constitutional, legal and legislative ideal that was sought in the Meech Lake Accord of 1987 and the Charlottetown Accord of 1992, including the lesser derivatives such as the community-based-self-government process, the Optional First Nations Chartered Land Act, etc.

Governance is a pragmatic journey in the absence of an over-arching constitutional amendment. It seeks to break from the status quo of Indian Act governance and domination by the federal government, and increasingly by the provinces under cooperative federalism in such jurisdictional fields as education, health, social assistance, child welfare, and administration of justice, etc. Provincial intrusion into an otherwise exclusive federal area of jurisdiction is in no small measure due to the effects of section 88 of the Indian Act which permits laws of general application within the province to apply to Indian persons, e.g. provincial sales taxes, hunting, fishing and game laws, licensing of business, etc., which erode treaty rights and promises.

The Siksika Nation had always practised governance even under the Indian Act, albeit in a rudimentary fashion with limited by-law making powers reserved for its Chief and Council system of governing. It was not until 1968, when the last and final federally appointed Indian agent packed his bags and forever vacated the Blackfoot Reserve, did the Siksika Nation actually start to practise *governance* in any real and significant ways. Also, this is the point of departure where modern Siksika Nation governance historically began -- a point where the concept of ***Rebuilding the Siksika Nation*** actually took root. This is the meat of the subject matter for this case study on Siksika governance, i.e. from 1968 to the present self-government negotiations process under the Community-Based-Self-Government (C.B.S.G.) policy of the federal government. The Siksika Nation has been actively participating in the C.B.S.G. negotiations since 1988, and in other governance initiatives such as the Alternative Funding Arrangements project, the Indian Taxation review, the Indian Governance project (formerly the Lands, Revenue and Trusts review), and the Optional First Nations Chartered Land legislation, to name a few.

Therefore, this case study on Siksika *governance* describes a need for *self-government* for a leading First Nation. It takes the reader from pre-treaty times to the present and thereby describes Siksika efforts to rebuild its own internal governing structures and its external legal relations with the Canadian and provincial governments. If all goes well, the Siksika Nation will eventually be self-governing as a natural end product of all of those initiatives described herein and its efforts to end the Indian Act status quo. More importantly, the big goal is to reclaim Siksika's historic right to govern its own internal affairs in order to seek the best alternatives for its people within Canada.

Lastly, it must be mentioned that this case study on Siksika governance is a collective effort (i.e., a collaborative study), not only by external consultants, but also by the Siksika Indian Government Committee members, including administration staff and the elders who advise that Committee. In this regard, I would like to give special thanks to Richard Hankinson -the Siksika Nation Public Administration and Economic Planner, to Robert Reiter - the Siksika Nation Legal Counsel, to Dr. Rick Ponting for his organizing ideas and editorship, to Michael Stern for his initial forays into this

project, to Tyler White for his helpful administrative assistance, to Leanne Crow Chief and Stephanie Waterchief for their tireless typing of the manuscript, and above all, to Chief Strater Crowfoot for his support for self-government within Council and foresight leadership, to former Councillor Leonard Good Eagle who requested that I write this study and who had confidence in my abilities, to former Councillor Clement Doore for his loyal leadership and encouragement and to Councillor Fred Breaker for his untiring commitment to the rebuilding of Siksika Nation.

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## I. EXECUTIVE SUMMARY

The Blackfoot Band Council is not an arm of the Department of Indian Affairs, the Indian Association of Alberta, or that new organization [called] A.F.N., or any other agency or organization. The Blackfoot Chief and Band Council, like our forefathers, receive their mandate from the people, not from these agencies or organizations. We, Indian people, have perhaps yielded too readily to these aggressions, sometimes one-sided approach. We, the Indian people, including the Blackfoot people, have fallen into the habit and the trap of always reacting to other people's interpretation of our life as Indians, our treaties, our culture, our Indian governments, our laws, our religion, and even our problems, such as drinking, instead of positively asserting our own.

-the late Jim Many Bears (1984),  
Blackfoot elder who passed away on July 21, 1990.

Canada has a standing commitment to the First Nations, such as the Siksika Nation, to open doors and thereby facilitate the full realization of Indian self-determination within the next millennium. The ground work needed to actualize that goal must begin now. Canada's standing commitment towards the full realization of Indian self-determination exists perforce from its status as a founding member of the United Nations and from its exclusive membership in the G7 Group of industrialized nations, indicating Canada's advanced social and economic development within the international community. One area of human development for which Canada does not have an advanced or success record rests in its treatment of its aboriginal citizens, i.e. the Indian, Metis and Inuit peoples. Aside from any political, moral or domestic law considerations, Canada is bound by international covenants existing at the U.N. Headquarters such as: The Tribal and Indigenous Peoples Convention No. 107 (1959), which Canada has not yet decided whether or not to ratify; the Civil and Political Rights Covenant (1966), and the Economic, Social and Cultural Rights Covenant (1966), which together make up the International Bill of Rights, including the Universal Declaration of Human Rights (1948). All of the foregoing international law instruments either bind Canada or have been acceded to by Canada at the latest in May 19, 1976, including the Convention on the Elimination of Racial Discrimination (1966).

All of the foregoing international law instruments, in regards to aboriginal societies throughout the world including Canada, have one purpose in common and that is: to prevent the unbridled encroachment by politically and technologically more advanced and more powerful societies upon the ill-educated, impoverished and defenceless aboriginal societies; secondly, to strive towards social and economic justice for the indigenous peoples in their daily struggles against the predatory interests of the more powerful non-indigenous population. Here in Canada, many First Nations, such as the Siksika Nation, have taken the approach

that the only way they can prevent the gradual and steady erosion of their constitutional, treaty, economic and political rights, would be through the full pursuit of the international human rights principle of self-determination both domestically and internationally. The Alberta Chiefs in regards to the Canadian constitution, the Mohawks of southern Ontario and Quebec in regards to their land claims, and the James Bay Cree of northern Quebec in regards to hydro power, have already and successfully used this political avenue much to the chagrin of Canada and Quebec.

As a concept, *self-determination* includes within its ambit the derivative concepts of both *Indian governance* and *Indian self-government*. (Refer to definitions in the Introduction.) It is obvious even to the most uncaring or uninformed Canadian that aboriginal societies in this country are in fact racially, culturally and linguistically distinct from the non-indigenous population, and it is those types of positive distinctions which the right of self-determination seeks to protect within the domestic society. Thoughts of assimilating the aboriginal societies into mainstream Canadian society have not worked during the past European settlement and colonial history of this country and there is no reason to assume that such ill-advised public policies will work in the 21st century.

*Aboriginal self-determination* does not imply separate nationhood or statehood. It does imply however that given sections 35(1), 35.1 and 52(1) of the Canadian Constitution and the numerous Indian treaties made over the past Canadian centuries, First Nations have the recognized and confirmed right to evolve their own political, legal, social, economic and educational institutions in order to shape their communal life according to their own values, beliefs, customs and traditions so that they may participate more effectively and abundantly within Canadian society. The manner, form and degree of aboriginal autonomy, or if you like, *aboriginal self-government*, are matters for negotiation with the national and provincial authorities in Canada. Much will depend upon particular circumstances and the political aspirations of each group in question. However, in any case, there exists an international as well as a domestic law requirement to negotiate self-determination with the existing aboriginal societies in Canada. No group, no government and certainly no individual can prescribe the precise form in which aboriginal self-determination (self-government) is to be achieved. Although dissimilar to the political aspirations of the Parti Quebecois, who want to break-up Canada as we know it today, the words of their leader, Jacques Parizeau, bear some resemblance to the ephemeral definition of *aboriginal self-determination*. Mr. Parizeau recently stated that, "Sovereignty does not belong to the Parti Quebecois, we do not have a monopoly over it.... We cannot define it nor do we what to define it alone or by following a pre-determined and unchanging path. Sovereignty belongs to all Quebeckers." (Quoted in the Globe and Mail, September 27, 1994.) Likewise, there are no pre-determined or pre-set parameters for aboriginal self-government because it is essentially a nation-building concept and undergirded by Indian treaties, land claims, constitutional protections and guarantees, legislative acts and favourable court decisions. Although the nature, form and substance of Siksika Nation's self-determination initiatives during the past 25 years, beginning with the Canada-Siksika Nation-Alberta Child Welfare Agreement in the early 70's, cannot be definitively stated as being *the right method* of achieving

self-government for that First Nation, nonetheless taken collectively, such initiatives constitute identifiable, describable and sequential evolutionary processes towards the ultimate ideal of *shared sovereignty* under Canadian federalism. This current case study on Siksika Aboriginal Governance is essentially a descriptive, analytical and visionary statement of those sequential evolutionary processes as each step along the way is carefully laid with vision, timing, planning and pragmatism.

## 1.1 PURPOSE OF STUDY

This study was undertaken under the authority and mandate of the Royal Commission on Aboriginal Peoples (RCAP) as established via Order-in-Council on August 26, 1991. The Royal Commission's broad Terms of Reference includes an investigation into sixteen (16) separate but interrelated aboriginal issues and problems "which confront aboriginal peoples today." The Siksika Nation undertook a commitment to assist in the monumental work of the Royal Commission in one of those specified areas for investigation, namely, the Aboriginal Governments in Canada Project, with a particular emphasis and focus upon Siksika Nation's recent experiences with governance matters and initiatives. For purposes of this study, *recent* means: post 1968, the year when the last proverbial Indian Agent left the Blackfoot Indian Reserve permanently and when Siksika Nation self-governance actually began. That process had humble beginnings in the small wooden office buildings that used to house the various government administrators that came to live among the Blackfoot Indians to manage their affairs over the years since 1881. That was the year when the Blackfoot bands made their final equestrian return journey from the United States and back into Canada in search of the great buffalo herds.

In 1968, the Siksika people were informed by the Indian Agent that they were now going to manage their own affairs as best as they could. Initially this actually meant self-administration and not true self-governance. In 1968, the Department of Indian Affairs still firmly controlled (and still does in 1994) all policy decision making, including determining the amount of fiscal transfer payments that flowed to the Siksika Nation, and making unilateral agreements with the Province of Alberta, various school boards and health boards on behalf of the Siksika people. Also in 1968, the Blackfoot Tribal Administration staff consisted of merely five people: the Band Manager, the Accountant, the Social Assistance Manager and several office secretarial clerks. Compared to 1994, the Siksika Nation Tribal Administration now employs over 250 full time and part-time employees in all areas of public government functions in such areas as education, family and child care support, economic development, land management, tourism, culture, recreation, tribal police, elder care, land claims, housing, health care, Indian government planning and development and many small project developments.

## 1.2 LIMITS OF THE STUDY

This study project focussed on the recent governance initiatives undertaken by the Siksika Nation beginning with the 1972 tripartite Child Welfare Agreement between the federal

Department of Indian Affairs, the Provincial Department of Social Services and the Siksika Nation Social Services and ending with the full participation in the discussion, development and drafting of the First Nations Chartered Land Act of 1993. In addition, the Siksika Nation entered into a Correctional Services Agreement with the Province of Alberta in 1993 to assume a greater level of responsibility in the provision of counselling and legal services to Siksika members appearing before provincial courts or incarcerated in provincial institutions.

A second major focus of the study deals with the design of governing institutions and structures including their jurisdictions in preparation for eventual self-government sometime in the future. This process will eventually lead towards the establishment of the Siksika Nation Government Act replacing the Indian Act. The third and final focus of the study deals with the rationale, advocacy and proposal for a new type of fiscal transfer payment arrangements both with Canada and the Province of Alberta, i.e. Global Funding Arrangements. Essentially, the Siksika Nation seeks long term financial guarantees and protection against unilateral government fiscal budget cutbacks. A Global Funding Agreement would be based on a nation-to-nation concept stemming from the spirit and intent of Treaty 7 of 1877.

The bottom line for such an Agreement would adhere to the liberal-democratic notion of *fiscal equality* that all Canadians normally receive and expect from their governments. The Siksika Nation has never received any such fair and equitable economic and fiscal treatment from the Canadian government ever since Treaty 7 was formally signed between the contracting parties, i.e. the Queen's government (which now includes the provinces as a result of constitutional development and interpretation.) and the Treaty 7 First Nations.

The entire study was written from a wholistic perspective in order to give equal treatment to the above mentioned foci. The entire study is about the process of *rebuilding* the self-governing capacities of the Siksika Nation and how that capacity was thwarted by past and current federal Indian policies, which are counter-productive, manipulative and short-sighted on fiscal and economic policy if such policies ever existed in the first place.

Since this case study focusses on the collectivity of the Siksika Nation, no single identifiable group such as the elders, youth, females or urban Indians are given any specialized attention. Such an approach was taken for primarily two reasons: (a) the topic of *governance* per se deals with the functioning, the authorities and institutions of government and not groups, although they are certainly covered by the above foci since governance means bringing order to peoples' lives, and (b) identifiable groups such as elders, youth and women are dealt with by other study projects of the Royal Commission of Aboriginal Peoples where they would receive the focussed attention that those groups rightly deserve.

### **1.3 ORGANIZATION OF THE STUDY**

The study is divided into four major sections Chapters II, III and IV describe the historical and contemporary socio-economic backdrop for the governance capacities of the Siksika Nation, including a summary of the many obstacles that have been experienced by that First



Nation as it attempts to rebuild itself upon its distant and recent past. Chapters V and VI examine that most recent efforts by the Siksika Nation to find alternatives to the Indian Act way of conducting tribal business. Through those various options, the Siksika Nation attempted to conduct its governance despite federal dominance and control through the Indian Act. Chapter VII delineates the areas of exclusive and concurrent jurisdictions that the Siksika Nation would exercise if and when it achieves self-governance. Chapters VIII and IX explore the various options that would meet the fiscal and other financial requirements of the Siksika Nation based on the concepts of *equality* and long-term financial stability, without which no Indian Government would survive in today's competitive and increasingly inward-looking economies.

## 1.4 MAJOR FINDINGS AND CONCLUSIONS

### CONSTITUTIONAL AND TREATY RELATIONS

1.4.1 With the coming into force of the Royal Proclamation of 1763, the British Imperial Crown recognized the existence of Indian title and the jurisdiction of First Nation governments. This notion was reaffirmed and reinforced with the signing of Treaty 7 in 1877 between the representatives of the British crown and the various Head Chiefs and Minor Chiefs of the Blackfoot Confederacy who agreed to allow European settlement upon their traditional territories in exchange for certain social and economic benefits including perpetual annuities. Legislation which followed the Royal Proclamation of 1763, including the Indian Act of 1876 and its later amendments, cannot override the historic understandings and undertakings as embodied in the said Proclamation and Treaty 7 of 1877. Since the said Proclamation was declaratory and confirmatory of the entire spectrum of aboriginal rights, it is reasonable to deduce that those rights include the inherent right to Indian self-determination as it may be made manifest via Indian self-government. (See p. 56 of study and subsequently each page number indicated after each paragraph in this section refers to specific pages throughout this study for easy cross reference.)

1.4.2. The inherent right of the Siksika Nation to establish a government cannot be disputed. The Canadian government and the Province of Alberta may question whether the Siksika Nation has consistently exercised its inherent right to govern itself. The delegated form of tribal governments, as defined by the Canadian government in the Indian Act R.S. 1970, c.1-6, s.1., serve merely as administrative tools for the federal institutions of government and are not true governments. The Siksika Nation is of the opinion that section 35 of the Constitution Act (1982) already recognizes First Nations' aboriginal and treaty right to form their own governments; secondly, that there is a need for a formal negotiations process and an implementation plan to be established with the government of Canada and the Province of Alberta. (p. 57)

1.4.3 The Siksika Nation governance case study provides clear evidence that the inherent right of that First Nation to establish its government has never been relinquished. At no time during the past 200 years has the Siksika Nation ceased to exercise some aspect or function of an independent government, albeit under the external constraints of the Indian Act (p. 57)

### THE INDIAN ACT

1.4.4 The Siksika Nation has attempted to limit the powers of the provincial government under section 88 of the Indian Act through the use of Band Council by-laws pursuant to section 81 of that Act. To date, a total of 11 by-laws have been enacted by the Siksika Chief and Council. Unfortunately, the powers delegated by Parliament under section 81, e.g. traffic, zoning, maintenance of roads and public buildings, conservation of fish and wildlife, observance of law and order, etc., are of a local or municipal government nature. The majority of legislative jurisdictions for Indians and Indian lands covering many government functions still remain with the federal government and with the provincial government under section 88 of the Indian Act. (p. 59)

### VETERANS AFFAIRS

1.4.5 In addition to programs offered through Central Mortgage and Housing Corporation, the federal government provided considerable assistance to WWII veterans in the form of free land, free medical benefits, access to low interest loans and cost free education assistance. Owing to a strict and narrow interpretation of the Indian Act, members of the Siksika nation who served their country honourably in both WWI and II were specifically excluded from any such war veteran benefits either from the Department of Veterans Affairs or through the Veterans Land Act. This is a cogent example of outright racism, bureaucratic mismanagement, Treasury Board austerity, and unfair exclusion as practised by the federal government against the Siksika Nation contrary to the understandings under Treaty 7 of 1877. (p. 75)

### MEDICAL CARE FUNDED BY BLACKFOOT LAND SALES

1.4.6 When the 1910 and 1912 Blackfoot land sales were finalized, one of the first items presented for funding by the Siksika Nation was a new hospital. Using the revenue from the land sale, the Siksika Nation constructed a modern hospital in 1923 just south of the present town of Gleichen. This hospital was equipped with the latest equipment and best staff available in southern Alberta. Every Siksika member would receive medical care at this facility paid from their own revenues. It is important to note that the Siksika Nation paid 100% of the costs of operating this hospital from 1923 until 1955 when the Medical Services Branch (National Health and Welfare) took over responsibility. This hospital operated until 1976 when it was finally closed by M.S.B. (p. 71)

1.4.7 Current negotiations for the transfer of jurisdiction for health care from the Medical Services Branch (National Health and Welfare) has identified a serious discrepancy between the existing level of services provided to the Siksika Nation and the level of services available in the surrounding communities. The issue of fiscal equality must be addressed by the Government of Canada at every level including the quality of health care provided to the Siksika Nation. (p. 73)

1.4.8. The population of the Siksika Nation had declined from 2,255 in 1882 to only 726 by 1917. The majority of this decline was traced to tuberculosis which spread rapidly through overcrowded accommodations. To add insult to injury suffered from tuberculosis and overcrowded housing, the Government of Canada decided to reduce the amount of food rations they had promised to provide to Siksika members when Treaty 7 was signed in 1877. In order to provide new housing and to increase food rations for Siksika Nations members, the Government of Canada convinced the Siksika people to sell over 125,000 acres of their treaty-reserved lands granted in 1879. Clearly, the significance of the 1910 land sale was never really explained to Siksika Nation members, who had little concept of fee simple land ownership or what future rights to the land they would lose if the land was sold. (p. 74)

In retrospect, the unjustifiable concept of selling treaty-reserved land to generate money for Siksika Nation housing, agricultural development, medical care and to prevent large scale starvation among the Blackfoot, must be viewed as a clear breach of trust by the Government of Canada and contrary to the terms of Treaty 7. Not only did the federal government first cut back on the food rations promised as part of Treaty 7, they also subsequently offered hungry Siksika members food if they agreed to sell a portion of their land reserved by treaty. (Note: It is not surprising that the portion of land sold by the Blackfoot in 1910 now contains hundred of producing oil and gas wells as well as rich coal deposits, which in today's economic terms translate into \$ millions of resource revenues which have now gone to the Province of Alberta to support all Albertans.) (p. 74)

### LAW ENFORCEMENT

1.4.9 The Government of Canada and the RCMP have established clearly defined relationships with many First Nations. Now that the extent of jurisdiction and the cost of law enforcement is understood by both the federal government and the Siksika Nation, the transfer of related jurisdiction and funding should be relatively straightforward. Unfortunately, the Government of Canada and the Alberta Government have both chosen not to include all associated costs related to law enforcement similar for other non-aboriginal jurisdictions within the province. (p. 61)

### HOUSING

1.4.10 Land claims research strongly indicates that the majority of the houses constructed on Siksika lands between 1910 and 1945 were paid for by the Siksika Nation itself, using revenues from the 1910 land sale and not by the Government of Canada or Canadian taxpayers. (p. 75)

1.4.11 Based on a review of the files maintained by the Indian Agent for the Blackfoot Reserve, the total federal government contribution towards the housing of Siksika members between 1944 and 1964 did not exceed \$250,000. Several policy papers circulated by the Department of Indian Affairs and Northern Development openly admitted that no attempt

was made to provide members of First Nations with a comparable quality of housing to that received by other Canadians between 1945 and 1965 (p. 75)

1.4.12 While the provincial and municipal housing authorities were building tens of thousands of new units for lower income families with federal government money, and absorbing up to 75% of the operating losses, the Siksika Nation was offered a maximum grant of \$7,500/unit, a CMHC loan guaranteed with their own money, and absolutely no share of *operating and maintenance* funding or replacement reserves for social housing units. (p. 78)

1.4.13 In 1966 the only social housing units in Canada which did not receive any level of operating subsidies from the federal government were those located within lands occupied by First Nations. (p. 78)

1.4.14 The only reason to restrict First Nations' access to conventional housing programs would be to save the Government of Canada millions of dollars each year in operating subsidies or to discourage the construction of new social housing projects on reserve lands. (p. 79)

From a constitutional and treaty standpoint, our research indicates that the introduction of a non-subsidized loan program by CMHC and DIAND in 1972/73 was not only misdirected but represented a serious breach in the fiduciary responsibility of the federal government. (p. 79)

1.4.15 It is very clear from a review of the debate between the National Indian Brotherhood and INAC between 1974 and 1977, that the Government of Canada did not view social housing as part of its constitutional responsibility for Indians under the Constitution Act of 1867. More importantly, it deliberately avoided any reference to decent housing as a right extending from the treaties signed with First Nations. (p. 81)

1.4.16 In the 20 year period from 1972 until 1992, the Government of Canada contributed over \$20,000,000,000 to support housing and infrastructure programs across Canada. Less than 10% of this total investment was related to construction of social housing within First Nation lands. (p. 84)

1.4.17 *Over the past twenty years, the Siksika Nation has provided the Government of Canada with a direct subsidy of more than \$12,000,000. If the Siksika reserve boundary had never existed, the Government of Canada and the Province of Alberta would have been required to provide the \$12,000,000 paid by the Siksika Nation as subsidies through CMHC.. The Siksika Nation feels that the Royal Commission on Aboriginal Peoples should be made aware of which government is actually subsidizing social housing within Siksika lands (p. 85)*

1.4.18 The Siksika Nation has examined the full extent of investment by the Government of Canada to illustrate that housing has been used to stimulate the Canadian economy. The obligations of the Government of Canada as they are defined in Section 91 (24) of the

Constitution Act took a back seat to the political aspects of stimulating growth through direct investment in housing. (p. 85)

Research completed by the Siksika Nation has revealed that First Nations in general, and the Siksika Nation specifically, received substantially less assistance from the Government of Canada than other jurisdictions. The most serious aspect of this double standard is the refusal of INAC or CHMC to contribute to the cost of operating and maintaining social housing units constructed prior to 1984. *In the case of the Siksika Nation, this discriminatory policy is saving the Government of Canada over \$1,200,000 per year.* (p. 85)

Between 1946 and 1985 the Siksika Nation was required to pay all costs related to the repair and maintenance of housing for families who required income support payments. In addition, the Siksika Nation was required to provide the balance of capital funding over and above the INAC grant. The net result was that it was the Siksika Nation that funded the majority of costs related to social housing, not the Government of Canada. The net loss to the Siksika Nation economy resulting from their direct involvement in social housing exceeded \$25,000,000 over this forty year period. (p. 85)

1.4.19 This Siksika is also concerned that the Government of Canada has linked the provision of housing to First Nations with funding provided for in section 15 of the National Housing Act. This link is tenuous at best. If the Government of Canada continues to vacate government functions defined within section 92 of the Constitution Act, it may only be a matter of time before the Canada Mortgage and Housing Corporation discontinues the subsidies provided through section 15 of the National Housing Act. (pp. 118-119)

#### INDIAN LAND VALUES

1.4.20 The value of real property in communities surrounding Siksika lands has increased by more than 40% since 1983 and by more than 600% since 1946. The only Canadian citizens which have been excluded from realizing the benefits of escalating land values are members of First Nations living within First Nation lands since the lands are inalienable. If it were possible to factor out the impact of escalating land values on the net worth of most Canadians, it would dramatically illustrate why the standard of living within most First Nation communities is substantially lower than the Canadian average. (p. 86)

#### SERVICE DELIVERY AND GOVERNMENT OPERATIONS

1.4.21 All First Nations are in a gray area between the Indian Act (which provides incomplete government powers) and true self-government. Siksika's problem in this context is compounded by the fact that it has become the service delivery agent for many of the programs that serve its members and now lacks the appropriate legal recognition and capacity to discharge its duties in an efficient way. The problem to be remedied is how to provide for a legal structure of government in the absence of the recognition of its inherent right to self-government. This structure would have to allow Siksika Nation to function as

a government and yet be legally binding in its decisions without relying on government status. (p. 98)

- 1.4.22 The Royal Commission on Aboriginal Peoples should be aware that the Siksika Nation is currently spending in excess of \$2,000,000 to support government operations. The Government of Canada cannot expect to increase the jurisdiction and responsibilities of the Siksika Nation without a corresponding increase in the level of transfer payments. The Siksika Nation is also concerned that the substantial savings realized through downsizing of INAC operations in the Alberta Region have not been reflected in the funding provided to First Nations in Alberta. (p. 115)
- 1.4.23 In 1991 INAC circulated a Memorandum of Understanding to the Chiefs and Council of First Nations within the Treaty Seven Area. The intent of this MOU was to clarify that the Province of Alberta would be responsible for the provision of social services to members living outside of First Nation lands. Based on their long standing relationship with the Government of Canada, the Siksika Nation refused to sign this MOU. The Siksika Nation feels that the Government of Canada cannot transfer responsibility for assisting Siksika members to the Province of Alberta without consent by the Siksika Nation. This issue remains unresolved. (p. 116)
- 1.4.24 The policy shift by the Government of Alberta is having a considerable impact on the Siksika Nation in the 1993/94 fiscal year. Many Siksika Nation members have been eliminated from provincial pay lists and have been redirected by provincial employees to the Siksika Nation for social assistance. INAC refused to allow the Siksika Nation to include any portion of their membership living in the city of Calgary as part of the original AFA data base. The Government of Alberta appears to be saving money at the expense of the Siksika Nation who have signed a fixed agreement with the Government of Canada. During the past six months INAC has refused all requests to increase the funding levels within the AFA to reflect the return of Siksika members to Siksika lands. (p. 116)
- 1.4.25 The Siksika Nation has proposed that the level of transfer payment for social services should be based on the funding required to meet mutually agreeable objectives, not on rates set by the Government of Alberta. The Siksika Nation will agree to educate, train, and employ its membership and to reduce the level of unemployment over a period of time. The Government of Canada would agree to provide a defined sum of money each year if the mutual social objectives are met. (p. 117)
- 1.4.26 The Government of Canada has acknowledged some level of financial responsibility for the construction of community infrastructure. However, this obligation has always been couched in broad references to cost sharing by First Nations with emphasis on projects related to the health and safety of First Nation members. In recent years the Alberta Region of INAC has determined that the Government of Canada has no obligation to assist in the construction of additional roads within First Nation lands. (p. 119)

The Siksika Nation has proposed that the Government of Canada develop a more comprehensive program to support capital projects, including roads. This program would increase funding provided for the operation and maintenance of capital assets by including an allowance for a replacement reserve. In this way, a First Nation could borrow funding for construction of an asset and use a portion of the operation and maintenance (O&M) funding to service the debt. (p. 119)

## EDUCATION

1.4.27 Treaty 7 contains the following clause;

"Further Her Majesty agrees to pay the salary of such teachers to instruct the children of said Indians as to her Government of Canada may seem advisable, when said Indians are settled on their Reserves and *shall desire teachers*"

It is difficult to misinterpret the intent of this clause when placed in the context of 1877. The Government of Canada had, and still has, a legal obligation to assure that all members of First Nations who signed Treaty Seven receive an education comparable to the education of the Canadian society in general. Chief Crowfoot, and other Chiefs who signed Treaty Seven, realized that times were changing and that they would require help in teaching the children the ways to survive in this new world. (p. 121)

The Siksika Nation was the last signatory within the Treaty 7 area to assume responsibility for educational programs. To many it may seem strange that the pioneers of Child Welfare, health care and law enforcement allowed INAC to operate elementary schools within Siksika lands until September 1989. However, it is important to understand the importance placed on Treaty 7 by the Siksika Nation, particularly the importance of Government of Canada support for the education of Siksika members. (p. 121)

1.4.28 The Government of Canada has never really accepted the concept of funding post secondary institutions within First Nation lands. Funding for post secondary education based on population, including the population of First Nations, is transferred by the Government of Canada to provincial governments. The government of Alberta has refused to release any portion of the funding to support the delivery of post secondary education programs at Old Sun Community College. This matter is currently the subject of a legal suit by the Siksika Nation against the Province of Alberta. (p. 122)

## ECONOMIC DEVELOPMENT

1.4.29 The Government of Canada invested very little in the economy of the Siksika Nation between 1965 and 1985. What concerns the Siksika Nation is the substantial investment made by the Government of Canada to expand regional economies across Canada. Major programs such as the Fund for Rural Economic Development, Department of Regional

Economic Expansion and the Atlantic Development Agency invested billions of dollars in economic expansion. First Nations in general, and the Siksika Nation specifically, were isolated from the major economic development programs offered by the Government of Canada and had to make do with the limited funding offered by Indian and Northern Affairs Canada. (p. 66)

1.4.30 One major initiative which benefitted many First Nations located north of 55th parallel was the Western Northlands Agreement administered as part of the Department of Regional Economic Expansion. Owing to their geographic location, the Siksika Nation did not have access to funding under this agreement. To date no similar program has ever been made available to First Nations located south of the 55th parallel. (p. 66)

1.4.31 The Siksika Nation is concerned that the Government of Canada (INAC) is retreating from its constitutional and treaty-based role in supporting economic and employment development within First Nation communities. With the introduction of the Canadian Aboriginal Economic Development Strategy (CAEDS), the federal government decided to address the issue of economic development in terms of support for "Aboriginals." Owing to the unique constitutional status of First Nation lands, coupled with the inability to use Indian land as security for development initiatives, the majority of funding provided through CAEDS has been allocated to projects outside of First Nation jurisdictions. (p. 68)

The foregoing problem has been exacerbated by the Pathways to Success program which was initiated by Canada Employment and Immigration Commission as part of the CAEDS program. Under the Pathways process, funding for employment development is distributed through local and regional management boards composed of representatives of all aboriginal interest groups. The Siksika Nation is of the view that the trend to aboriginalize First Nation programs as an obvious and deliberate dilution of the special constitutional and fiduciary relationship between the Government of Canada and First Nations, given that those relationships are based on the Royal Proclamation of 1763 and reinforced in the treaties with First Nations. (pp. 68-69)

1.4.32 The proposal of the Government of Canada to sell over 125,000 acres of Siksika Nation land in 1908 was never fully understood by its members. In retrospect, it is abundantly clear that it was an obvious move by the Government of Canada to escape from their financial obligations under Treaty 7 and to transfer those obligations back to the Siksika Nation. When it is considered that the Siksika Nation funded all aspects of its economic development for more than 50 years, including the wages of federal government employees assigned to assist and advise them, it is difficult to claim that the Siksika Nation government did not exist or that all decisions during this period were made by the Indian Agent. (p. 69)

1.4.33 Between 1877 and 1985, no sector of the Canadian economy received less support for economic development from the Government of Canada than First Nations. Since 1985 the level of funding support has increased significantly. However, the infrastructure for



commercial or industrial expansion within First Nation lands is woefully inadequate when measured against the infrastructure in the surrounding jurisdictions. (p. 69)

- 1.4.34 The Government of Canada has invested billions of dollars from revenues received from resource development, including revenues generated from Siksika Nation traditional lands, in the development of regional economies. The level of funding provided to the Siksika Nation by the Government of Canada is negligible when compared to the funding provided to other jurisdictions. It is distressing that while section 91 (24) of the Canadian constitution gives the Government of Canada exclusive jurisdiction over "Indians, and Lands reserved for the Indians", they continue to provide a greater level of financial support to municipalities or regions under provincial jurisdiction. (p. 69)
- 1.4.35 It is time for a change in the way the Government of Canada provides support for the development of First Nation lands. Financial institutions, with the support of the Government of Canada, must develop alternative forms of collateral for commercial loans. The most obvious collateral available to First Nations are the transfer payments from the Government of Canada, which should include funding related to the development of First Nation economies. Perhaps the Royal Commission on Aboriginal Peoples could address the issue of improved access to development funding in their submission to the Government of Canada. (p. 70)

#### GOVERNMENT OF ALBERTA

- 1.4.36 The Government of Alberta has realized billions of dollars in royalty revenue from oil and gas development in southern Alberta, the traditional lands of the Blackfoot Confederacy. A multi-billion dollar Heritage Fund was established with a portion of the revenues from natural resource development. Over the past twenty five years the Government of Alberta has only supported one project within Siksika Nation lands, a \$2,000,000 Elders Lodge constructed in 1986. No area or recreation centre, no hospital, no high school, no cultural centre, no major irrigation projects, no services industrial parks, no loan guarantees for major economic development projects, and no grants to home owners of subsidies to reduce interest rates. In fact on a per capita basis, it is doubtful whether members of First Nations received more than \$1,000 each in benefits from the Heritage Trust Fund over the past 15 years. (p. 125)

The Heritage Trust Fund has been used and abused, to stimulate the economy of Alberta. Unfortunately, the *trust relationship* towards members of the First Nations has never been honoured by the Government of Alberta that continues to use the Indian Act to deflect responsibility to the Government of Alberta. The Government of Canada is shifting funding for economic development from INAC to Industry, Science and Technology Canada under the Canadian Aboriginal Economic Development Strategy. Now Metis or Non Status Indians living under provincial jurisdiction have access to yet another pool of development money while direct funding to First Nations is systematically reduced. (p. 125)

The Government of Canada introduced a similar approach through the *Pathways To Success* strategy whereby CEIC funding for First Nations allocated to local management boards controlled by a cross section of aboriginal interests. The Metis and Non Status Indians now have access to all the programs offered through Alberta Manpower, plus a share of the CEIC funding for First Nations. First Nations have no means of accessing Alberta Manpower programs and must now compete for the shrinking funds offered by CEIC. It is impossible to conclude members of First Nations have equal access to financial resources under current government programs. That situation is discriminatory and must be challenged immediately. (pp. 125-126)

### THE ISSUE OF EQUALITY

1.4.37 The Siksika Nation is of the opinion that the Canadian Constitution is based on the notion of equality for all citizens regardless of their ethnic origin or place of residence. It is unfortunate that this notion has not been incorporated by administrative departments under the direct control of the Government of Canada. Without repeating examples of inequality outlined in the Siksika Nation case study, it is sufficient to say that equal treatment under the laws of Canada has not been achieved by the Siksika Nation and should be addressed immediately. (p. 126)

The most glaring examples of inequality arise when the Government of Canada introduces programs aimed specifically towards *aboriginals* without understanding the substantial differences between members of First Nations in general, members of First Nations who signed treaties, members of First Nations resident on defined reserves and a wide range of other aboriginal groups living under the jurisdiction of provincial governments. (p. 126)

Under the current regime in Alberta, members of the Siksika Nation living within Siksika lands cannot access most provincial assistance programs, while other *aboriginal* groups have gained equal access to most Government of Canada assistance programs e.g., CMHC subsidies, CEIC subsidies, ISTC subsidies. (p. 126)

1.4.38 In order to address existing inequalities, the Siksika Nation has proposed that the Government of Canada adopt a more global approach to financial assistance based on the needs of Siksika Nation members. First Nations and the Government of Canada would compare the range of assistance available to Canadian citizens and would negotiate an appropriate share which should be transferred to First Nation governments. The Government of Canada would agree to transfer financial resources to First Nations who in turn would agree to use the financial resources to address the needs of their membership. (p. 127)

Under the Siksika Nation global approach to financial arrangements, the Government of Canada would have an obligation to provide a First Nation with funding at a level which was *equitable* compared to funding provided to Canadians who were not limited by the Indian Act or narrow provincial interpretations of Section 91 (24) of the Constitution Act. In

essence, the Government of Canada would assume full responsibility for providing resources to First Nation governments and would adjust their transfer payments to the provincial government accordingly. (p. 127)

First Nation governments could continue to negotiate agreements with the provincial government to address issues of mutual concern. However, the majority of funding for essential government functions such as education, income support, social housing, law enforcement, and government operations would originate from the Government of Canada. (p. 127)

### FISCAL ARRANGEMENTS AND FINANCIAL ARRANGEMENTS

1.4.39 Many Canadians are of the opinion that First Nations receive *preferential treatment* from the Government of Canada. Research completed by the Siksika Nation has revealed that in almost every function of government, the level of funding transferred to First Nations is substantially lower than funding transfers to other government jurisdictions for all kinds of essential services for ordinary Canadians. This research has also revealed that in several areas such as social housing and health care, the Siksika Nation has actually subsidized the fiduciary and treaty obligations of the Canadian government. (p. 57)

1.4.40 One of the unfortunate consequences of having to assume responsibility while operating under legislation developed by the Government of Canada is that the level of financial transfer payments for specific functions seldom meets the actual needs of the First Nation governments who perform the functions. It is clear that most programs offered to First Nations through INAC were never funded on the basis of community needs but on the basis of an *equitable* distribution of INAC funding across Canada. (p. 88)

The Siksika Nation analysis of four key functions of governments has uncovered several interesting features:

- (i)The existing level of funding provided by the Government of Canada is not adequate to meet the needs of most communities;
- (ii)The Government of Canada often provides a higher level of financial assistance to other jurisdictions;
- (iii)First Nation governments are often restricted from accessing well funded development programs offered by the Government of Canada to other jurisdictions;
- (iv)The Siksika Nation has been required to spend millions of dollars of its scarce financial resources to address the needs of the membership when other jurisdictions are receiving transfer payments from the Government of Canada to address similar needs of their constituents; and

(v)The Government of Canada's responsibilities and obligations, as they relate to the funding of the Siksika Nation government, are founded on well established agreements with the British Crown. (p. 88)

The Siksika Nation has realized that it does not have access to sufficient resources to meet the social and economic needs of its membership. In order to address this important issue, the Siksika are attempting to redefine their relationship with the Government of Canada and to clarify the extent of financial support which will accompany a government-to-government relationship. One thing is certain: the Government of Canada has a fiduciary responsibility to the Siksika Nation which cannot be fulfilled under the existing terms of Indian Act. (pp. 88-89)

1.4.41 Under existing financial arrangements with the Government of Canada, First Nations in general, and the Siksika Nation specifically, have not been receiving their appropriate share of Canada's substantial wealth. Comprehensive research into expenditures by the Government of Canada over the last fifty years has illustrated a consistent pattern of underfunding financial agreements with First Nation governments. This is not to suggest that the underfunding was intentional, or that the Government of Canada has maintained a double standard. However, once the discriminatory practices have been identified, it is incumbent upon the Government of Canada to terminate all discriminatory practices and develop more equitable financial arrangements with First Nations. (p. 124)

The detailed analysis of social housing programs illustrates that the scope of financial assistance offered to First Nations by INAC and CHMC was far less generous than financial assistance offered to other jurisdictions. The Siksika Nation included this detailed analysis to illustrate to the Royal Commission on Aboriginal Peoples that such discriminatory practices still exist. Without substantial research into the level of financial assistance the Government of Canada transfers to other jurisdictions, it will be extremely difficult for First Nations to request, to perhaps demand, equal treatment. (p. 124)

1.4.42 In 1992/93 the Government of Canada expended more than \$5.0 billion on programs intended to benefit members of First Nations living within First Nation lands. This represented an average expenditure of \$12,412 for each of the 358,028 members living on First Nation lands across Canada. In 1992/93 there were 2,650 Siksika Nation members living on Siksika lands. Using the Government of Canada average of \$12,412/capita, the Siksika Nation's share of the total Government of Canada expenditures should be near \$33,000,000. (p. 128)

The Siksika Nation has clearly established that the level of funding provided by the Government of Canada for Social Housing, Medical Services, Government Operations, and Economic and Employment Development is substantially lower than assistance offered to other jurisdictions. Based on the realization that many necessary functions of First Nation government are currently underfunded when compared to other jurisdictions, it is safe to assume that the Siksika Nation's proper share of Government of Canada transfer payments

would exceed \$40,000,000 per year for members living on Siksika lands. A minimum of \$10,000,000 per year in transfer payments would be required to meet the needs of Siksika members currently living under provincial and municipal jurisdiction. (p. 128)

The Siksika Nation is suggesting that the Government of Canada has a legal and Treaty obligation to transfer an appropriate level of financial resources to all Treaty First Nations. Once these financial resources are transferred, the First Nations will assure that the needs of the membership are addressed in a responsible manner. (p. 128)

1.4.43 Existing financial agreements between the Siksika Nation and the Government of Canada all contain phrasing which indicates that all funds are *subject to appropriation by Parliament*. In recent years this phrase has been used to justify substantial decreases in a number of multi-year agreements between the Siksika Nation and the Government of Canada. (p. 129)

The Siksika Nation has proposed that financial arrangements with the Government of Canada could span a period of 25 years, or longer, and that the agreements would become legally binding on future governments. In essence, the Siksika Nation is proposing that the spirit of mutual respect which preceded the signing of Treaty 7 be continued through a legally binding arrangement. The Government of Canada has consistently refused to enter into arrangements that are legally binding on future governments and has insisted that all future funding must be subject to ratification by the government of the day. (p. 129)

*An important aspect of intra-governmental relations, which is often overlooked, is the relationship between First Nation governments and the Government of Canada established at the signing of the treaties. Until the Government of Canada recognizes the full extent of its legal obligations under the treaties, it will continue to treat First Nation governments as junior governments without inherent rights.* (p. 129)

1.4.44 Current forms of transfer agreements between the Siksika Nation and the Government of Canada are not comprehensive, particularly in the area of constructing, maintaining and replacing capital assets. The Siksika Nation is proposing that funding for education, and other services requiring capital facilities, would include an appropriate level of funding for the capital replacement based on a mutually agreed life expectancy of each capital asset. (p. 132)

The Siksika Nation is also aware that INAC has reduced its total staff from more than 4,100 in 1986/87 to a fewer than 2,800 in 1992/93. This reduction was made possible through the transfer of additional responsibilities to First Nations. This reduction in staff also reduced the requirement for office space and associated expenses for each employee. This reduction in federal expenditures for human resources and infrastructure did not translate into economic benefits nor increased transfer of fiscal resources to the Siksika Nation. The Siksika Nation is concerned that the existing formulas for calculating support funding for larger First Nation does not accurately reflect the full cost of developing new responsibilities for First Nations. (pp. 132-133)

### GLOBAL FUNDING ARRANGEMENTS

1.4.45 Under a *global* funding arrangement, the Siksika Nation and the Government of Canada would reach agreement as to the appropriate share of all expenses that will be transferred to support the provision of services to the Siksika nation members. The global funding arrangement would reflect all expenses that form part of government functions, including expenses which may not form part of existing financial transfer arrangements. (p. 133)

*Global* refers to the provision of services to all Siksika Nation members, including those who do not reside on Siksika lands. Given the transient nature of most Canadians, including members of the Siksika Nation, it is difficult to base long term financial arrangements on residency. Members of the Siksika Nation, particularly post-secondary students, often move into urban areas for sustained periods, only to return when housing or an employment opportunity becomes available. (p. 133)

The term *global* means that funding will be provided as a single amount and will not be provided on a program basis. For example, the Siksika Nation could enter into a global agreement for a total of \$55,000,000. The negotiations which led up to determining the value of the agreement would be based on unit by unit costs, per capital formulae, etc. However, once the total amount of the agreement has been determined, the program boundaries dissolve and the funding becomes a *global transfer payment*. (p. 133)

1.4.46 The *global* funding approach proposed by the Siksika Nation is a substantial improvement over the existing system of unconditional grants and year to year contribution arrangements. While *global* funding incorporates many of the benefits of an Alternative Funding Arrangement, it adds another dimension of accountability by clearly defining the obligations of both parties. (p. 134)

The Siksika Nation realizes that the Siksika Nation government must be fully accountable to the membership and must base its functions as a government on community priorities. The Siksika Nation also realizes that INAC is coming under increasing pressure to improve accountability to Parliament for funding transferred to First Nation governments. Considering that both the Siksika Nation and the Government of Canada require some means of evaluating how financial resources are utilized, the concept of *global* funding should be seriously considered as an alternative to existing arrangements. (p. 134)

### TREATY FEDERALISM

1.4.47 The concept of treaty federalism can be implemented to achieve modern Indian self-government treaties in Canada and as a continuation of the historic treaty negotiations process. There should be no questions or doubts anymore that Treaty 7 recognized and confirmed original Indian sovereignty in 1877 and Indian land ownership. The treaty is a living document meant to ensure the political and economic survival of the signatory First

Nations, not only during the 19th century but also for future centuries, for *as long as the sun rises in the east, the rivers flow and the grass grows*. There are ample reasons to support the proposition that First Nations should negotiate their self-governing arrangements with Canada and the provinces pursuant to their post-Confederation treaties, after all, succeeding generations of Canadians have greatly prospered using lands and resources that originally belonged to the First Nations such as the Siksika Nation. This type of negotiations process can be successfully implemented without the necessity of another constitutional amendment simply because, in this case, the Treaty 7 inherent right to self-government is already entrenched in the 1982 Canadian Constitution. (p. 138)

## 1.5 RECOMMENDATION HIGHLIGHTS

1.5.1 The community - based - self - government process of the federal government should be abandoned and be immediately replaced by a *treaty based* self-government negotiations process that will bind the federal and provincial governments to bargain in good faith. This process will not only restore *existing* treaty rights that have been unilaterally eroded, derogated or abrogated by the operation of discriminatory federal and provincial statute law, but it will also add new treaty rights that were not apparent when the world was less complicated and less technologically advanced as we know it today. (p. 140)

*Indian self-government treaties* should and could include both *existing* treaty rights that were in place at the time of signing of the original treaty plus any new treaty rights or self-government rights that would enhance the principle of self-determination within First Nations such as Siksika. (p. 140)

1.5.2 Constitutional entrenchment of aboriginal self-government in s.35(1), transforms the right into a basic law of Canada and any law that is less basic and conflicts with the right will be inapplicable to the extent of the inconsistency (the effect of s.35 and s.52). This does not mean that the right is absolute, as there are many competing rights and interests also found in the Constitution that may conflict with an elaboration of the right of self-government, e.g. the fundamental right to equality. (p. 140)

Generally, this right stems from the political, legal and social realities found in Canada. This right is recognized; it is not created, since it is assumed to have existed prior to the occupation by the Europeans. Thus, one can say that the right is an aboriginal right since it is, to use the *Sparrow* terminology, based on practises that existed prior to, and in modified form (limitation of the right) after, the occupation. (pp. 140-141)

An argument can be made that the aboriginal right to self-government already exists via common law; this position has been posited by the AFN since the failure of the Charlottetown Accord. (p. 141)

Therefore, the constitutional amendment should place the inherent right in the following context: (p. 141)

- (i) Aboriginal governments should be recognized as one of three orders of government;
- (ii) The legislative authority of First Nation governments should be defined in the Constitution;
- (iii) The jurisdictions of First Nations should be placed within the context of: "to safe guard and develop their languages, culture, economies, identities, institutions and traditions and to develop, maintain and strengthen their relationship with their lands, water and environment";
- (iv) The in-road of provincial jurisdiction allowed by s.88 of the Indian Act should be terminated in the new era of self-government. This could be done if the jurisdictional scope and quality of First Nation governance is adequate such that neither the provincial government nor the federal government can create conflicting legislation with First Nation legislative competence;
- (v) The "Peace Order and Good Government" power will have to be redefined in light of the more general question of the jurisdiction of First Nations and the development of a doctrine of paramountcy (rule to determine the supremacy of laws) that can accommodate three and not just two orders of government;
- (vi) There should be several models of government for a First Nation government structure with a land base. An urban native government is, by its nature, a totally distinct creature. As to the paradigm of self-government, the federal and provincial governments are contemplating that aboriginal government will be of a lower order than a provincial government paradigm. Generally, in the context of First Nations, the two models that arise by analogy are the provincial and municipal paradigms. In fact, neither can adequately address the sui generis (unique) nature of First Nation governments. However, as illustrative mechanisms, the paradigm of the provincial governance, with radical changes, should be the model for First Nation governments. All First Nation governments should direct their energies to acquiring jurisdictional powers with the scope and quality found in the provincial paradigm. An aboriginal government that is based on the municipal paradigm will be no better than a government under the Indian Act or under the provincial Municipal Government Act. (p. 141-142)

1.5.3 DIAND's centralized policy and service delivery structure is not consistent with aboriginal self-government. In light of initiatives taken by First Nations over the last two decades, DIAND's self-government policy has resulted in a half-hearted and misdirected attempts at facilitating self-government for First Nations. The basic problem with DIAND's policy is that it comes far short of self-government envisaged by First Nations. DIAND's use of the term *self-government* entails an exercise of delegated mandates, authorities and responsibilities to First Nations. First Nations in turn, view self-government as autonomy



with respect to policy formulation, administration, adjudication and enforcement of laws. The view of First Nations is that tribal governments must form a third order along with the federal and provincial levels of government. The powers and jurisdiction of First Nation governments would be somewhere between a province and municipality. The primary criticism levelled against the federal government is that its *concept of self-government* is reducible to a form of municipal government whereby the federal government's legislative responsibilities are taken over by provincial governments and eventually watered down by the time they reach First Nations. (pp.143-144)

Therefore, the following factors distinguish the Siksika Nation approach from the current federal perspective and approach: (p. 144)

- (i) Central to the Siksika Nation approach is a detailed proposal for a three branch government system (legislative, executive and judicial) which will form the framework of a relatively independent government. (p. 144)
- (ii) Siksika Nation's approach involves a full blown judicial system that will exercise jurisdiction over all civil and lower order criminal matters that occur on Siksika Nation lands. This jurisdiction will cover non-Siksika members who violate laws made under Siksika Nation Government Act (S.N.G.A) and Canadian laws that the Siksika Nation will enforce. (p. 144)
- (iii) Siksika Nation has initiated discussions in the area of finance that turn on the concept of *equality with non-Indian governments* as opposed to *adequate funding for the continuation of the delivery of services*. This shift in the approach to negotiating funding has forced the federal negotiators to realize that the *Charter and the principles of equality* demand that funding in the *Financial Arrangements P.M.U.* be similar to that received by provincial governments. These negotiations should remedy the long history of inequality in the area of post-secondary education that Crowfoot v R is now addressing through the courts. (p 144)
- (iv) Through unique funding formulas, the Siksika Nation has attempted to have its jurisdiction apply in an extra-territorial way. As an example, Siksika Nation is requesting program funds for its members who live off the reserve and to give service delivery in such areas as health care, education and social services. This will allow Siksika Nation to enter into service delivery agreements that would bind other governments to delivery services in ways that meet Siksika Nation's priorities. (p. 144-145)
- (v) Siksika Nation's jurisdiction and laws will apply to non-members found on Siksika Nation lands. (p. 145)
- (vi) Siksika Nation views the outcome of the C.B.S.G. negotiations process as only a stepping stone into true self-government. (p. 145)

1.5.4 Treaties are a means of bringing First Nations into the constitutional fold. Treaties recognize the self-governing nature of First Nations in so far as they presupposed Indian representatives as being legitimate governmental representatives with the *legal status and capacity* to act on behalf of their members. (p. 145)

The aboriginal and treaty right to self-government is recognized as an historical and legal fact by all aboriginal leaders. Therefore, the Crown, with whom First Nations have entered into numerous treaties regarding military, peace, friendship, land and co-existence matters and as represented by the federal, territorial and provincial governments, should build new relations with Treaty First Nations based upon the following principles: (p. 145)

- (i) Recognize an inherent right to aboriginal self-government based on the history and the constitutional status of First Nations;
- (ii) Source of the right is inherent to the First Nations; it is not created either by the federal or provincial governments via the constitution;
- (iii) The scope of the right is circumscribed by the constitution. Hence, no powers exist outside of the constitution which would hamper that right;
- (iv) Aboriginal governments have sovereign status rather than being subordinate to the other constitutional governments;
- (v) Self-government must be implemented only with the consent of the directly affected individual First Nations. Such implementation must be consistent with s.35 constitution rights, treaty rights, and also with the fiduciary obligations of the Crown;
- (vi) The application and interpretation of the Treaties in modern contemporary terms which are consistent with an approach that promotes the social and economic independence and advancement of First Nations; (p.146)

1.5.5 The prevailing theory posited by the courts is that treaty rights have been merged and consolidated by the Natural Resource Transfer Agreements. What this means in practical terms is that NRTAs are taking the place of the numbered treaties, i.e. No.s 1-11. It is the NRTAs that govern the relationship of the special rights of Indians. For instance, hunting rights have commercial aspects to them under Treaties 6 and 8, but the effect of the NRTA is to restrict them to sustenance hunting rights that can be exercised only on unoccupied Crown land (which is very difficult to find south of Treaty 8). (p. 147)

The Court of Appeal of Alberta recently ruled on the NRTA and its effect on Treaty 8 in R v Badger. Although the decision upheld the conviction of an Indian for a violation under provincial legislation, Mr. Justice Kerans noted that the theory of merging and consolidating

treaty rights under the NRTA is problematic as that notion was reached without the participation of First Nations in the negotiations process. This judicial consideration of the NRTA may be interpreted as promoting the brokerage of jurisdiction and rights over traditional lands within the Treaty 8 area. One means of addressing the damages (the loss of the commercial aspects of treaty rights) inflicted by the NRTAs is to open up the NRTAs to renewed discussions and negotiations and allow First Nations to participate in the royalties that the prairie provinces are now taking as the sole beneficiaries of the NRTAs. This participation in the NRTAs could be the primary means of funding treaty-based Indian self-government. (pp. 148)

1.5.6 Other major considerations include the following: (pp. 148-149)

- (i)The scope and quality of jurisdiction proposed by the initial First Nations to enter into negotiations will set the standard as to the scope and quality of jurisdiction by which other First Nations will be limited and judged. Hence, such initial self-government models should be expansive and liberal on the issues of jurisdiction.
- (ii)The self-government models will have to be connected to the mainstream institutions and processes; e.g. tribal courts will be required to have their appeals addressed by the Federal Court Trial Division or The Court of Queen's Bench;
- (iii)All government agreements should have escape clauses that allow opting out if the agreement does not work out for First Nations.
- (iv)All community based self-government negotiations processes, A.F.A's, and other processes involving devolution of responsibility should be examined in the negotiations stage
- (v)The First Nation leadership has to inform its membership at all stages of self-government negotiations.
- (vi)Mechanisms for accountability to the membership must be in all models of self-government.
- (vii)Treaty and land issues should and must become part of self-government negotiations. (pp. 148-149)

## **1.6A FULL VISION OF THE FUTURE OF THE SIKSIKA NATION GOVERNMENT WITHIN CANADA**

1.6.1 Within the present community-based-self-government (C.B.S.G.) negotiations process, the Siksika Nation has included the urban Siksika population in Calgary as part of their long-term self-government planning and strategy. Other locations are excluded because their low numbers do not warrant any special attention at this time. However, if the

demographics should change, that concern will change accordingly. Under the C.B.S.G. process, the Siksika Nation will take full responsibility for the provision of programs and services for all of its members whether living "on-reserve" or "off-reserve". In this fashion, the cultural and political integrity of the Siksika Nation will be maintained. The Siksika Nation is the only First Nation, at least in Alberta, to be actively including their "off-reserve" members within their long term-term plans under self-government. This commitment has been concretely shown by the Nation through the provision of financial assistance to the Siksika Urban Association of Calgary in its efforts to organize itself as an effective urban organization for the benefit of its membership. Such financial assistance was given in 1992, 1993 and 1994. (pp. 36-37)

(Recently this fall in 1994, the Siksika Family and Social Services established a Calgary office in order to give direct services to urban members and as a step to further solidify this unique commitment.)

1.6.2 The Siksika Nation has a very strong bond with the Government of Canada and is concerned that section 92 of the Constitution Act is taking precedence over section 91 (24). Responsibility for the well-being and interests of the Siksika Nation membership, e.g., income support, education, support for housing, child welfare and health care, should never be transferred to the Province of Alberta without consent of the Siksika Nation membership. (p. 87)

In recent months the Government of Canada has expressed the opinion that it is no longer responsible for looking after the interests of Siksika Nation members living outside of Siksika lands. The Siksika Nation, on the other hand, is insisting that obligations under the Royal Proclamation (1763), section 91 (24) of the Constitution Act (1867), and Treaty 7 of 1877, bind the Government of Canada to the membership of the Siksika Nation regardless of where they may choose to live. (p. 87)

The current political environment in Canada is very confusing. Regional interests are taking priority over national interests and as a result, the elaboration of aboriginal and treaty rights within the Canadian Constitution has been placed on the back burner. Without any clear evidence of national support for Treaty issues, the Siksika Nation has elected to proceed with its own agenda and to negotiate the implementation of the Siksika Nation Government Act pursuant to Treaty 7. (p. 87)

1.6.3 In the process of self-government negotiations with Canada and the Alberta government, the Siksika Nation fully desires to establish a truly responsible government: i.e. democratically elected representatives who are responsible to the Siksika people instead of to the Minister of Indian Affairs in Ottawa; the leadership prepared to be thrown overboard in they fail in their duty to serve the Siksika people; the authority for every act and action taken by the Siksika Chief and Council flowing from the Siksika people; the Siksika Government being answerable to the Siksika people; to achieve government status similar to but unlike the "*10 largely self-governing provinces*"; the Siksika Government being responsible for many and

challenging socio-economic problems of the Siksika people; the Siksika Government being a creature of the Siksika people under the proposed Siksika Nation Government Act instead of being a creature of the federal government under the Indian Act; and finally, the Siksika people being ultimately responsible for their own government. (p. 101)

In their self-government negotiations with Canada and the Alberta government, it can easily be seen that the objective of the Siksika leadership is to establish a bona fide three branch government system, i.e the executive, legislative and judicial. This can be accomplished within Canadian federalism via federal legislation, similar to but much more comprehensive and sovereign-treaty based than the Sechelt Indian Band Self-Government Act (1986). (p. 101)

1.6.4 The Siksika Nation intends to deal with the federal and provincial governments on a government - to - government basis, and will use the terms of Treaty 7 of 1877 and section 35 of the Constitution Act of 1982 as back-drops to its self-government negotiations. The unique features of the S.N.G.A proposals include the concepts that: (a) a three branch government system will form the framework of an independent government, (b) the jurisdiction of the tribal court will not only cover all civil and some criminal matters, but it will apply to both Siksika and non-Siksika members who violate Siksika or Canadian laws within Siksika lands, (c) Siksika Nation jurisdictions and powers will be *transferred not delegated* and it will govern concurrently with the Alberta government concerning those areas of exclusive provincial jurisdiction as they are applicable on Siksika Nation territory including off-reserve matters, and (d) transfer payments will be for long-term funding arrangements that are necessary for the operation of a three branch government system and will be on par with the funding levels of non-Indian governments. (p. 106)

The leadership of the Siksika Nation takes the approach that, whether or not there will ever be a constitutional amendment process established again, to recognize and affirm the existence of an *aboriginal right to self-government* within Canada, all of the past and current work accomplished under the community-based-self-government policy of the federal government are considered as stepping stones towards the achievement of true self-government for Siksika Nation, a right which is based on Treaty 7 of 1877. (p. 106)

1.6.5 The objective of the Siksika Nation's government initiatives is to enhance true self-government. What it is attempting to structure are plenary, non delegated jurisdictions and powers that would ideally be entrenched in the Canadian Constitution. Within the context of the Canadian Constitution, the type of government envisaged entails powers and jurisdictions similar to those of a province. However, the form that such a government will take will be purely unique, as the cultural, social and political principles and values of the Siksika Nation would fine tune the exact form and mechanics of such a government. This form of government would require the brokerage of three as opposed to two basic jurisdictional divisions as are now found under the Constitution. This, in turn, implies the creation of totally unique principles of Constitutional interpretation with respect to powers, jurisdictions, duties of each government and the resolution of conflicts among these factors.

It is on the basis of these premises that the necessary components of a Siksika Nation Government Act are formulated. The ultimate rationale for such an Act is the *rebuilding* of the Siksika people.. The structure and justification for the Act are derived and based in treaty rights, and the traditional way of delivering public services to a First Nation community according to their unique needs and ways of doing things (p. 109)

- 1.6.6 The government that Siksika Nation desires is a true state similar to a state government in the U.S.A. That is to say, its government would have legal status and capacities on par with the province or, in some circumstances, on par with the federal government. In legal terms, a state is a recognized entity that is distinct from a natural or artificial person. This distinction turns on the unique powers, duties and privileges that are associated with a state. For instance, states have three branches of power (legislative, administrative and judicial) which regulate activities within their jurisdiction. In addition, a state has rules that dictate who can govern and how those who govern are accountable to the members who are represented. The characteristics of a state are underscored when one considers the manner in which legal proceedings against the state are altered. For example, in Commonwealth nations, the notion of the Crown is intrinsic to the state. As a consequence, in the interests of the public, Crown immunity prevents certain types of actions against the Crown in order to protect the state and its members. It is suggested that any First Nation government initiative that fails to incorporate the presupposition of a state in the status and capacity of the government would be philosophically misdirected. The reason is that the government would be a delegated form of government, which is what First Nations now have under the Indian Act.

The ideal sui generis government that the Siksika Nation envisions is defined by the following matrix: Constitutional recognition of First Nation Governments with reference to s.35 or other empowerment mechanisms in order to establish the right to self-government in the Constitution Act, 1982. (pp. 109-110)

#### 1.6.7 The Manitoba Experiment in Self-Governance

On April 20, 1994, on the territory of the Opaskwayak Cree First Nation near The Pas, Manitoba, Grand Chief Fontaine of the Assembly of Manitoba Chiefs and Indian Affairs Minister Ron Irwin signed an historic Memorandum of Understanding which agreed to:

- (a) restore the jurisdiction to First Nations peoples in Manitoba consistent with the inherent right to self-government;
- (b) recognize First Nations governments in Manitoba as legally empowered to exercise the authorities required to meet the needs of their members; and
- (c) to dismantle the existing departmental structures of the Department of Indian Affairs and Northern Development as they affect First Nations in Manitoba.

In addition to the above primary objectives, the Treaty rights of the First Nations in Manitoba will be given an interpretation, as agreed upon by Canada and First Nations, in contemporary terms while giving full recognition to their original spirit and intent; the Crown's fiduciary obligations will continue in accordance with all aboriginal and treaty laws; First Nations governments in Manitoba will have the power to enter into agreements with other First Nations governments, provinces, municipalities and the federal government; First Nations governments in Manitoba will be able to undertake legislative, executive, administrative and judicial functions, based on agreements which are consistent with the inherent right to self-government; the Province of Manitoba will be invited to participate in the negotiations process on mutually agreed upon times, terms and issues, such as those dealing with provincial jurisdictions; ten (10) positions will be made available by DIAND to the AMC, so that they may work alongside departmental staff, at senior levels, in order to gain a better understanding of federal practices and policies; and the entire negotiations process will be in force until all of the aforementioned objectives are achieved on a mutually agreeable basis or (10) ten years, whichever comes earlier, or such longer period as may subsequently be agreed to by the parties.

There is really no comparison between the community-based self-government process within which the Siksika Nation is presently attempting to realize their full vision of self-determination and the M.O.U. signed between the Minister and Grand Chief Fontaine. The most that can be said is that the Manitoba M.O.U. contains all the essential negotiating principles that the Siksika Nation has been arguing for since entering the C.B.S.G. process. The other main difference is that the Manitoba M.O.U. was developed in partnership with the Manitoba Chiefs; whereas the C.B.S.G. process was developed in isolation by Ottawa DIAND bureaucrats without due regard for the needs, aspirations and guaranteed rights of the First Nations it was meant to serve. A good example is that the Manitoba M.O.U. is committed towards the principle of treaty interpretation in contemporary terms; whereas the C.B.S.G. process did not want to deal with either inherent rights or treaty rights. It is obvious that the federal government now has more political will and a sufficient mandate to conclude self-government agreements in Manitoba than it was willing to display within the C.B.S.G. process. If the federal government adheres to the principles that it agreed to in the Manitoba deal, the First Nations in that province should have good agreements. It is regrettable that the Siksika Nation was not offered a similiar M.O.U. in the first place. However, our negotiating experiences must have benefitted both the federal government and the A.M.C. in determining the details of the Manitoba M.O.U. since groups usually build upon past experiences.

There is considerable doubt that the Manitoba experiment will have any direct impact upon the self-government process described in this study. For one thing, the C.B.S.G. process at the Siksika Nation is near completion and is in its final phases before referendum. Secondly, the federal negotiators have no mandate to negotiate a new treaty-based self-government process with the Siksika Nation. The federal government would have to show a willingness to enter into a new treaty process that would be built upon the past 5 years of Siksika Nation C.B.S.G. negotiations experience.

## II. COMMUNITY PROFILE

The people of the Siksika Nation of southern Alberta are the descendants of the renowned Blackfoot<sup>3</sup> tribe who are members of the equally renowned Blackfoot Confederacy comprising the Blackfoot, Blood, Peigan, and the allied although linguistically different Sarcee. The Blackfoot tribe or nation was the gate keeper of the northern part of the traditional Blackfoot Confederacy territory which extended "from the Upper Missouri River to the North Saskatchewan and from the Yellowstone River to the Rocky Mountains...Straddling the International Boundary between the land of the British Hudson's Bay Company to the north and the United States to the south, they recognized no allegiance except to their tribe and their land"<sup>4</sup>.

Today, the Siksika Nation is now located about 95 kilometres east of Calgary. (See location maps in appendices: 12.5(a), 12.5(b), 12.5(c), and 12.5(d) at pp. 174-177.) The reserve land base covers a total area of 178,580 acres, of which a large portion is used for agricultural purposes. It is the second largest in Canada. In addition, the Siksika have outstanding land claims for 125,000 acres of land which were forcefully surrendered under questionable circumstances under the provisions of the Indian Act in 1910 and 1912. Another land claim exists between Banff and Lake Louise comprising 26.5 sq. miles which is the Blackfoot Timber Indian Reserve which was surveyed and established as an Indian reserve in 1891. In 1908, the federal government unilaterally and contrary to Treaty 7, abolished the Blackfoot Indian Timber Reserve without any consultation, surrender vote, compensation, or Indian consent as required by the federal Indian Act. When Banff National Park was created in 1911, the Blackfoot Timber Indian Reserve was unilaterally taken by the federal government to become part of the national park without any form of consultation, negotiation, surrender vote or compensation. Both claims have now been accepted for negotiations with the federal government.

The Siksika Nation has always led in pathbreaking governance initiatives since the early 1970's. In 1990, Siksika Nation became the first of Canada's aboriginal peoples to receive a Royal Grant of its own coat of arms from the Governor General of Canada. The armorial bearing granted to Siksika is a buffalo on a Blackfoot war shield with a crossed peace pipe and a war club.(See appendices, 12.6 at p. 178.) Heraldic devices of this sort, especially during medieval times in Europe, are marks of sovereignty, identity, authority and honour.

There have been a number of statistical surveys done on the Siksika population in the recent past. The most recent socio-economic demographic community survey was completed in June, 1989 for purposes of their present community-based-self-government negotiations process with the federal government.<sup>5</sup> Therefore, that report, which was prepared by Dr. Rick Ponting of the University of Calgary, is the basis of the following statistical data on the Siksika population with the necessary updates. The statistical data that is now available from Statistics Canada's Aboriginal Peoples Survey (1991) is incomplete and was not totally ready at time of writing. Therefore, the "Stats Can" reports will not be used in this section of the case study. Also, there is the two volume 1986 Household Survey, including "Facts and Figures", completed by HHC TEAM Consultants<sup>6</sup>. That survey will be used here as well as their 1987 Feasibility Study<sup>7</sup> for the establishment of a alcohol



and drug treatment centre on the Blackfoot Indian Reserve. Both reports have excellent population and socio-economic data and analysis.

The data given below is not meant to be completely quantitative nor definitive since that it is not the primary purpose of this study. More detailed statistical analysis and information can be obtained by reference to the research documents and reports mentioned above and which are footnoted for easy reference. Therefore, the data given below is primarily summative in nature and should give the reader a good general idea and impression about the Siksika people, their land and their resources.

## **2.1 Population Size (4,355 as of November, 1994)**

The total Siksika Nation membership stood at 4,155 in May of 1994, which includes 1,683 members living off-reserve. The Indian register kept by the federal Indian Affairs Department lists the total Siksika population at 4,389 as of May 1994. The Indian register includes Blackfoot women who were reinstated to their Indian status under the Bill C-31 Indian Act amendments including their children, both numbering at 234.

The Siksika Nation has the twelfth largest Indian population in Canada and the third largest in Alberta. According to the 1987 HHC TEAM Consultant's study on alcohol and drug abuse, 66.5% of the Siksika population live on-reserve. This translates into 2,742 persons living on-reserve in 1993 based on the updated total population figure. That report also finds that 33.5% of the Siksika population live off-reserve or a total of 1,327 persons who currently do not live on the reserve for various reasons. Those reasons include: (a) higher education and up-grading, (b) better housing or lack thereof, (c) employment, (d) abuse within the family home, (e) social assistance, (f) disability care, (g) old-age care, and (h) quality of life and lifestyle. A significant number of persons presently living off-reserve will likely return as progress is achieved in employment, economic development, self-determination, and eliminating the housing backlog.

The Siksika population figures do not include the estimated 295 families that own cottages on the tribal owned Hidden Valley Resort, which hosts one of the best little golf course in southern Alberta. If we estimate that each family unit is approximately 3.5, (includes week-end visitors) that translates into 1,032 additional persons who use Siksika lands for recreational purposes, including waste disposal, use of water, increased need for utility infrastructure such as powerlines, pipelines, etc. The resort is open for occupancy from April 15 to October 15 every year.

Another important population factor to be aware of is the Bill C-31 issue. That issue may never go away or be solved to anybody's satisfaction. Some reinstated Bill-C 31 women and their children presently live on the reserve contrary to the Siksika Nation Membership Code. However, the majority do live off-reserve. At present there are 74 Blackfoot women who are in that category and their children number at 286. Precisely how they will affect the demographic and socio-economic data below cannot be estimated at this time. One of the few reliable inferences that can be estimated at this time is that, there will definitely be an increase in the demand for services of all kinds, including housing, from the Siksika Nation Administration sometime in the future, especially if the

Siksika Membership Code restrictions are relaxed, in order to allow previously excluded Bill C-31 members onto the Siksika Nation membership list.

After the membership provisions of the Indian Act were amended by the federal government in 1985, it became clear to the Siksika Nation Government and Administration that the federal government either under-estimated, or did not make any adequate provisions for, the Bill C-31 impacts upon the reserve communities and their financial and land resources. The Bill C-31 issue needs to be addressed comprehensively and adequately in Siksika self-government arrangements and planning, including expanding the reserve land base through changes to the legislation concerning "reserve land" status and increased fiscal transfers.

## **2.2 Population Growth (High growth rate)**

Between the 1981 and 1986 census, the Siksika "on-reserve" population increased by 17.3%. The growth rate, whether "on-reserve" or "off-reserve", can be expected to increase between now and the year 2000 A.D. mainly due to: (a) the entry into the family formation years of a large group of individuals who at the time of the 1986 Canada Census were in their late teens (ages 15-19), and (b) the entry into the population of Bill C-31 women.

The Indian Register kept by the Indian Affairs Department in Ottawa shows a Siksika population increase of 10.5% between the years of 1980 and 1985, and 11% between 1985 and 1988. (Refer to "Age Structure" and "Age Distribution" for 1986, i.e. 12.4 (a) and 12.4 (b) at p. 171 and "Age Group Comparisons" for 1981 in the appendices 12.4 (c) at p.172 ) The circle graphs at 12.4 (c) at p. 172 show that the older age groups gained in pure percentages over the number of the very young between 1967-1981. Various factors may be involved such as the existence of the Siksika Medicine Lodge, the Siksika Elders Lodge and better housing conditions.

## **2.3 Land Area (178,580 acres of land, or 664 sq. km, plus 68.64 sq. km. of timber land claim)**

The Siksika land base is the second largest in Canada. It ranks behind only the Blood reserve which is 1429 sq. km near the U.S. border in southern Alberta. (See land area maps in appendices 12.5(a) at pp. 139-142) In addition, the Siksika presently have outstanding land claims which may increase their land base depending upon the political will of the Canadian government and its specific land claims policy. These claims involve the 1910 questionable surrender of 125,000 acres which contains rich oil, gas and coal deposits and effectively reduced the land base by about 40% and 15,040 acres of timber reserve land within Banff National Park.

## **2.4 Population Density (4 persons per sq. km.)**

The Siksika land base has a very low population density in comparison with most Indian reserves in Canada and non-Indian communities. The 1986 Canada Census lists the population density at 4 persons per sq. km. and the Blood reserve at 3 persons per sq. km.

## **2.5 On-Reserve Population Distribution(13 separate communities)**

Due to the large land base of the Siksika Nation, its population is dispersed among thirteen separate communities "on-reserve". This factor alone increases the sociological complexity of the dynamics of Siksika daily life, and increases such factors as the time required for community consultation and decision-making, the need for communications with all the dispersed communities for tribal decision-making, the cost of household surveys and research, and the cost of the delivery of services.

Success with the land claims settlement process could conceivably lead to the creation of one or more additional communities, e.g. Castle Mountain land claim area within the Banff National Park located about 200 km. west from the reserve proper, even if some substitute land should be provided outside the Park.

The Siksika communities are listed below:

- |                           |                         |
|---------------------------|-------------------------|
| (a) <u>The West End</u>   | (b) <u>The East End</u> |
| (i) Gleichen townsite     | (vii) Cluny             |
| (ii) West End             | (viii) South Camp       |
| (iii) North Camp          | (ix) Little Washington  |
| (iv) Arrowwood Bridge     | (x) Many Bears Flats    |
| (v) Little Chicago        | (xi) Shouldice          |
| (vi) Stobart/Barstow Lake | (xii) Poor Eagle Flats  |
|                           | (xiii) Crowfoot         |

**(Refer to Community Locations map in the appendices)**

During the pre-Treaty era, i.e. before 1877, all of the above communities would have been separate "bands" or "clans" in themselves and be under the leadership of minor Chiefs and in turn the minor Chiefs would have appointed through consensus their principal spokesman, i.e. the Head Chief or the main Chief of the Blackfoot tribe. Chief Crowfoot was selected as the principal spokesperson by the Chiefs during the negotiations and signing of Treaty 7 in 1877. However each minor Chief would have had his own political autonomy and authority. Therefore, there was no such thing as the "rule of the majority" within traditional Blackfoot society, only "consensus building" which was real democracy. Even today, "on-reserve" politics is sometimes dictated by geographic location and by the ever-present East vs. West controversies, e.g. the location of the rodeo and pow-wow grounds, and location of recreational facilities.

## **2.6 Off-Reserve Population (Extremely High Growth Rate)**

The 1989 statistics showed that the "off-reserve" Siksika population was growing much faster than the "on-reserve" population, in both absolute numbers and in percentage terms. For instance, Indian Register data for the end of 1988 and the end of 1980 show a growth of about 200 persons in the "on-reserve" population, compared to a growth of about 500 persons in the "off-reserve" population for the same period.

The "off-reserve" Siksika population increased by 21% between 1980 and 1985 for a crude average annual growth rate of about 4%. Between 1985 and 1988, that same population increased by 26% for a crude average annual growth rate of over 8%, including Bill C-31 reinstatement.

As we see in graphs 12.4(e) and 12.4 (f) at p.173 in the appendices, in 1980, 68% of the Siksika population lived on the Siksika land base, and by the end of 1988 the "on-reserve" population had declined to 59%. This has serious implications for long-term tribal planning under self-government. It is entirely possible that without substantial progress in "on-reserve" housing, economic development, job creation, increased community services, and better school facilities, the majority of the Siksika population will be living away from the Siksika land base before the year 2000 A.D.

Although the Siksika people have long respected the decisions of individual members and families to move away from the reserve when it is necessary, the likely prospect of the majority of the Siksika population living off-reserve should become a major concern for the elected leadership of the nation. Why? There are several reasons. One is the overall concern for greater pressures towards assimilation when individuals and families are living away from their mother nation, especially among the young people who may quickly lose their Siksika identity and language. The other major concern is that if the "off-reserve" population becomes greater than the "on-reserve" population, there will be increased political pressures to cut the pie financially and politically.

Therefore, one of the major goals of Siksika self-government arrangements and governance should be to create an attractive socio-economic environment for all members of the nation in order that they may no longer feel it necessary to leave the reserve for economic, employment, education or quality of life reasons.

Within the present community-based-self-government (C.B.S.G.) negotiations process, the Siksika Nation has included the urban Siksika population in Calgary as part of their long-term self-government planning and strategy. Other locations are excluded because their low numbers do not warrant any special attention at this time. However, if the demographics should change, that concern will change accordingly. Under the C.B.S.G. process, the Siksika Nation will take full responsibility for the provision of programs and services for all of its members whether living "on-reserve" or "off-reserve". In this fashion, the cultural and political integrity of the Siksika Nation will be maintained. The Siksika Nation is the only First Nation, at least in Alberta, to be actively including their "off-reserve" members within their long-term plans under self-government. This commitment has been concretely shown by the nation through the provision of financial assistance to the Siksika Urban Association of Calgary in its efforts to organize itself as an effective urban organization for the benefit of its membership. Such financial assistance was given in 1992, 1993 and 1994.

## **2.7 Mother Tongue (Predominantly English)**

The Blackfoot language is in a precarious situation within the Siksika population. Three quarters of the Siksika population cite English as their main operative/working language; this includes members who are either fluent, semi-fluent or no fluency at all in the use of the Blackfoot tongue. The 1986 Canada Census figures show that only 420 Siksika individuals cite Blackfoot as their mother tongue (presumably the older age group), and another 120 Siksika individuals had both

English and Blackfoot as their mother tongue.

The past cultural-genocidal practises of the religious mission residential schools and the federal government controlled schools are responsible for this current state of affairs. Immediate remedial programs are needed to revive the Blackfoot language among all age groups from kindergarten to the middle age categories, e.g., conducting tribal business in the Blackfoot language as policy especially within the home territory.

## **2.8 Educational Attainment (Low in some respects, but improving. Absolute numbers are encouraging.)**

Reports from the 1986 Canada Census conclude that the Siksika population is lacking in formal education. However, there have been significant gains in formal educational attainment over the last ten years. Relatively speaking, due to the comparatively large size of the Siksika population vis-a-vis other First Nations, even a small percentage increase in Siksika Nation members obtaining post-secondary education certification actually represents a significant number of individuals. Finally, as in the experience of other under-developed areas such as Newfoundland, it is expected that a significant return flow of well-educated Siksika members will occur as the socio-economic indicators improve "on-reserve" through increased self-determination, good leadership, job creation and an improved environment.

On the basis of the 1986 Census and interviews with senior management in the Siksika administration, it is abundantly clear that there must be a large scale fiscal resourcing of human resources development and training if Siksika self-government is to be successful. Due to high drop-out/push-out rates, the pool of skilled human resources on-reserve is relatively shallow even in some of the most basic occupations such as mechanics, accountants and carpenters. During community consultations, many respondents state that the Siksika Nation does not have the skilled management and expertise to undertake self-government. It is a genuine community concern which should not be treated lightly.

## **2.9 Labour Force Participation (Low) and Unemployment (High)**

Only about 45% of Siksika men and 15% of Siksika women participated in the paid labour force in 1989. This is low, even by the standards of the similarly sized Blood tribe of southern Alberta; it is much lower than the comparative populations of the southern Alberta agricultural towns of Cardston and Claresholm, whose total labour force is about equal to the total Siksika labour force. Siksika women are particularly traditional by this measure, since in the pre-contact era, they did not work outside the family home. These data are strongly indicative of the fact that there are too few employment opportunities "on-reserve". Those in the so-called economically unproductive years, i.e. youths and seniors, are an economic burden on those

Siksika members who are employed. When the economic productivity of those Siksika members, who are employed, is off-set by high unemployment, the economic burden upon the former is magnified.

(youth and seniors = dependency ratio)  
(all other Siksika members)

The unemployment rate on Indian reserves is difficult to measure in a way that is both meaningful and comparable to non-aboriginal communities. The 1986 Census estimate of the Siksika unemployment rate in 1985 is 40% for males and less than 15% for females. Statistics Canada's Labour Force Survey does not even include Indian reserves and has had difficulty in devising a measure of unemployment which is suitable for the aboriginal labour force. However, the weaknesses of Statistics Canada's measure of unemployment are somewhat less important for the Siksika Nation since only a very small proportion of the labour force engages in traditional economic activities, e.g., supplementing family income through hunting.

Siksika management provide much higher estimates for Siksika unemployment than the Census gives. Regardless of which is more accurate, the bottom line is that such high unemployment rates would never be tolerated by the federal and provincial governments if they were to should occur in non-aboriginal communities. The elected leaders in non-aboriginal communities would surely lose their jobs if they did not do anything to correct such high unemployment rates.

### **2.10 Source and Amount of Income (Income levels are very low. Almost half of all per capita incomes are derived from government transfer payments)**

Only a slight majority of income received by Siksika individuals comes from employment. A very large proportion (44%) comes from transfer payments such as social assistance. These data are a crude indication of the challenge facing the Siksika leadership in efforts to break the welfare cycle and dependency mind-set among its constituent population.

The Siksika median household income was about \$4,000 in 1985, about \$4,000 less than the Blood median household income. Furthermore, it is about two thirds less than the median household incomes for both Cardston and Claresholm. When the distribution of family income is charted on a scale, we see that in comparison to the Bloods, the Siksika had more families at the low end of the income scale and fewer families at the high end of the income scale in 1989.

The facts speak for themselves. The Siksika territory is an economically depressed area that stands in desperate need of economic development stimuli. It is difficult at this time to envisage self-government to be successful on the Siksika Nation over the long-term without substantial progress on the economic development side in areas such as job creation, small business, labour intensive industries and human resources development.

### **2.11 Size of Families and Households (Large)**

Not only are Siksika incomes lower than those of relevant comparison communities, but another distributing factor is that the number of persons per household and/or family depending on that income, tends to be significantly larger than those comparison communities. It is well established

that aboriginal families tend to be larger than non-aboriginal families.

### **2.12 Family Structure (Majority of families are single parent)**

Most Siksika families are headed by a single parent (55%). The Blood situation is more like the non-aboriginal pattern of predominantly two-parent families. Thus, the Siksika situation involves some very special needs for family support services that can best be met through innovative and flexible arrangements under Siksika self-government, e.g. day-care, transportation, life skills, etc.

### **2.13 Age Structure (Large young dependent population with prospects of an increasingly large old dependent population)**

(Note: Refer to graphs 12.4(a) and 12.4(b) in the appendices at p.171)

Graphs 12.4(a) and 12.4(b) provide two different ways of looking at the same data. Graph 12.4 (b) merely breaks out the population into a larger number of age categories and rotates the graph in 12.4(a) by one quarter turn. Graph 12.4(a) demonstrates that the Siksika population is relatively young (In 1986 almost half were under 20 years.) and has very few people ages 55 and over.

A slight majority of the population is permanently unemployed, i.e., 20 years to 64 years, and cannot be effectively included within the labour force age range. This is an extremely heavy demographic burden of economic dependency for the wage/salary earners. This situation is unlikely to lighten in the near future. The scarcity of job creation and employment opportunities "on-reserve" is the direct contributing factor for such a large scale of economic dependency. Self-Government alone does not guarantee that the situation will improve. The impetus for economic change must come from those Siksika leaders responsible for that sector activity, e.g. job creation, economic development ventures, revenue generation activities, attracting labour intensive manufacturing firms onto the reserve, lobbying the federal and provincial governments for flexible arrangements in order to create a good investment environment, and quality education and training initiatives focused upon young people and those that are attempting to break out of the welfare cycle.

The number of people entering old age will become increasingly large as time goes on. Similarly, as each successive age group enters the old age category, it will become larger than its predecessor age group due to the improvements in health care services and facilities, and improved housing standards.

### **2.14 Social Problems and Symptoms (Unemployment, boredom, alcoholism)**

The data above have demonstrated that a major unemployment problem exists "on-reserve". At community consultation meetings, unemployment and boredom emerged as the main forces driving Siksika individuals to abuse alcohol and other chemical substances. That abuse is widespread. A Siksika study conducted in 1986 estimated that about three out of every five ("on-reserve") Siksika individuals age 13 and over use alcohol or some other mind-altering chemical substances daily. One of the many consequences of this factor is that there are about five alcohol related deaths per year in the Siksika "on-reserve" population, plus suicide attempts.

The Siksika Alcohol Society is combatting this problem, but faces an uphill struggle until there is a

fundamental change in the underlying casual factors. Achieving such changes is a primary reason why the Siksika Nation has entered the community-based self-government negotiations process. Thus, adequate funding of the Siksika Alcohol Society should be one of the major priorities for the transition period.

The many challenges facing Siksika leadership are so great that the Siksika government will only be able to be successful if it is able to reclaim and draw upon the leadership potential that has been lost to alcohol and other drugs.

## **2.15 Conclusion**

The above community profile does not present an entirely positive picture. Members of the Siksika Nation should not be ashamed or angry by it; nor should they try to ignore the situation as it really stands today. The people of Siksika must face their own reality through research and reports such as this document where the community as a whole is examined through the eyes of a skilled researcher. Only by knowing where they are today, in the most realistic terms possible, will they be able to deal adequately with their future well-being; and by getting to know themselves better can they begin to make changes for the betterment of their people and to rebuild the Siksika Nation under self-governance.

The community profile indicates that the Siksika elected leaders and their administrators have a lot of work ahead of them, especially in terms of job creation and creating opportunities for their people to become self-sufficient once again, through better educational programs, training programs, family support programs and business development programs, etc.

The achievement of self-governance for the Siksika Nation will only be the beginning and will only lay the foundations to make jurisdictional inroads to the larger Canadian society. Self-governance for the Siksika Nation will make it easier for them to deal with appalling socio-economic statistics. It is their rightful claim as full members of the Canadian society. Their achievement of self-governance status and the ability to deal on a government - to - government basis will make their case that much stronger.



### **III HISTORICAL CONTEXT OF SIKSIKA GOVERNMENT**

As stated in the introduction of this case study on Siksika governance, any examination of that topic would be incomplete without looking at its historical context. The historical aspects of Siksika governance gives the reader a greater appreciation for the initiatives now being taken by the Siksika leadership, and provides the context for the whole story of how the Siksika government functioned prior to and after European contact.

#### **3.1 Pre-Contact Era**

The Siksika Nation is a member nation of the powerful Blackfoot Confederacy which ruled the northwestern section of the Great Plains during the 17th, 18th and 19th centuries. The Blackfoot Confederacy was formed by the Blackfoot, Blood, Piegan, and the allied Sarcee, for their mutual protection in times of war and also to protect their territories against all other Indian nations. The Blackfoot, Blood and Piegan shared a common culture and language, while the Sarcees spoke a different language. Thomas E. Mails states:

...the dominant tribes of the Plains were those with the largest populations, the Blackfoot confederation, the Sioux, the Assiniboine, the Pawnees, and the Comanches....Most everyone, Whites included, considered the Blackfoot tribes to be an unrelenting terror, and the Sioux were a foe of some magnitude for anyone to take on....the Blackfoot tribes, the Crows, the Sioux, and the Mandans, in that order, outdid the rest during their golden period, which extended from A.D. 1750 to 1875.<sup>8</sup>

The above named Indian nations were truly self-governing, self-sufficient and occupied traditionally defined territories for their exclusive use and benefit, which was well understood and respected by other tribes. They protected those lands and fought anyone who dared to trespass. The various Indian nations who occupied the Great Plains, (which stretched from the North Saskatchewan River in modern day Alberta and Saskatchewan as its northern perimeter, bounded by the Rocky Mountain chain to the west, all the way down to Texas and Oklahoma near the Gulf of Mexico and east to the modern eastern Minnesota border) did so at the good will of the Creator and not under any earthly Sovereign as the modern day judicial courts would have us believe. Thomas E. Mails states that, "At their population peak, around A.D. 1800, all of the Plains tribes together numbered no more than 200,000 people,..."<sup>9</sup>. The Blackfoot Confederacy tribes were the most numerous at 30,000 strong.

The Blackfoot Confederacy tribes ruled and exclusively occupied the northernmost tip of the Great plains, which was no small territory. Their traditional territory stretched from the North Saskatchewan River in the north, west to the Rocky Mountains, south to the Yellowstone River and Upper Missouri River, east to the Great Sand Hills and Battle River in Saskatchewan, straddling the U.S. - Canada border. Hugh Dempsey states that the Blackfoot tribes, "...recognized no allegiance except to their tribe and their land..The British traders were acceptable as long as they stayed on their own side of the Saskatchewan River, but the Americans, whether trappers or traders, had been despised ever since the Lewis and Clark expedition had killed one of the Blackfoot people.

Anyone coming from the south was considered an enemy."<sup>10</sup>

The Pre-Contact Era consists of what both Blackfoot and White historians call "the dog days" and the later "horse culture days." Regarding the former era, and according to John C. Ewers, the acknowledged dean of American Indian historians and scholars,<sup>11</sup> elderly Blackfoot Indians refer to this pre-horse era as the time "When we had only dogs for moving camp."<sup>12</sup> Therefore, the expression "dog days" is used by the Blackfoot tribes to identify an earlier pre-European contact era. According to Ewers, no Whiteman visited the Blackfeet during the dog days. Therefore, there are no written descriptions of their life in those times.<sup>13</sup>

The Spaniards' introduction of the horse to the Great Plains Indian tribes forever changed their way of life and led to the flourishing of their military, political and religious structures and institutions which were instrumental in the governing of their societies. Ewers states that the Blackfeet acquired their first horses between the years of 1732-1737 in advance of first European contacts with the three tribes.<sup>14</sup> The Blackfoot tribes moved from their previous occupation and residence on the Saskatchewan Plains, near the Eagle Hills, located about 400 miles east of the Rockies, during the early 18th century after they had acquired both horses and guns. Consequently they pushed other tribes, such as the Kutenais and Flatheads, southwestward and eventually arrived at the foothills of the Rockies which became their historic homeland.<sup>15</sup> The Blackfoot Confederacy nations had progressed from what Ewers refers to as the Pedestrian Culture Period to the Horse Culture Period beginning at about 1732-1737. Ewers states:

...the horse, which literally lifted the Indian off his feet, broadened his concepts of area and distance, shortened his concepts of travel time, altered his opinions of the difficulties of moving camp and making a living, and that it quickened the tempo of his life and made that life more exciting, cannot be denied, even though we lack precise techniques for evaluating the psychological influences of the acquisition and use of horses upon the Indians.<sup>16</sup>

Thomas E. Mails states that from approximately 1775 onwards, the shifting of tribal domains ceased and became set, "...and because of the spread of the horse, a common, buffalo-and-horse-oriented pattern of life had emerged which lasted till about 1875, the end date varying somewhat according to what happened to each tribe in its contact with the Whites."<sup>17</sup>

There is considerable doubt and speculation as to the exact year when the Blackfoot and the Whiteman ("Napikwan" in the Blackfoot language to explain the strange, white-skinned wonder worker) first met. However, there is general agreement that the Blackfoot nations were long sheltered from any direct contact with the Whiteman long after other Algonkian tribes of the eastern forests and the Indian tribes on the Southern Plains came to know the Napikwan well. "Not for two and one-half centuries after the landing of Columbus did they see the face of Napikwan," states Ewers.<sup>18</sup> In 1754, Anthony Henday was the first Whiteman ever to be received by the Blackfoot Chiefs somewhere between the present city of Red Deer and Pine Lake. Even though the Blackfoot had known for many years of the existence of the Napikwan, no white fur trader had ever

met or seen the Blackfeet until Henday's historic visit to that great Blackfoot camp in central Alberta.<sup>19</sup>

At the close of the 18th century, very few Whiteman had come within close range of the Blackfoot territory. When David Thompson, a British Hudson's Bay Company trader, arrived among the Blackfoot tribes in 1787, there were probably fewer than 200 Whitemen living in trading forts within the Blackfoot country. These forts were the first Whiteman's homes the Blackfoot Indians had ever seen.<sup>20</sup> (They were known to the Blackfoot as "Napioyis" meaning "Old Man Person's lodges.") Thomas E. Mails states:

It is evident that the Indians could not have been what they were in the year 1800 without a long history of excellent progress in a material and religious life-way. Their life pattern militated against sudden - or even significant - changes. Therefore, every custom the Whites found when they arrived on the Plains was seasoned wine - though put in some ways into new wineskins because of the arrival of the horse, and accordingly, the greater accessibility of the buffalo.<sup>21</sup>

Edward Umfreville characterized the Blackfoot tribes in 1790 as "...the most numerous and powerful nation we are acquainted with. War is more familiar to them than to other nations.... In their inroads into the enemies' country, they frequently bring off a number of horses, which is their principal inducement in going to war."<sup>22</sup>

### **3.2 Traditional Siksika Government and Governing**

The traditional form of government and the customary practise of governing among the Blackfoot tribes had its own unique features, although only in slight variations from other Great Plains tribes. The Blackfoot governments flourished during the Horse Culture Period starting from the Pre-Contact Era right up until the signing of the Blackfoot Treaty 7 in 1877. Thereafter the traditional forms of governments and governing were slowly replaced by Indian Act governments that were imposed by the federal government in Ottawa upon the now subdued Blackfoot tribes. The Siksika people were no longer self-governing by 1890. The full impact of the federal Indian Act was felt by then, especially with the passing away of Chief Crowfoot on April 25, 1890. He alone had a special personal sway with the federal Indian agents and the other government and church officials.

#### **3.2.1 The Blackfoot Nation Government**

Nearly all Plains Indian tribes divided into scattered bands for most of the year. They united only for major ceremonies and communal hunting. The Blackfoot Nation consisted of three politically distinct and independent tribes, i.e. Blackfoot or Blackfeet, Blood and Piegan. They spoke the same language, shared the same customs (with the exception of a few ceremonial rituals),

intermarried, and made war upon common enemies. It has been customary to speak of these three tribes as one people under the general name of Blackfoot or Blackfeet.<sup>23</sup> The Blackfoot tribes usually gathered once a year during June or July as one nation for the great spiritual and religious gathering called "Many Lodges Gathering", or some call it the Sundance. At such gatherings, all the main warrior, religious, women's, children's, and police societies held their own special and unique ceremonies. It was a time for spiritual renewal and purification and the fulfilment of spiritual promises made to the Creator for the benefit of some loved one. Such ceremonies were performed in the main Sundance lodge situated in the middle of the huge teepee circle. It was also a time of visiting long missed relatives. It was a courting time for the young adults. Important decisions for the whole nation were made at these gatherings by the Head Chiefs and Minor Band Chiefs, e.g. whether or not to make peace treaties or war on neighbouring enemy tribes. It was also a time for exchanging gifts of all kinds and transfer ceremonies of sacred bundles, teepees, and society memberships. It was a great joyous occasion.

### **3.2.2 Blackfoot Executive Authority**

Absolute governmental authority was exercised only at special occasions such as the annual tribal hunts or the "Many Lodges Gathering." The police societies (All Brave Dogs Society and Black Soldiers Society) were used to the greatest extent by the Chiefs to carry out "executive orders" and instructions on how to maintain the camp or who was responsible for a number of important government functions and roles of key tribal government officials. The greatest of the Chiefs would not personally or directly command a recalcitrant individual to fall into line. That duty or order was carried out by a member of the police societies.

### **3.2.3 Tribal Chieftaincy**

Each of the three Blackfoot tribes, North Blackfoot (Siksika), Blood (Kainai or Kainah, meaning Many Chiefs), and Piegan (Pikuni, meaning a people who were poorly dressed or possessed torn robes)<sup>24</sup> possessed a Head Chief. Such eminent and venerable men included: Crowfoot, Old Swan, Old Sun, Three Suns and Big Swan from the North Blackfoot; and Seen From Afar, Buffalo Bull Back Fat, Red Crow Shot-on-Both-Sides from the Blood tribe; and Lame Bull, Big Snake, Little Dog, White Calf and Sitting-on-an-Eagle Tail from the Peigans.

The position of a Chief was neither hereditary nor elective, but wholly self-creative. The young man ambitious of this distinction sought to be conspicuous for energy and daring in war, intelligence in council, a liberal in giving feasts and providing tobacco for the guests of his lodge. The exhibition of these qualities in more than ordinary degrees would win him the respect and confidence of the members of his band, and they were usually ready to follow his guidance and accept his counsel. The office of Head Chief tended to shift from one band to another and was always up for competition by rivals, each backed by powerful band factions. The Head Chief rose to office through distinction gained as a prominent band Chief.<sup>25</sup>

The leaders of the warrior societies were often mistakenly called "Chiefs" by the Whites. The Blackfoot tribes reserved this title for members of the tribal governing body. An individual could

not be at one and the same time a tribal Chief, a society leader, or a war Chief. He could only be one or the other. In addition to the Head Chief, some tribes had many lesser Chiefs for each of the tribe's small bands and clans. These came together and consulted on all tribal affairs. Others had a Council of Chiefs made up of the leaders of each band, and who each held equal authority. In no case could one man speak for and make binding decisions for the entire tribe, especially in something so important as the making of a treaty. On that issue Hugh Dempsey states:

One of the underlying causes of dissension was the false position in which the Mounted Police and other officials placed Crowfoot in regard to the negotiations, [i.e. Treaty 7]. Crowfoot was considered by them to be the head chief of the whole nation and the undisputed leader not only of the Blackfeet but also of the Bloods and the Piegans. Such a thought was entirely foreign to the Blackfeet, with the result that chiefs with equal or greater influence than Crowfoot felt they were being ignored. Red Crow and Rainy Chief, the two head chiefs of the Bloods, had followings which were larger than Crowfoot's, and Red Crow in particular wielded a greater authority in tribal decisions. But, because he did not have the diplomatic reputation of the Blackfoot chief, nor had he established such peaceful relations, he had gone relatively unnoticed. The distinction between the Blackfoot tribe and Blackfoot nation also was a confusing factor; when some officials were told that Crowfoot was the leader of the Blackfeet, they believed this to be of the whole nation, not just a part of one tribe. With the European concept of kings with absolute authority, they could not conceive of the democratic type of native leadership which provided for no all-powerful superleader.<sup>26</sup>

Generally speaking, the office of Chief had few compensations attached to it. It was honorary, laborious, and frequently a thankless task. There was no insignia of rank except a distinguished staff of office. A Chief might carry a staff topped by an eagle head, or a beaded one with an eagle's claw at the end.. He was entitled to wear the warrior's headdress of eagle feathers and to carry an eagle wing fan. He was also entitled to wear the regal ceremonial clothing worn by all distinguished warriors on ceremonial occasions and occasionally in battle. However, a Chief seldom dressed better than the majority of the male members of this tribe. His lodge occupied a central position within the camp circle. He was consulted on all important matters. He had to secure and maintain his living and position in the same manner as the others, and he did not possess the great powers so often attributed to Chiefs in fictional work by White authors. The Chief controlled the destiny of his people only so long as the correctness of his judgements was proven, and thereby supported his authority to govern.

The desired qualities for a tribal Chief consisted of: (a) an outstanding proven war record, and (b) a reputation for generosity. Regarding the former, it is contended that no man was recognized as a band Chief unless he had taken a gun from the enemy in hand-to-hand combat, which was the

highest war honour. The requirement of outstanding war achievement for tribal leadership had social value. It ensured that men who rose to power in the band were brave and experienced warriors qualified to lead in the formulation of plans for the protection of the band and revenge upon the enemy. In an atmosphere of almost constant warfare with neighbouring tribes, it was necessary that political leaders be warriors of proven mettle. Regarding the latter, the requirement of generosity was by no means of secondary importance in selection of a band Chief. A stingy warrior was not recognized in spite of his war record. A Chief could only receive and maintain his status by lavish generosity to the unfortunate. Therefore, charity, next to a fine war record was the basis for achieving and maintaining a high standing. Especially among the Blackfoot tribes, a man aspiring to become a leader sought to outshine his competitors by his feasts and presents given to others, even at the cost of self-improvement. Once selected, he was expected to give away with one hand what he had obtained with the other. Greed, as it is now understood in materialistic terms today, was not a Blackfoot virtue and was despised as a personal trait.

Most Chiefs were experienced warriors and relatively young. While the wisdom of the old was appreciated and solicited, there was a limit to the deference paid to elders insofar as chieftainship was concerned. An aging Chief usually declined in prestige after the age of forty. If such Chief sought to remain in office, factions commonly argued that he was "getting too old." According to the Blackfoot, a good tribal leader must continually be providing for his people and continually prove his ability in the hunt, war and council. An older man would not have the physical stamina to do all this work. Talent as an orator counted little and was minimal in the selection of a Chief. Autocratic Chiefs did exist at times among the Blackfoot. An exceptionally powerful personality could exert great influence. Generally though, the lifestyle of the Great Plains culture militated against dictatorships. The splitting up of most tribes into smaller and independently governed bands or clans for most of the year acted effectively to distribute authority. Occasionally, a man with medicine powers, feared for his spiritual powers, might obtain chieftainship by political maneuvering, but those kind of leaders usually proved to be bad rulers in the end. Every band or clan took its nature from its Chief, whether it be good, wise, prudent, or predatory.

Much attention has been devoted above to the subject of "tribal chieftainship" for reasons that are obvious to the reader knowledgeable about Great Plains culture, but also which may not be so obvious to the uneducated reader. The Chief within the traditional Blackfoot society held executive authority and shared legislative authority with other tribal and band Chiefs. It is this body of men (women were never part of it) that set the political, diplomatic, strategic negotiations and military course for the entire Blackfoot Nation. The Blackfoot Nation have had the good fortune of having able leadership under some very outstanding individuals, no less than the Fathers of Confederation in Canada nor the leaders of the original thirteen colonies in the United States, who had planned their own self-government arrangements, political and economic freedom from an autocratic British Imperial rule.

### **3.2.4 The Band as Political Organizations**

Clark Wissler considered the band as "the social and political unit" among the Blackfoot.<sup>27</sup> In 1856, Blackfoot Indian Agent Hatch stated, "Each tribe is divided into bands, which are governed

or led by either a chief or a band-leader; the former office is hereditary, the latter depends upon the bravery of the individual and his success in war"<sup>28</sup>. Thomas E. Mails further explains, "I will often make reference to "bands" and "clans", since each tribe was subdivided into one or the other of those. Bands were subdivisions of a tribe which consisted in the main of different, or unrelated, families. Clans were subdivisions which were made up of relations or families; father, brother, sisters, uncles, cousins, nephews, etc."<sup>29</sup>.

The Blackfoot band, the social and political unit through the greater part of the year, was a fluid organization. Both the number of bands and the membership of each was subject to almost continual change. Heavy losses attendant upon war casualties and severe epidemics necessitated combinations and regrouping of bands, to provide camps of sufficient strength both to withstand and revenge enemy attacks. Population growth tended to encourage division of larger bands into smaller units requiring fewer buffalo for subsistence. The existence of bands bearing the same name among two Blackfoot tribes was due to persons leaving one tribe to live with another who chose to preserve the name of their former band rather than unite with an existing band in their new tribe. It was not uncommon for a family, or even two or three families, on account of some quarrel or some personal dislike of the Chief of their own band, to leave and join another band.

The poor people were the most migratory in their band affiliations. They became camp followers of the Chief who seemed to be most able and willing to supply them with their basic needs, food and horses for hunting and moving camp. Sometimes these poor families became so numerous that their demands were too great a drain upon the resources of the band Chief. Should their Chief fail to provide for them, he would lose their allegiance, and they would either campaign for the candidacy of another leader within the band or find residence in another band led by a Chief who appeared to be more affluent. Care of the poor was one of the recognized responsibilities of the band Chief. Should he fail in this duty, his leadership position was seriously jeopardized.

### **3.3 Social Status**

Blackfoot social stratification was grounded in respect for the right of the individual to own and to accumulate property. In the Horse Culture Period, social stratification was determined by the economic status of the family head, whose wealth was determined primarily in terms of horse ownership. "Three Calf stated that in his youth there were three classes among the Blackfoot: the rich, the poor, and the in between"<sup>30</sup>.

#### **3.3.1 (a) The Rich**

A man who owned forty (40) or more horses was considered wealthy. This number of animals was more than ample to meet his normal family needs for horses to move his possessions and obtain food through hunting. His horses provided the means of acquiring a plentiful food supply, either through his own efforts or through those of other men to whom he loaned horses for buffalo hunting. Moreover, he obtained sufficient food surplus to enable him to entertain through feasts following a successful hunt and still permit his women folk to prepare extensive supplies of pemmican and dried meat in the fall for winter subsistence. His many horses were the means of

transporting surplus foods, one or more large lodges, and many other bulky possessions. His surplus of robes was exchanged at the trading posts for the most improved weapons, metal tools, household utensils, ornaments and trade cloth. He and members of his family dressed well. They owned several changes of clothing including expensive and elaborately decorated dress outfits. Their saddle and riding gear were well made and showy. He possessed the means to purchase membership in men's societies, to obtain important sacred bundles through ceremonial transfers, and to pay leading medicine men to care for sick members of his family. If his favourite wife had the moral qualifications, she could anticipate an opportunity to play the role of medicine woman in the Sun Dance of the tribe. He and his sons could marry well, could have a large choice of mates and could support several wives. Before he died, he could make a verbal will dividing his wealth among his children to provide for their continued enjoyment of his many advantages.

Through careful management of his breeding stock, he could increase his horse herds and hence his wealth. He lived in constant fear of losing his horses from an enemy raid. He took out insurance policies against this constant threat by building up supplies of fine, clean clothing, good weapons, sacred bundles and other valuable goods. If he should lose his horse herd in an enemy raid, he could rebuild his herd by buying horses with his stored wealth.

The wealthy man accumulated many sacred bundles, e.g beaver bundle, medicine pipe bundle, war bundles, etc., and the prestige gained from their ownership was never lost. Even though he may fall victim to poverty, he would still be spoken of as wealthy and powerful. Ownership of such sacred bundles also ensured continuing participation in many important tribal ceremonies and occasions even though they may have been transferred to another person.

The wealthy man who was also kind and generous need never fear reduction to abject poverty through loss of his horses. His many friends and relatives would give him horses to care for the needs of his household. However, the stingy wealthy man was genuinely disliked by his fellow men. Generosity was felt to be a responsibility of the wealthy. They were expected to loan horses to the poor for hunting and moving camp, to give food to the poor, and to give away horses occasionally. They were expected to pay more in intratribal barter than those who were not well to do. If a man of wealth had political ambitions, it was particularly important that he be lavish with his gifts in order to gain a large number of followers to support his candidacy.

In numbers, the wealthy comprised by far the smallest of the three Blackfoot social classes at about 5 percent of the total population during the buffalo days.

### **3.3.2 (b) The Middle Class**

The middle-class Blackfoot owned from 5 to less than 40 horses. He was economically independent, possessing enough horses to hunt buffalo and move camp. He could obtain adequate meat for his family, although many middle-class families could not transport a large winter reserve.

He lived in a smaller lodge and entertained much less frequently or lavishly than the rich man. He had fewer surplus robes to trade and consequently received less of the trader's desirable goods. He tried to the best of his ability to keep up with the life styles set by people of wealth in clothing,



ornaments, weapons, tools, household utensils, riding and transport gear. His possessions were fewer and they were usually less elaborate than those of wealthy men. With the help of relatives, he could accumulate enough horses and other costly items necessary to purchase a valuable sacred bundle. However, only the wealthy could purchase large and important bundles without help.

In numbers, the middle class comprised the largest of the three Blackfoot classes and the majority of the population. There were no clear class distinctions within the Blackfoot society. Consequently, the middle class blended into the wealthy class at the top and the poor class at the bottom. Loss of even a portion of their horse herd from an enemy raid could reduce a middle-class family into poverty.

### **3.3.3 (c) The Poor**

At the bottom of the horse economy social scale were the poor. They owned less than 5 horses. They were far more numerous than the wealthy, but less numerous than the middle class. They may have numbered 25 percent of the total population. Poor families were dependent upon their relatives or band leaders for even the economic essentials. They borrowed horses to move camp or used dogs as transport animals. They borrowed horses to hunt or received food from the more fortunate. Their small homes were often made from the tops of old lodges discarded by wealthy owners and cut down to a size the poor people could transport. Poor families could easily be recognized by the smallness of their lodges and the shabby appearance of their clothing, transport gear, household utensils, etc. The poor owned no fancy dress clothing. The poor man's gun was generally an old muzzle loader, broken and tied together with buckskin cord.

If the poor man had pride or political ambition, he suffered greater mental anguish than physical discomfort. His fellow tribesmen saw to it that his family did not starve. Yet he realized that he made a poor appearance among his people and that he owned none of the desirable possessions of members of the upper and middle classes. His self-esteem suffered through inability to participate actively in many facets of Blackfoot life. He could not purchase important sacred bundles or memberships in societies. His desires and opinions carried no weight in decisions regarding band and tribal affairs. His marriage prospects were very limited. The aged poor were sometimes left behind when the camp was moved due to lack of adequate transport means.

Notwithstanding the above description of the three social classes in Blackfoot society, that system was not crystallized. There was always plenty of opportunity for the poor boy, who was courageous and ambitious, to better his status. Ambitious boys of poor families generally participated in war at an early age, were frequent participants in horse raids, and were inclined to take the desperate chances. A few became wealthy, many became respected members of the middle class, some never were successful in acquiring many horses, and others simply lost their lives in skirmishes with the enemy. The road from rags to riches via the horse capture route was a long and perilous one.

### **3.4 Administration of Justice, Morals and Values**

The common form of tribal government among the Blackfoot Nation promoted the worth and freedom of the individual. Distinctions of rank were established and maintained for peace, order and good government. However, there were no caste systems, nor dynasties of a privileged class, nor a hereditary class, and no servants or slaves. As is the case in every society, the children of distinguished men enjoyed certain advantages. A Chief's son or the daughter of a rich family were more quickly acclaimed than other children. In the Blackfoot tribe, a rich man's child was "captured" and was made part of the sacred ceremony for the cutting of the hide in the annual Sun Dance. The rich father paid handsomely for this honour. These children were called "Minipoka," (pampered or a privileged child).

The owner of important positions or wealth bequeathed them to his living relatives and family and thereby encouraged them to continue his family's privileges. However, usually everything a warrior had was given away at his death. His favourite ponies were killed to be laid beside him so that his spirit may have swift hunting and war ponies in the other world.

Even though warriors raided enemy camps for horses, the motive was really for self-aggrandizement rather than pure materialistic gain. Any individual, whether he be a Chief, war leader or a poor person, could not appropriate the possessions of any other member of the tribe--such an act was unthinkable. David Thompson had observed that the Piegan possessed "an inherent sense of the rights of individuals to their rights of property, whether given them, or acquired by industry, or in hunting. All these belong to the person who is in possession of them; and which gives him the right to defend any attempt to take them from him."<sup>31</sup> Individual ownership of all property other than land was the rule among the three Blackfoot tribes. Even sacred bundles, e.g. Sun Dance bundle, beaver bundle, and the medicine pipe bundle, which were manipulated for the good government and well-being of the whole community, were individually owned and were transferred from one individual to another through elaborate ceremonies. Individual ownership of horses followed the Blackfoot pattern of ownership of other property. As far as the land was concerned, that belonged to the collectivity of the entire membership. The ownership of the land resided within the Blackfoot Nation and not with individuals. By the end of the 18th century, the Blackfoot Nation had become the masters of the northwestern plains after driving the Shoshonis, Flatheads, and Kutenais from the area.<sup>32</sup> Therefore, the Blackfoot land was appropriated and expanded through war.

In the Blackfoot view, supernatural favour and personal aggressiveness could bring anyone to a position of wealth and high standing. Hence to begin life as a social nobody was a special kind of challenge; a man could strive for spiritual blessings through visions and prayers, distinguish himself as a tribe-protecting warrior, gain wealth, and ultimately surpass others by the status he obtained. Any man within Blackfoot society always had hope if he had a worthwhile goal and vision.

There were a number of unwritten rules followed by the Blackfoot tribes, notwithstanding that no courts or judges existed to administer justice in the modern jurisdictional sense. The following were the crimes which the Blackfoot tribes considered sufficiently serious to merit a distinct form of punishment, and the penalties attached thereto.

### **3.4.1 Murder**

A life for a life, or a heavy payment by the murderer or his relatives to the victim's relatives at their option. This payment was often so oppressive as to strip the murderer absolutely of his entire property. Murder within the tribes was extremely rare and almost non-existent. The tremendous power of public censure and opinion did much in itself to curtail dishonourable conduct, community misbehaviour and violence.

### **3.4.2 Theft**

Simply the full restoration of the property taken and apology.

### **3.4.3 Adultery**

For the first offense, the husband usually cut off the offending wife's nose or ears. For the second offense, she was killed by the police society. Sometimes if her husband complained enough about his wife, the woman would be killed by her brothers or first cousins, or more usually, at the hands of the "all comrades" society. If he wished, the husband could have her put to death for the first offense.

### **3.4.4 Treachery or Treason**

Death on sight, i.e. when a member of the tribe went over to the enemy or gave them any aid whatsoever.

### **3.4.5 Cowardice**

A man who would not fight in defense of this tribe was obliged to wear a woman's dress, and was not allowed to marry.

### **3.4.6 Greed or Selfishness**

If a man left camp to hunt buffalo by himself, thereby driving away the game, the police society were sent after him, and not only brought him forcefully back, but often whipped him, tore his lodge to shreds, broke his travois, and took away his store of dried meat, pemmican, and other food.

\* \* \* \* \*

The Blackfoot were exceedingly sensitive to reactions and to gossip which would affect their social standing. A person who broke the common unwritten rules, (Similar to the origins of the English common law.), would be held up to general ridicule amid shrieks of laughter. The embarrassment of the unfortunate transgressor sometimes drove him into exile or onto the warpath. Therefore,

while strict order and discipline were lacking in child training, the strong public censure applied to adults who broke the common law did more than enough to shape up children and keep them in line. The Blackfoot method of training children was discipline by example.

The Great Plains Indian was a firm individualist. No single person ever held total influence over any Blackfoot tribe. A Chief ruled by the "will of the people" so long as he remained true to his duties and continued to provide sound leadership. Individualism prevented the Great Plains Indian tribes from forming a great alliance against the armies of the Canadian and U.S. governments. This was fortunate for the White soldiers and settlers alike, for the Great Plains Indian tribes constituted the best light cavalrymen the world has ever known. Had they united, the course of Canadian and American history and politics could indeed be very different today. Historical authorities assert that individualism among the descendants of the Great Plains tribes is as apparent now as it ever was. According to them, this explains why foreign cultural influences have never been able to gain a toe hold among the Great Plains tribes. They are also of the opinion that individualism is one of the reasons why the North American Indian earned a reputation for being an exceptionally courageous and resourceful fighter during World War I and II, and the Korean conflict.

Thomas E. Mail states:

...a comprehensive study of the Plains Indians shows that their virtues far out-weighed their shortcomings....Perhaps the Indians of 1750 to 1875 were not really saints, yet they achieved so much that it is equally wrong to call them primitives or savages. Neither description is accurate or adequate.<sup>33</sup>

Here in Canada, the Canadian government, with the help of the established churches, developed policies and programs to assimilate or integrate the Blackfoot or Siksika people into Canadian society since the signing of Treaty 7 in 1877. The leaders of the Siksika Nation have never believed that they were a conquered people. They believe that historic understandings exist between them and the Crown, whether that be Great Britain, Canada, or the provinces, and that one of those historic understandings was that they would remain self-governing and continue to maintain their way of life. To this topic we now turn, *i.e., Siksika Nation Governance*.

#### **IV THE CONTINUATION OF *SIKSIKA NATION GOVERNANCE* FROM THE LATE 19TH CENTURY TO THE PRESENT TIMES**

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In the previous chapter of this study, we explored the traditional methods of Siksika governance during the Horse Culture Period (1735 - 1875), to which Thomas E. Mails refers as the Blackfoot Golden Period. In this particular chapter, we shall review how various Siksika governing functions have withstood the test of European contact and settlement, and how the Siksika Nation has never relinquished its ability to govern its internal affairs, and external relations with other tribes and the British authorities. Notwithstanding the fact that the Canadian government externally imposed the Indian Act upon the Siksika Nation after the signing of Treaty 7 in 1877, without consultation or consent, a strong sense for self-governance was never far away from the Siksika people.

The following sections briefly describe how the Siksika Nation governed itself before and after European contact; how the Siksika have continued to govern themselves even under the externally imposed federal Indian Act of 1876 and into the present. The Siksika Nation leadership actually started to resume and re-establish their governance capacity for their people in 1968 when the last bona fide federal Indian Agent left the Blackfoot Indian reserve for good. Ever since 1968, the political leadership of the Siksika Nation has steadily assumed greater jurisdiction and responsibilities to manage their own internal affairs according to their community needs and priorities albeit under the Indian Act. The Siksika Nation has now reached a point in its political, administrative and social development where the federal Indian Act has now outlived its purpose and usefulness to the community.

##### **4.1 Functions of a Government**

It is extremely important to understand why governments exist and why constituents of a defined political entity agree to delegate certain responsibilities, or functions, to a government. In the case of the Siksika Nation, it is also important to understand that it was the performance of specific responsibilities or functions on behalf of the Siksika membership that created government, not the election, or appointment, of political leaders.

While most forms of contemporary government tend to be very complex, most of the functions of government have remained constant for thousands of years:

- Protection/Defense of Citizens
- Citizenship
- Protection of Culture and Heritage
- Development of Economic Potential
- Education of Members
- Care for the Sick or Less Fortunate and Dependent Members
- Management of Land
- Development and Management of Community Property

- Treasury and Management of Currency
- Development of Laws/Policies
- Interpretation of Laws/Policies

The Siksika Nation has always viewed government as the provision of necessary services to the membership in a consistent and organized manner. Historically, activities within the Siksika Nation were performed by societies who had clearly defined responsibilities and maintained their responsibilities from generation to generation. While a number of these societies still exist, the majority of their traditional responsibilities have been assumed by an elected Chief and Council and their full time administrative staff.

The Siksika Nation does not require the approval or permission of the Government of Canada to continue the provision of necessary services to the membership. Siksika Nation government exists because the Siksika Nation membership has maintained their right to self determination and looks to their leadership for the provision of essential services. No other government, including the Government of Canada, can eliminate or restrict the inherent right of the Siksika Nation membership to establish their own government with responsibility for addressing their specific needs.

When the Royal Proclamation of 1763 was declared, the British Crown recognized the existence of First Nation governments and their interest in unceded land. This relationship between the British Crown and the Siksika Nation, particularly as it related to the Siksika Nation interest in their traditional lands, was reinforced in 1877 through the signing of Treaty 7. Legislation which followed the Royal Proclamation of 1763, including the Indian Act of 1876, cannot override the existence of First Nation governments prior to arrival of the first Europeans. (Note: The Royal Proclamation of 1763 is significant for Indian governance purposes because it has been described by the now retired Justice Emmett Hall of the Supreme Court of Canada as "...the guarantee of Indian rights... an Executive Order having the force and effect of an Act of Parliament... the 'Indian Bill of Rights'... Its force as a statute is analogous to the status of Magna Carta... It was a law which followed the flag as England assumed jurisdiction over newly-discovered or acquired lands or territories [i.e. from France]... The Proclamation must be regarded as a fundamental document upon which any just determination or original rights rests." Since the said Proclamation was declaratory and confirmatory of the entire spectrum of aboriginal rights, it is deducible that those rights include the right to Indian self-determination as it may be made manifest via Indian self-government.)

The inherent right of the Siksika Nation membership to establish a government cannot be disputed. However, the Government of Canada, and in some cases the Province of Alberta, may question whether the Siksika Nation has consistently exercised its inherent right to government. Specifically the Government of Canada may try and define the government powers of the Siksika Nation within the terms of the Indian Act. Therefore, it becomes extremely important to clarify that the delegated forms of tribal government defined within the Indian Act are only administrative tools of Indian and Northern Affairs Canada and are

*not true governments.*

The Siksika Nation is of the opinion that section 35 of the Constitution Act, 1982 recognizes Siksika's aboriginal rights, including the right to form their government. However, they also realize that aboriginal rights, including the right to govern themselves free from outside intervention, must be negotiated with the Government of Canada. It is the need for a formal relationship with the Government of Canada that forms the basis of negotiations for approval of the Siksika Nation Government Act.

In order to establish evidence that the Siksika Nation members have maintained their inherent right to form their government, a number of government functions have been reviewed in considerable detail. This review will illustrate that the Siksika Nation never relinquished its inherent right to form governments and has performed most of the functions of government on a consistent basis for the past two hundred years.

Each time the Government of Canada has attempted to restrict the inherent rights of the Siksika Nation membership there has been a positive response to mitigate the impact of this intervention. The positive responses to interventions by the Government of Canada have shaped the current relationship and have provided the basis for negotiating the Siksika Nation Government Act.

The review of government functions will also address the issue of transfer payments between the Siksika Nation and the Government of Canada. Many Canadians are of the opinion that First Nations receive preferential treatment from the Government of Canada. Research completed by the Siksika Nation has revealed that in almost every function of government, the level of funding transferred to First Nations is substantially less than funding transferred to other political jurisdictions. This research has also revealed that in several areas such as social housing and health care, the Siksika Nation has actually subsidized the Government of Canada.

It is very important for the Royal Commission on Aboriginal Peoples to comprehend how the Siksika Nation met the needs of their membership and how legislation introduced by the Government of Canada impacted on Siksika Nation Government. The Siksika Nation case study provides clear evidence that the inherent right of the Siksika Nation membership to establish governments has never been relinquished. At no time during the past two hundred years has the Siksika Nation ceased to exercise some aspect or function of an independent government, albeit under the constraints of the Indian Act.

## **4.2 Analysis of Specific Siksika Government Functions**

### **4.2.1 Protection/Defense of Citizens**

### **1790 to 1877**

Accordingly to the Siksika elders, when the first Europeans contacted the outermost camps of the Siksika Nation they were struck by the confident and aloof attitude of the warriors. They noticed that the Siksika warriors watched them from a distance using a number of different vantage points. Many attempts to befriend or enlist Siksika members were rejected and Europeans continued to use scouts from Cree Nations to progress through Siksika traditional lands.

During the period of the Indian wars in the United States, there were several negotiating parties sent from the Sioux Nations to try to involve the Blackfoot Confederacy in the defense of Indian territory. Under the leadership of Chief Crowfoot, the Siksika Nation refused to participate in direct conflict with the American soldiers. In 1886, Chief Crowfoot, and other Blackfoot Chiefs, travelled to Ottawa to discuss the approaching conflict with the Government of Canada. While Crowfoot was there, he witnessed first hand the weapons available to Canada to fight the First Nations. Chief Crowfoot realized that his warriors could only defend Siksika, and other First Nation lands, for a limited time before reinforcements arrived with more weapons.

The most appropriate defense of Siksika lands, and their way of life, was to negotiate a Treaty with the Government of Canada. Chief Crowfoot played a significant role in the development of Treaty 7 and in persuading other First Nation leaders to sign the document in 1877. While the Siksika Nation has always viewed Treaty 7 as primarily a peace and sharing treaty, as opposed to a complete land surrender treaty, there is little doubt that the signing of Treaty 7 saved many lives that would have been lost through armed confrontation.

### **1877 to 1965**

Once Treaty 7 was signed and the Siksika Nation was provided with reserve lands, there was little need to defend the new territory from potential invaders. However the Siksika Nation maintained many of the traditional functions including defense, and established an unofficial army/police force known as the Scouts. Over time the Northwest Mounted Police assumed full jurisdiction for law enforcement within Siksika lands and the Siksika Scouts were discontinued.

It is important to note that the Siksika Nation government of the day did not agree to give up their role in the defense of the Nation immediately after signing Treaty 7. They retained that role until it became clear that the Mounted Police were capable of defending the Siksika Nation membership. It is also important to note that members of the Siksika Nation were not permitted to carry firearms unless they were hunting game. As the game disappeared from Siksika lands, the use of weapons was restricted by the Northwest Mounted Police.

### **1965 to 1985**



In the early 1960's, there was renewed interest in the establishment of a Siksika controlled body to enforce certain laws within Siksika lands. Initially this group continued the tradition of the Scouts but over time they became adjuncts to the Royal Canadian Mounted Police with limited responsibility for the enforcement of Siksika legislation developed under the Indian Act. The RCMP retained full responsibility for the enforcement of federal and provincial legislation.

Under section 88 of the Indian Act, the Government of Canada defined two broad categories where the provincial governments would have jurisdiction and where provincial laws would apply;

- a) Where a provincial law of general application does not affect Indian treaty rights or status and
- b) Where a provincial law of general application touches on Indian treaty rights or status but does not affect an Indian's interest in land and is not inconsistent with the Indian Act, or legislation under the Indian Act, does not conflict with other federal legislation including Treaty 7, and does not duplicate the Indian Act.

The Siksika Nation has attempted to limit the powers of the provincial government under section 88 of the Indian Act through the use of by-laws developed under section 81. To date, a total of 11 by-laws have been enacted by Chief and Council. Unfortunately the powers allotted under section 81, e.g., traffic, zoning, maintenance of roads and public buildings, conservation of fish and wildlife, are of a local or municipal nature. Jurisdiction for legislation covering the majority government function remained with the federal government or with the provincial government under section 88.

The only funding provided by INAC for the enforcement of Siksika Nation by-laws was approximately \$60,000 allocated under the Band Constable Program. Under this program the Siksika Nation would receive funding for a maximum of 4 constable positions if the Band constables met conditions established by the Solicitor General for the Government of Alberta. The enforcement power of the Siksika constables was limited to by-laws passed under section 81 of the Indian Act, including traffic by-laws for Siksika roads.

### **1985 until Present**

The Siksika Nation realized that the development of legislation specific to the protection of Siksika Nation members and the enforcement of this legislation by Siksika government employees would be difficult under the Indian Act. The most reasonable approach to increase the jurisdiction of the Siksika Nation, as it related to protection services for their membership, was to negotiate with the federal and provincial governments for the delegation of additional authority.

The Siksika Nation completed negotiations of a tri-partite agreement for law enforcement in 1993.

This tri-partite agreement between the Siksika Nation, the Government of Alberta and the Government of Canada, establishes a framework which permits Siksika law enforcement staff to enforce Siksika Nation laws, provincial and federal legislation within Siksika Nation lands.

Under the terms of this agreement the Siksika Nation receives \$900,000 which supports a Chief of Police, 8 constables and 2 support staff positions. When expressed in terms of dollars per constable the funding provided through the tri-partite agreement is substantially less than funding provided by the Government of Canada to the RCMP detachment in neighbouring Gleichen. In addition, the federal government just completed a \$1,300,000 police station for the RCMP detachment in Gleichen, which borders Siksika lands, while the Siksika law enforcement staff are occupying a converted portable classroom. It is estimated that 80% of the duties once performed by the Gleichen RCMP detachment are now being performed by Siksika law enforcement staff.

It is interesting to note that the \$60,000 provided by INAC under the Band Constable program was included in the 5 year Alternative Funding Arrangement between the Siksika Nation and INAC. During negotiations related to the tri-partite law enforcement agreement, neither INAC, the office of the Solicitor General, nor the Government of Alberta made any reference to the \$60,000. When the tri-partite agreement was signed, INAC processed an amendment to the existing Alternative Funding Arrangement which deleted the \$60,000 provided for Band Constables for the 1993/94 and 1994/95 fiscal years. The Siksika Nation objected to this amendment for two reasons: Firstly, under the terms of the AFA no amendment is to occur without consultation with the Siksika Nation and; secondly the funding provided within the AFA is the property of the Siksika Nation not the Government of Canada. If the Government of Alberta and the Solicitor General were concerned about the existing \$60,000 they should have asked the Siksika Nation to include this amount as their share within the tri-partite agreement. It is time for both the Government of Canada and the Government of Alberta to stop acting like it is still 1930. It is time to recognize the Siksika Nation as a distinct order of government capable of negotiating services in the best interest of its membership.

During the first years of the tri-partite agreement, the RCMP have agreed to second 3 full time staff to work with the Siksika law enforcement staff as part of the training program. This assistance has allowed the Siksika Nation to direct a portion of the staff and training budget towards the construction of a new headquarters which is scheduled for completion by 1994 when Siksika law enforcement becomes a full autonomous police force.

### **Summary - Protection Services**

The Siksika Nation has never relinquished their right to defend their traditional lands or to provide services for the protection of their membership. The Government of Canada used the Indian Act to assume jurisdiction for protection services and to apply provincial legislation to Siksika lands. Even during the period when the Indian Agent and the RCMP attempted

to control the movement of Siksika members, the Siksika leadership recognized and gave tacit consent to policing by external authorities. As soon as it was feasible, the Siksika Nation began exercising their limited authority under section 81 of the Indian Act and began to recover a portion of the jurisdiction occupied by the Province of Alberta under section 88.

In 1993 a tri-partite agreement was signed which transferred additional jurisdiction for protection services to the Siksika Nation as a delegated authority. While this tri-partite agreement will result in the establishment of a fully autonomous police force by 1994 it should be viewed as a temporary measure which will be reinforced within the Siksika Nation Government Act.

The Siksika Nation is concerned that the level of funding provided through the tri-partite agreement is substantially less than the funding provided by the Government of Canada and Government of Alberta to the RCMP for similar services. In particular, the Siksika Nation is concerned that the tri-partite agreement does not provide funding for the construction, purchase, maintenance and replacement of capital assets, including a new headquarters.

The Government of Canada through the RCMP has established clearly defined relationships with many First Nations. Now that the extent of jurisdiction and the cost of law enforcement is understood by both the RCMP and the Siksika Nation, the transfer of this jurisdiction and associated funding to the Siksika Nation should be relatively straightforward. Unfortunately, the Government of Canada and the Government of Alberta have chosen not to include all costs related to law enforcement in the initial tri-partite agreement.

In spite of discrepancies in the level of transfer payments, the Siksika Nation has developed one of the best trained law enforcement authorities in Canada and is currently providing the membership with protection services which are far more comprehensive and community based than services previously provided through the RCMP.

#### **4.2.2 Development of the Siksika Nation Economy**

##### **1790 to 1877**

The Siksika Nation were not interested in developing a fur trading relationship with the first Europeans who settled near Siksika lands. While there was a genuine interest in the axes, woolen blankets and glass beads, the majority of Siksika members viewed the new arrivals with suspicion. Gradually the settlers and fur traders increased their trade with Siksika members who offered buffalo hides and horses for the new goods. As demand for the new goods increased, many fur traders began to offer alcohol-based beverages for trade and began to accumulate Siksika artifacts along with horses and buffalo hides.

While it is possible that increased hunting by Siksika members may have accelerated the decline of the buffalo in southern Alberta, it was the arrival of the Europeans that marked the beginning of the end for the buffalo and for the Siksika economy. It was also the introduction of alcoholic beverages which resulted in the death of many Siksika Nation

members and the loss of many important artifacts.

### **1877 to 1965**

It is difficult to imagine the cultural and economic impact on the Siksika Nation which accompanied the extermination of the buffalo. The buffalo was far more than a source of food, clothing and shelter to the Siksika Nation. The buffalo represented a way of life that had been incorporated into every cultural and spiritual tradition.

Much has been written about the events which preceded the signing of Treaty 7 and the role played by the legendary Chief Crowfoot in convincing other Chiefs of the Blackfoot Confederacy to sign the Treaty. There is little doubt that Chief Crowfoot and his followers viewed Treaty 7 in simple economic survival terms. Representatives of the Government of Canada were offering "blue backed paper" which could be used to obtain blankets, guns, and tea from the traders. All they appeared to be asking in return was that the Siksika warriors stop raiding the surrounding First Nations and that they permit "others" to use the land.

No member of the Siksika Nation, including Chief Crowfoot, had any concept of what the terms "cede", "release", "surrender and yield up", meant or how those terms would affect their future. They were told that they could continue to hunt on their land "forever" and since that was all they had ever used the land for, there was never any sense of loss when Treaty 7 was signed.

In 1877 the Siksika Nation had not fully realized that the buffalo were being exterminated. When they signed Treaty 7 they believed that life would continue as usual with the added benefit of receiving money in the fall to buy goods from the traders. There was considerable pressure from the members of the Blackfoot Confederacy, and the protected nations, to sign the Treaty so that they could obtain axes and yard goods with the new money. If any Siksika Chief had refused to sign the Treaty, most of the members in the camp of the declining Chief would have left and joined the camp of a Chief who had agreed to sign the Treaty.

It is important to note that immediately after the signing of Treaty 7 in 1877, most Siksika bands left in search of buffalo in the south. These Siksika bands realized that they would be able to "steal" from other First Nations in the south without breaking the new Treaty. Life after Treaty 7 would continue as usual with the exception of a having to keep peace with the Cree and Assiniboine Nations.

In the summer of 1879 the lives of the Siksika Nation changed forever. The warriors and hunting bands straggled into Fort McLeod with a report that the buffalo had vanished from traditional grounds. This news startled every one in the northern camps and soon many of the elderly Siksika members who relied on food from the hunting parties were dying of starvation and the women and children were begging for food.

In 1880 the several Siksika bands used their Treaty money to buy rations and equipment and set off

for the buffalo hunt. These bands pushed east and south, well into enemy territory, before they located buffalo. Using their superior skills as hunters and warriors, these bands remained in the south for two years and did not return to collect treaty money in the fall of 1880.

By the Spring of 1881 the last of the buffalo were slain and the Chief of the hunting bands had no option but to return to the lands designated as part of Treaty Seven. When the last of the southern bands returned in the summer of 1881 it marked the final chapter in the traditional hunting economy of the Siksika Nation.

The Government of Canada had moved a farming instructor onto the Siksika reserve in 1880 and intended to teach Siksika members to become self reliant. As an interim step they agreed to provide the Siksika Nation with regular rations of beef, flour and tobacco. The introduction of rations had interesting consequences for the Government of Canada as the Siksika Nation viewed the distribution of food as an obvious extension of Treaty 7. So while other First Nations accepted the concept of self reliance obtained through agriculture, the majority of Siksika Nation members refused to "grovel in the dirt". The Chiefs of the Siksika Nation, including Crowfoot, condemned gardening and supported the continuance of a more traditional lifestyle.

As the benefits of agriculture became more evident to Siksika members, there was a substantial increase in production. In 1883 the Siksika Nation produced 2,370 bushels of potatoes. In 1890 potato production had increased to more than 14,800 bushels. The interesting difference between agriculture within Siksika lands and agriculture practised by other First Nation was that Siksika members used agricultural products to trade for goods in the surrounding stores. Siksika Nation members continued to rely on the rations provided by the Government of Canada as their main source of food.

The Government of Canada grew increasingly concerned with the position of the Siksika Nation and their interpretation of Treaty 7. Notes from Government of Canada officials continually referred to the need to reduce rations and to educate Siksika members in agricultural production.

The events that followed the signing of Treaty 7 have been described in detail to illustrate that the Siksika Nation has always viewed Treaty 7 as an economic treaty which committed the Government of Canada to support Siksika Nation members for *as long as the grass grows, the river flows and the sun shines*. This position has not changed significantly over the years despite substantial shifts in policy by the Government of Canada.

In 1911 and 1917 significant portions of the Siksika reserve were sold at auction by the Government of Canada. This sale generated over \$2,200,000 and made the Siksika Nation the most wealthy First Nation in Canada. While the terms of this sale have always been disputed by most Siksika Nation members, and are currently the subject of a specific claim against the Government of Canada, there is no doubt that the quality of life improved

substantially after the sale.

One disturbing aspect of the land sales was that a significant portion of the proceeds was directed to the capitalization of agriculture (\$400,000) and to housing and infrastructure (\$350,000). A portion of the funding for these activities should have remained the responsibility of the Government of Canada under the terms of Treaty 7.

The balance of the funds from the land sale was placed in trust where the interest of 5% per year was used by the Siksika Nation to pay the wages of the farm equipment operators, pay the wages of the farm instructors, cover the cost of blankets, yard goods and clothing for the aged, and provide rations of beef (7 lb), flour (5 lb) and tea (1 lb) each month.

It is clear that the Government of Canada was attempting to convert the Siksika Nation from a group of collectives (bands), where the wealth of individual bands was distributed by the Chief, to a community of individual entrepreneurs who generated wealth from agricultural pursuits. The Government of Canada had some difficulty understanding the collective aspects of the Siksika Nation culture but in the end they supported a system where communal wealth, generated from the sale of Siksika Nation land, would be distributed on a regular basis to the membership by the Siksika Chiefs.

In effect, the Chiefs functioned as the legitimate government of the Siksika Nation by deciding to distribute their communal wealth to the entire membership rather than investing in the creation of entrepreneurs which was the preference of the Indian Agent. Records maintained by the Indian agents illustrate quite clearly that the Siksika Nation assumed responsibility for paying the wages of Government appointed farm instructors out of their trust funds.

By 1939-40 the distribution of the income from the trust funds had changed considerably but was still based on the tradition of communal distribution.

Annuities to the members	\$24,000
Rations to the members	\$26,000
Medical Care	\$30,000
Clothing for the Elders	\$ 3,000
Equipment	\$10,000
Livestock to the members	\$ 7,000
Maintenance of Roads and Buildings	\$ 6,000
Wages to White Instructors	<u>\$ 9,000</u>
	<u>\$115,000</u>

It should be pointed out that over time a considerable number of Siksika Nation members became entrepreneurs through the development of natural resources such as coal and through the sale of grain or cattle. For a period of time the land was divided and assigned to individual members or bands who leased the land to non Indian farmers and used the money for the

needs of their family or band members. However, even the more entrepreneurial members did not accumulate wealth in the European sense but distributed the majority of surplus wealth to members of his family or to members of his band. The economy of the Siksika Nation has always been viewed in collective terms and the needs of the membership have always taken priority over the accumulation of wealth by individuals.

### **1965 to 1985**

The traditional collective nature of Siksika Nation holdings continued after the introduction of social assistance for all Canadians by the Government of Canada. Cattle cooperatives and tribal farms were maintained on Siksika land long after this practice was abandoned by most First Nations.

In 1968 the Chief and Council of the Siksika Nation rescinded all previous individual allocations of land and put an end to the system of "rocking chair farmers". Only members who were actively farming the land were allocated land and if they ceased to continue farming the land, the land would be reallocated by the Chief and Council. The communal ownership of all Siksika land reserved by treaty remains in effect to this day pursuant to traditional forms of land occupation and possession.

In 1975 the Siksika Nation allocated 300 acres of land for development of a nine hole golf course and summer vacation resort. The initial Government of Canada contribution to this project was less than \$200,000. The balance of the funding required for construction was contributed by the Siksika Nation, or borrowed under a Ministerial guarantee. Owing to a slow economy and high interest in the early 1980's the sales required to offset carrying charges were not realized. The Government of Canada assisted the Siksika Nation by agreeing to pay out the commercial lenders and accept a compromise settlement for the loan balance.

With the exception of the vacation resort and a series of loans to support agriculture, the Government of Canada invested very little in the economy of the Siksika Nation between 1965 and 1985. What concerns the Siksika Nation is the substantial investment made by the Government of Canada to expand regional economies across Canada. Major programs such as the Fund for Rural Economic Development; Department of Regional Economic Expansion and the Atlantic Development Agency invested billions of dollars in economic expansion. First Nations in general, and the Siksika Nation specifically, were isolated from the major economic development programs offered by the Government of Canada and had to make do with the limited funding offered by INAC.

In 1968 the Siksika Nation developed a comprehensive community development plan which called for expansion of agriculture to include processing, development of an industrial park, construction of a modern office complex, establishment of commercial enterprises such as a service station and general store, and the establishment of a vocational training centre with emphasis on agriculture. It is significant that the Government of Canada chose not to respond to the Siksika plan even though funding for similar initiatives was provided to other communities.

One major initiative which benefitted many First Nations located north of the 55th parallel was the Western Northlands Agreement administered as part of the Department of Regional Economic Expansion. Owing to their geographic location, the Siksika Nation did not have access to funding under this agreement. To date no similar program has ever been made available to First Nations located south of the 55th parallel.

### **1985 to the Present**

In 1987 the Siksika Nation established the (Blackfoot) Siksika Economic Development Corporation to coordinate expansion of their economic base. The first priorities of SEDCo were to obtain funding for a new office and commercial complex and to establish an industrial park.

Fortunately the establishment of SEDCo coincided with the introduction of the Native Economic Development Program, which was the first comprehensive approach to economic development by the Government of Canada. With the support of a \$2,000,000 grant from NEDP the Siksika Nation, through SEDCo, built a 50,000 square foot office and commercial complex. The total cost of this complex exceeded \$4,600,000, of which \$600,000 was provided by the Siksika Nation, \$220,000 from INAC and \$1,800,000 in commercial loans secured by Siksika Nation assets.

SEDCo also initiated two programs for the training of commercial seamstresses and staff for a commercial pottery operation. With financial assistance of approximately \$450,000 from CEIC, 35 Siksika members were trained for these new enterprises. In 1993 Siksika Fashions employed 8 members in the manufacture of leisure wear and Old Sun Pottery employed 4 members in the production of tableware, vases and wind chimes.

As of October 1993 SEDCo held 100 % of the outstanding shares of six for profit companies:

Siksika Service Station -	Annual sales \$1,500,000 5 full time/6 part time staff
Siksika Mayfair Foods -	Annual sales \$1,600,000 7 full time/4 part time staff
Siksika Fashions -	Annual sales \$300,000 8 full time staff
Siksika Restaurant -	Annual sales \$250,000 4 full time/3 part time staff
Old Sun Pottery -	Projected Annual sales \$150,000 5 full time staff
Siksika Resort -	Annual fee received \$150,000



## 14 seasonal staff

Assets of SEDCo were appraised at \$8,500,000 and current liabilities, including equity provided by the Siksika Nation, do not exceed \$2,800,000.

SEDCo also operates the Siksika Nation Commercial complex which has 5 full time and 2 part time maintenance staff and 5 full time and 2 part time security staff.

Since 1987 SEDCo has provided financial assistance to over 50 Siksika members who required equity to start up a small business venture. Over 50% of these business are still in operation.

In 1989 the Siksika Nation entered into an Alternative Funding Arrangement with INAC. The intent of this agreement was to secure financial resources for a five year period, ending March 31, 1995, and to obtain greater flexibility as to how funding from the Government of Canada could be spent. Under the terms of this agreement the Siksika Nation was to receive \$349,000 per year to support economic and employment development. Before the agreement was signed INAC reduced funding projected for economic development by 10% to guard against possible cut backs by Parliament.

During the first three years of the agreement funding remained at \$349,000 but in April 1993, the funding was cut without consultation to \$306,000, which was even less than the budget confirmed in the AFA agreement. This cutback had a significant impact on the operation of SEDCo as they had used the AFA funding for economic development as security for financing from Peace Hills Trust.

When the Siksika Nation entered into the AFA, they had hoped that a five year agreement could be used as security for commercial loans. In reality the AFA agreement has little value as security for loans when INAC insists that all funding is subject to appropriations by Parliament and can be reduced at any time without consultation.

Existing loans with Peace Hills Trust are currently secured by a long term agreement with the Province of Alberta related to the Bow River Irrigation Canal and an annual fee charged to the Hidden Valley Vacation Resort which they have secured with a \$3,000,000 debenture. The most serious impediment to the expansion of the Siksika Nation economy is the inability to use long term government transfer payments as collateral for commercial loans. Access to commercial loans is also restricted by the Indian Act and the fact that title to the land cannot be used as collateral.

The Siksika Nation was the first government to apply the designation procedures outlined in Bill C-115, the Kamloops Amendment. The revisions to section 28 of the Indian Act were a step in the right direction, but most commercial lending institutions remained cautious about using real estate assets on First Nation lands as security for developmental loans.

The Siksika Nation is concerned that INAC is retreating from its role in supporting economic and employment development within First Nation lands. With the introduction of the Canadian Aboriginal Economic Development Strategy (CAEDS), the federal government decided to address the issue of economic development in terms of support for "Aboriginals". Owing to the unique status of First Nation lands, and the inability to use land title as security for development initiatives, the majority of funding provided through CAEDS has been related to projects outside of First Nation lands.

This problematic situation has been compounded by the Pathways to Success program introduced by Canada Employment and Immigration as part of the CAEDS initiative. Under the Pathways process, funding for employment development is distributed through local and regional management boards composed of representatives of all *aboriginal* interest groups. The Siksika Nation sees the trend to *aboriginalize* programs as an obvious and deliberate dilution of the special relationship between the Government of Canada and First Nations which is based on the Royal Proclamation, 1763 and reinforced in the treaties with First Nations.

### **Summary - Development of the Siksika Nation Economy**

The Siksika Nation has been fully responsible for the development of their existing economic base. Since the moment Treaty 7 was signed, the members of the Siksika Nation have attempted to define the responsibilities of the Government of Canada and have insisted that the offer of support outlined within Treaty 7 be fulfilled.

The proposal of the Government of Canada to sell over 125,000 acres of Siksika Nation land was never fully understood by Siksika Nation members. In retrospect, the 1910 proposal was an obvious move by the Government of Canada to escape from their financial obligations under Treaty 7 and to transfer those obligations back to the Siksika Nation. When it is considered that the Siksika Nation funded all aspects of its economic development, for more than fifty years, including the wages of government appointed employees, it is difficult to claim that the Siksika Nation Government did not exist or that all decisions during this period were made by the Indian Agent.

Between 1877 and 1985 no sector of the Canadian economy received less support for economic development from the Government of Canada than First Nations. Since 1985 the level of funding has increased significantly. However, the infrastructure for commercial or industrial expansion within First Nation lands is woefully inadequate when measured against the infrastructure in surrounding jurisdictions.

The Government of Canada has invested billions of dollars of revenues received from resource development, including revenues generated from Siksika Nation traditional lands, in the development of regional economies. The level of funding provided to the Siksika Nation by the Government of Canada is negligible when compared to the funding provided to other jurisdictions. It is distressing that while section 91(24) of the Constitution Act gives the

Government of Canada exclusive jurisdiction over "Indians and lands reserved for Indians", they continue to provide a greater level of financial support to municipalities or regions under provincial jurisdiction.

The Siksika Nation has asked for financial support for the installation of services in their 114 acre Industrial Park, which was surrendered by designation in 1989. The response from the Government of Canada is that the servicing of commercial and industrial land is not eligible under CAEDS. Over the past 40 years the Government of Canada, through CMHC, DREE, DRIE, Special ARDA etc., has provided hundreds of millions of dollars in loans and grants to develop the commercial and industrial capacity of Canadian communities. Additional financial assistance has also been provided by provincial governments using revenues realized from the development of resources on lands which were once the traditional territories of the First Nations.

It is time for change in the way the Government of Canada provides support for the development of First Nation lands. Financial institutions, with the support of the Government of Canada, must develop alternative forms of collateral for commercial loans. The most obvious collateral available to First Nations are the transfer payments from the Government of Canada, which should include funding related to the development of First Nation economies. Perhaps the Royal Commission could address the issue of improved access to development funding in their submissions to the Government of Canada.

### **4.2.3 Medical Services**

#### **1790 to 1877**

Owing to a number of wars with surrounding First Nations, particularly against the Crow Nation, and the expansion into new hunting territories, the population of the Siksika Nation had declined to less than 14,000 by 1838. In this year a devastating small pox epidemic swept through the Siksika camps and more than 6000 deaths were recorded.

Between 1838 and 1853 the weakened Siksika Nation was involved in a number of battles with surrounding First Nations who saw the opportunity to obtain a portion of the vast Siksika lands. By 1854 a combination of disease, war and starvation had reduced the population of the Siksika Nation to less than 6,000 members.

In 1864 and again in 1869 the Siksika Nation faced outbreaks of small pox which further reduced the population to 4,000 by 1870. Smaller numbers, coupled with the increase of white settlers in the United States, led to a split in the Blackfoot Confederacy and the retreat into Southern Alberta by several major Blackfoot tribes.

At the time of the signing of Treaty 7 the once mighty Siksika Nation had been reduced to fewer than 2,500 and many of these were weakened by hunger and past illnesses.

### **1877 to 1965**

When Treaty 7 was signed the members of the Siksika Nation had no way of knowing that their traditional lifestyle was ending. When the last of the hunting parties returned in 1881 with word that the buffalo had vanished, the remaining members of the Siksika Nation must have wondered what would become of them. Without a regular source of meat many of the elder members died of starvation or of a broken heart.

When an epidemic of tuberculosis arrived within the Siksika Reserve in 1880 as a result of a new sedentary lifestyle, Chief Crowfoot approached Father Lacombe and the Anglican missionaries for assistance. A small hospital was established by the churches to treat Siksika members.

In 1895 a permanent hospital was constructed near the Anglican Mission on the Siksika Reserve. This hospital was run by the Anglican Church even though the Department of Indian Affairs was assigned responsibility for looking after the affairs of First Nations in 1880.

When the 1910 and 1912 land sales were finalized, one of the first items presented for funding by the Siksika Nation was a new hospital. Using revenue from the land sale, the Siksika Nation constructed a modern hospital in 1923, south of Gleichen. This hospital was equipped with the latest equipment and the best staff available in southern Alberta. Every Siksika member would receive medical care at this facility paid from their own revenues. In addition, a special assistance program was developed to help care for the dependents of each patient during the period of illness.

This hospital operated until 1976 when it was finally closed by the Medical Services Branch of Health and Welfare Canada.

It is important to note that the Siksika Nation paid 100% of the costs of operating this hospital from 1923 until 1955 when the Medical Services Branch took over responsibility. During this period the medical staff from the hospital visited the homes of Siksika members on a regular basis. The Public Health Nurse was referred to as the *travelling nurse* by the Siksika Members.

In 1962 the Medical Services Branch introduced the use of Community Health Representatives which trained community members to assist professional medical staff.

### **1965 to 1985**

A Public Health unit was established for the Siksika Nation and operated out of two trailers adjacent to the Siksika Hospital. When the Siksika Hospital was closed in 1976, the public health unit moved to the upper floor of the hospital.

In June of 1977, the Medical Services Branch opened the Siksika Medicine Lodge which replaced the diagnostic functions of the Siksika Hospital. Medical transportation by ambulance was arranged to convey patients in need of hospital care to provincial hospitals in Bassano, Strathmore and Calgary.

The Siksika hospital was demolished in 1980 and the public health unit was transferred to the Medicine Lodge.

### **1985 to Present**

In 1990 the Medicine Lodge was expanded to provide a full service pharmacy and improved services for the dentist and optometrist.

Medical transportation Services were expanded in 1990 to improve access to the medicine lodge for elderly and disabled patients.

In 1991 the Siksika Nation contracted with RLI Consulting to develop a Community Health Plan. During the development of this plan 350 adults and 88 students were surveyed to identify community needs and concerns. This survey formed an integral component of research performed as part of the pre-transfer negotiations between Health and Welfare Canada and the Siksika Nation.

The pre-transfer negotiations are intended to define the future relationship between the Government of Canada and the Siksika Nation. It is anticipated that the Siksika Nation will assume full responsibility for administering health care to the membership within the next five years. However there are a number of issues which must be addressed before any transfer of comprehensive health care will occur.

It was estimated that the Siksika Nation would require approximately \$7,250,000 in transfer payments from the Government of Canada to meet the health care needs of the membership. This did not include approximately \$4,100,000 in non-insured health benefits which the Government of Canada is not prepared to transfer at this time.

Under existing conditions established by Health and Welfare Canada, the Siksika Nation would be entitled to receive less than \$1,700,000 in transfer payments for health care. The balance would remain under the jurisdiction of the Medical Services Branch. Based on these preliminary findings the Siksika Nation has informed Health and Welfare Canada that the transfer of Medical Services must be approached in a more comprehensive manner and has suggested that the Self Government negotiation process might be the most appropriate format for future discussions.

Notwithstanding the current negotiations with Health and Welfare Canada the Siksika Nation has requested that the Government of Canada construct a new medical facility within the next two years. Once this facility is completed the Siksika Nation will include the cost of maintaining this facility, and replacing key components, as part of their transfer agreement with the Government of Canada.

The Siksika Nation is also negotiating with the Province of Alberta for the creation of a Siksika Nation ambulance service. Currently ambulance services are provided by a private contractor based in Gleichen who is reimbursed on a per trip basis by the Medical Services branch. Considering that close to 3,000 members live within Siksika Nation lands, the creation of an autonomous ambulance service is a realistic objective.

### **Summary - Medical Services**

The Siksika Nation has a well established history of providing medical services to the membership. No First Nation in Canada has approached the provision of medical services by a First Nation government in the same fashion as the Siksika Nation. In fact, it could be argued that the Siksika Nation established the first medicare system in Canada back in 1924.

When it is considered that health care is one of the fastest growing areas of expense for the Government of Canada, it seems inconceivable that they would resist negotiating ways to improve the existing system with the Siksika Nation. Under the current insurance styled program, the cost of health care is open ended and very difficult to project. Under the Siksika Nation Global funding approach a predetermined budget for health care would be transferred by the Government of Canada to the Siksika Nation who would assume full responsibility for managing with this budget.

Current negotiations for the transfer of jurisdiction for health care from the Medical Service Branch of Health and Welfare Canada have identified a serious discrepancy between the existing level of services provided to the Siksika Nation and the level of services available in the surrounding communities. The issue of equality must be addressed by the Government of Canada at every level, including the quality of health care.

### **4.2.4 The Provision of Basic Shelter to the Siksika Membership**

#### **1877 - 1945**

Prior to arrival of European explorers in North America, the Plains Indians had developed a very sophisticated form of portable housing based on animal hides and slender support poles. Each family within a tribe owned a teepee and was responsible for repair, maintenance and decoration.

Tribes within the Blackfoot Confederacy were recognized by the elaborate designs painted on their teepees. Many of the designs were passed down from generation to generation and have become a permanent part of Siksika and North American design traditions.

When Treaty 7 was signed in 1877 the members of the Siksika Nation were still living in teepees and were still moving from camp to camp in search of the remaining buffalo. By 1900 the majority of Siksika Nation members had returned to the reservation designated in Treaty 7

and were living in a combination of small wooden shacks and teepees clustered in several distinct communities.

As the number of settlers in Western Canada increased, they introduced the concept of wood framed buildings and the establishment of permanent communities. The buildings of the new arrivals were often heated by iron stoves or fireplaces which were a significant improvement from the open fires which heated the teepees. Even the most traditional members of the Siksika Nation realized that the new houses would be much more comfortable in the winter months. By 1910 there was considerable demand for permanent wood framed housing. It was this demand for wood to construct houses that convinced the federal government to provide the Siksika, Kainai and Peigan Nations with a timber reserve to supply the demand for housing materials.

It is important to note that the population of the Siksika Nation had declined from 2,255 in 1882 to only 726 by 1917. The majority of this decline was traced to tuberculosis which spread rapidly through overcrowded accommodations. In addition to the problem of diseases and overcrowded housing, the Government of Canada decided to reduce the level of rations they had promised to provide to Siksika members when Treaty 7 was signed in 1877. Poor nutrition, poor housing conditions and a lack of natural immunity made it difficult to resist new diseases such as tuberculosis and small pox.

In order to provide new housing and improved rations for Siksika Nation members, the Government of Canada proposed that the Siksika Nation sell over 125,000 acres of the reserve granted in 1879. Clearly the significance of the 1910 land sale was never explained to Siksika Nation members, who had little concept of fee simple land ownership, or what future rights to the land they would lose if the land was sold.

In retrospect, the unjustifiable concept of selling treaty reserve land to generate money for housing, agricultural development and the continuation of food rations, must be viewed as a breach of trust by the Government of Canada. Not only did the federal government representatives cut back on the rations promised as part of Treaty 7, they also offered hungry Siksika members food in exchange for a portion of their reserved lands.

This is a clear example of why the Siksika Nation is attempting to redefine their relationship with the Government of Canada by introducing legally binding legislation to replace the Indian Act and longer term financial transfer arrangements to replace program-based contributions which are changed without proper consultation.

Notwithstanding the legal implications of the 1910 land sale, which is the subject of a specific land claim, related claims research strongly suggests that the majority of the houses constructed on Siksika Lands between 1910 and 1945 were paid for by the Siksika Nation, using revenues from the 1910 land sale, not by the Government of Canada or Canadian taxpayers. While these houses were not substantial, and were inferior to houses being constructed in surrounding communities, they were a marked improvement over the teepee.

### **1945 - 1964**

After World War II the Government of Canada established the Central Mortgage and Housing Corporation and commenced a comprehensive series of housing programs across the country under the National Housing Act. Between 1944 and 1964 the Government of Canada, through CMHC, provided Canadians with:

- in excess of \$2,000,000,000 in loans to construct new housing;
- more than \$75,000,000 in loans for Municipal sewage treatment and community infrastructure projects;
- \$115,000,000 as an investment in joint Federal Provincial social housing projects; and
- \$65,000,000 for the direct purchase of real estate.

Based on a review of files maintained by the Indian Agent for the Blackfoot (Siksika) Reserve, it would appear that the total federal government contribution towards the housing of Siksika members between 1944 and 1964 did not exceed \$250,000. In fact several policy papers circulated by DIAND openly admitted that no attempt was made to provide members of First Nations with a comparable quality of housing to that received by other Canadians between 1945 and 1965.

In addition to programs offered through CMHC, the federal government provided considerable assistance to veterans of WW II in the form of land and access to low interest loans. Owing to a narrow interpretation of the Indian Act, members of the Siksika Nation who served their country in WW II were specifically excluded from receiving any form of assistance for housing from the Department of Veterans Affairs or through the Veterans Lands Act. This is a direct example of outright racism, bureaucratic mismanagement, Treasury Board stinginess, and exclusion as practised by the federal government against the Siksika Nation contrary to the understandings under Treaty 7.

### **1964 - 1973**

In June 1964 the National Housing Act was substantially amended to authorize CMHC to provide a greater level of assistance to provincial and municipal governments. The federal government, through CMHC, could provide a province, or a municipal housing authority, with loans covering 90% of housing projects and could agree to adsorb 50% of operating losses for the life of the project.



Between 1964 and 1973 CMHC provided loans of more than \$1,400,000,000 to provincial/municipal housing authorities for the construction of 106,000 social housing units and 1000 hostel units. In addition to construction loans CMHC provided these authorities with more than \$165,000,000 in annual operating subsidies for these units. It should also be noted that the loss of federal government income resulting from loaning funds at below market rates was estimated at more than \$50,000,000 during this period.

CMHC also entered into a number of federal/provincial agreements which provided provincial governments with 75% of the capital cost of social housing in the form of a grant and offered to adsorb 75% of the operating losses for the life of the project. The remaining cost of constructing and operating social housing projects was generally shared between the provincial government and the municipality where the project was constructed.

Between 1964 and 1973 CMHC provided provincial governments with grants of \$308,000,000 to subsidize construction of 26,367 units of social housing. In addition to construction grants CMHC provided an additional \$60,000,000 as their share of annual operating subsidies. The loss of federal government income related to this grant program and operating subsidies would have exceeded \$100,000,000 over this period.

Social housing units were also provided through direct loans to not-for-profit housing corporations and to private entrepreneurs who agreed to limit their rate of return in exchange for CMHC loans at preferential rates (often 2%/annum below market). CMHC provided 95% of the capital cost through an insured loan in the rents for the project were targeted for lower income families or individuals.

Between 1964 and 1973 CMHC provided not-for-profit companies with loans of \$491,500,000 to assist with construction of 22,350 rental units and 39,800 units of hostel accommodation. Between 1969 and 1973 CMHC provided private entrepreneurs with loans of \$660,000,000 to assist with construction of 52,000 rental units and 948 units of hostel accommodation. Included in this total was \$4,800,000 loaned to First Nations for the construction of 411 single detached houses.

CMHC provided \$1,152,500,000 in loans at preferential interest rates for the construction of 74,350 rental units and 40,750 units of hostel accommodation. The lost opportunity for the federal government on the spread between market rates and rates offered to construct rental housing would have exceeded \$100,000,000 over this period.

CMHC was directly involved in the construction of 206,717 socially oriented rental housing units and 41,750 hostel units between 1964 and 1973. CMHC provided loans of \$2,554,100,000 at preferential interest rates, grants of \$533,000,000 for construction and operating subsidies, and lost more than \$250,000,000 in revenue that could have been earned from the loans and grants at market rates.

#### **4.2.4 (a) On-Reserve Social Housing Programs**

In 1964 the federal government also introduced a new program to support social housing within First Nation lands. This program, administered through Indian and Northern Affairs Canada, was based on capital subsidies for new housing and limited assistance for minor repairs to existing housing. Initially the assistance provided was based on a maximum grant of \$7,000/house, plus transportation. This assistance gradually increased to a maximum of \$23,000/house, plus transportation, by 1985. That level of assistance remains at the same level today.

The most important difference between the range of CMHC social housing programs outlined above and the program administered by DIAND was the refusal of DIAND to provide any form of subsidy for operating losses. For some reason the federal government decided that the provision of a small contribution towards the cost of construction eliminated any obligation they might have for the ongoing maintenance of the unit, or for contributing to the cost of financing the balance of construction costs.

In 1966 alone, CMHC provided over \$526,000,000 in direct loans and over \$100,000,000 in grants for construction of lower income housing under Federal Provincial Agreements. When DIAND was established in 1966 they introduced a housing subsidy program which offered a maximum grant of \$7000-8500 per unit for a limited number of units. The total budget for social housing appropriated by DIAND in 1966/67 was less than \$40,000,000. The total subsidy offered to the Siksika Nation in 1966/67 was \$110,000 which supported the construction of eight houses.

In 1966/67 the federal government did not provide the Siksika Nation with a single dollar to assist in covering the cost of operating over 100 units of housing occupied by families whose only source of income was social assistance.

Under the DIAND housing program introduced in 1966, the Minister agreed to provide a guarantee, against First Nation trust accounts, for all direct loans negotiated with CMHC. At the same time, the Minister categorically refused to accept any portion of the operating losses of social housing constructed with CMHC loans.

While the provincial and municipal housing authorities were building tens of thousands of new units for lower income families with federal government money, and absorbing up to 75% of the operating losses, the Siksika Nation was offered a maximum grant of \$7,500/unit, a CMHC loan guaranteed with their own money, and absolutely no share of *operating and maintenance* funding or replacement reserves for social housing units.

It is important to note that over 85% of the labour force living within Siksika lands in 1966 was unemployed for most of the year. If the reserve boundary had not existed, the large majority of these families would have been offered subsidized housing by provincial or

municipal housing authorities using capital funding and operating subsidies provided by the federal government.

In 1966 the only social housing units in Canada which did not receive any level of operating subsidies from the federal government were those located within lands occupied by First Nations.

By 1973 DIAND had increased the grant available to First Nations to a maximum of \$10,000 per unit but still refused to provide any portion of the operating losses for lower income housing.

It should be noted that in 1973 CMHC provided Canadians with:

- direct loans in excess of \$625,000,000;
- \$18,000,000 for the direct purchase of real estate;
- \$47,000,000 for construction of Federal Provincial projects; and
- \$130,000,000 to cover operating losses from subsidized housing projects.

It is also important to note that not a single penny of the above \$820,000,000 investment by CMHC benefitted a single on-reserve member of the Siksika Nation. In fact, the Siksika Nation was required to invest hundreds of thousands of dollars of its own money to cover the balance of funds required to construct and maintain the social housing portfolio.

During the 1972/73 fiscal year the Siksika Nation agreed to borrow funding from CMHC to construct 39 new houses under section 59 of the NHA. Unfortunately the federal government did not offer to provide the Siksika Nation with any share of the operating losses arising from repair, maintenance and debt service of these units. Apparently CMHC and DIAND concluded that the Siksika Nation could generate sufficient revenues from rent and INAC grants to cover the operating costs of this project. Unfortunately, their conclusion was not only erroneous but extremely discriminatory to the Siksika Nation.

If we compare how the federal government funded the construction of social housing projects outside of Indian Reserve boundaries (NHA Sections 15, 15.1, 34.1 34.15, 34.18, 40, 42, 43, 44, 47, 55) to how projects were funded on Indian Reserve (NHA section 59) the only conclusion that can be drawn is that the federal government must have had some political or economic reason to restrict the ability of First Nations to access conventional programs.

The only reason to deliberately restrict First Nations' access to conventional housing programs would be to save the Government of Canada millions of dollars each year in operating subsidies or to discourage the construction of new social housing projects on reserve lands.

From a constitutional and treaty standpoint, our research indicates that the introduction of a non-subsidized loan program by CMHC and DIAND in 1972/73 was not only misdirected but represented a serious breach in the fiduciary responsibility of the federal government. This statement is supported by an examination of the following facts:

- (a) There are no constitutional provisions for direct federal government involvement in low income housing. Social housing is clearly defined as an area of provincial government jurisdiction under section 92 of Constitution Act, 1867.
- (b) Section 91 (24) of the Constitution Act, 1867, gives the federal government legislative responsibility for Indians and land reserved for the said Indians. Social housing for First Nations is clearly defined as an area of federal government jurisdiction and responsibility not only under the Canadian constitution but also under the Indian treaties such as Treaty 7.
- (c) CMHC, a crown corporation, provided provincial and municipal governments with up to 90% of the cost of constructing lower income housing projects and agreed to cover up to 75% of the operating losses from all lower income housing projects.
- (d) DIAND, a federal department, provided First Nations with small subsidies for construction but refused to offer a single dollar to subsidize operating losses for lower income housing projects constructed on Indian reserves.
- (e) First Nations have been required to subsidize the construction and maintenance of social housing units and have never been compensated for the lost opportunity of investment related to their contribution.

Clearly there was a double standard in effect which severely restricted a First Nation's access to funding for social housing. We can only guess why the federal government insisted on this double standard but we have ample evidence of the shameful results.

### **1974 - 1983**

The Government of Canada through CMHC expanded its involvement in social housing between 1974 and 1983:

- A total of \$1,802,000,000 was invested for the construction of 70,781 public housing units;
- A total of \$1,400,000,000 was invested in the construction of 155,000 non-profit rental units and 15,000 hostel units;
- A total of \$430,000,000 was invested in the construction of 15,000 units of rural and native housing outside reserve lands; and

-A total of \$3,000,000,000 was paid out in subsidies for low rental housing.

This represents a total investment of \$6,632,000,000 over ten years plus approximately \$500,000,000 in lost investment opportunity related to the grants and reduced interest loans.

The actual investment by the Government of Canada in subsidizing social housing across Canada between 1974 and 1983 exceeded \$7,130,000,000. Over the same period of time CMHC invested less than \$60,000,000 in the construction of social housing units within First Nation reserves.

It should also be noted that CMHC also made substantial investments in other housing assistance programs between 1974 and 1983:

- A total of \$210,000,000 in grants related to the Assisted Home Ownership Program (AHOP);

- A total of \$170,000,000 in grants related to the Assisted Rental Programs;

- A total of \$700,000,000 in grants related to the Canadian Home ownership Stimulation Plan and First Time Home owner Grants;

- A total of \$840,000,000 in grants related to the Residential Rehabilitation and Assistance Program;

- A total of \$440,000,000 in grants related to the Canada Home Renovation Plan;

- A total of \$200,000,000 in grants related to the Neighbourhood Improvement Program;

- A total of \$653,000,000 in grants to municipalities to encourage higher density housing and for sewage treatment projects; and

- A total of \$400,000,000 in grants related to the Community Services Contribution Program.

This total represents an additional \$3,600,000,000 in grants over and above the \$3,000,000,000 in grants related to social housing. In conservative terms, it can be stated that the Government of Canada, through CMHC, spent \$6,600,000,000 in direct grants and subsidies, invested \$3,630,000,000 in reduced interest loans and surrendered over \$750,000,000 in potential income by offering loans at preferred interest rates.

The Siksika Nation is of the opinion that a contribution of \$7,350,000,000 towards a sector of the economy where the Government of Canada has no constitutional authority is very generous.

It is unfortunate that this generosity did not extend to First Nations, particularly the Siksika Nation.

As a point of comparison, the Government of Canada, through INAC, provided the Siksika Nation with a total contribution of less than \$100,000 in 1974 which was used to subsidize the construction of 8 new houses. In 1977, the subsidy per unit was increased from \$10,000 to \$12,000 which increased the annual funding provided to Siksika to \$120,000. In 1980 the subsidy per unit was increased to \$18,000 which increased the annual funding to \$180,000.

It is very clear from a review of the debate between the National Indian Brotherhood and INAC between 1974 and 1977 that the Government of Canada did not view social housing as part of its constitutional responsibility for Indians under the Constitution Act of 1867. More importantly, it deliberately avoided any reference to decent housing as a right extending from the treaties signed with First Nations.

In 1979 Bill C-29 of the National Housing Act finally permitted First Nations to have access to most CMHC programs. Unfortunately First Nations were not allowed to access the public housing sections of the NHA and as a result could not access operating subsidies. In 1979 the Siksika Nation borrowed \$600,000 from CMHC to assist in the construction of 25 houses. While INAC realized that many of these houses were occupied by families on social assistance, they did not offer to provide the annual operating subsidies offered to provincial housing authorities by CMHC.

In 1983, Parliament finally increased the INAC capital budget for housing to \$92,900,000 as a base budget and provided \$40,000,000 as a one time contribution to address the significant demand for additional housing. The Siksika share of this appropriation was less than \$700,000.

It is worth noting that the total contribution made by the Government of Canada to the Siksika Nation, through INAC, between 1974 and 1983 was less than \$1,850,000. It is also worth noting that the CMHC loan to the Siksika Nation was guaranteed by the Minister of Indian Affairs using the Siksika Nation resources as collateral. The Siksika Nation is currently responsible for meeting the total annual debt service for this loan even though 14 of the units are occupied by families on social assistance.

### **1984 to present**

In 1983/1984 the Government of Canada expanded its involvement in supplying social housing for members of Canada's First Nations through two new initiatives. The first was the Urban Native Housing Program which provided people of native ancestry who lived in urban areas with access to the existing non-profit housing program. Under this program the Government of Canada and the provincial governments agreed to provide additional subsidies to assure that tenants paid no more than 25% of their income in rent.

The second initiative involved an allocation of subsidized non-profit units to INAC who would coordinate access to the units by First Nations across Canada. While this initiative did not include additional subsidies from the provincial governments, INAC agreed to pay a fair

market rent for all units occupied by families who were receiving social assistance. For the first time since social housing programs were introduced in 1946, First Nations, including the Siksika Nation, would be receiving funding to offset the cost of operating, maintaining and replacing their social housing portfolio.

The Siksika Nation expressed a concern that the on-reserve program did not appear as comprehensive as the rural and native housing programs, which included incentives for home ownership, and the urban native programs, which provided additional subsidies to lower income tenants. Under the on-reserve program administered by INAC the only means of establishing viability for a non profit project was to include a sufficient number of families who were eligible for social assistance. Without rental income through the social assistance program few non-profit projects would be viable unless the Siksika Nation contributed additional equity to reduce debt service charges.

Between 1984 and 1992 the Government of Canada subsidized the construction of 147,500 social housing units under the non-profit and cooperative housing programs of the National Housing Act. An additional 22,000 social housing units were subsidized under the rent supplement program. The breakdown is as follows:

Non-profit and Co-op units	110,990	65.5%
Rent Supplement units	22,000	13.0%
Rural and Native (off Reserve)	15,265	9.0%
Urban Native (off Reserve)	8,810	5.2%
On Reserve (through INAC)	<u>12,351</u>	<u>7.3%</u>
TOTAL:	<u>169,416</u>	<u>100.0%</u>

While it is clear that the Government of Canada has substantially adjusted its emphasis to address the housing conditions of Canadians who trace their ancestry to the First Nations, it must be remembered that from 1946 until 1983 this sector of the housing market was all but ignored.

In order to support the wide range of social housing programs initiated since 1946 the Government of Canada was required to contribute \$11,500,000,000 in grants and subsidies through CMHC.

	<u>\$ millions</u>	
Rent Supplement/Assisted Rental	\$500.0	4.4%
Public Housing/Provinces	\$4,442.0	38.6%
Non Profit/Cooperatives	\$5,200.0	45.2%
Rural and Native	\$808.0	7.0%
Urban Native	\$200.0	1.8%
On Reserve Non Profit	<u>\$350.0</u>	<u>3.0%</u>
TOTAL:	<u>\$11,500.0</u>	<u>100.0%</u>

The above does not include support for market housing, RRAP, home owners' grants, etc. Treasury Board stinginess is evident even when \$950,000,000. in capital funding provided by the Government of Canada through INAC between 1984 and 1992, to support the construction of social housing within First Nation lands, is included. The total investment by the Government of Canada is only \$1,300,000,000. or 10.4 % of the total grants and subsidies provided to support social housing across Canada.

In the 20 year period from 1972 until 1992 the Government of Canada contributed over \$20,000,000,000 to support housing and infrastructure programs across Canada. Less than 10% of this total investment was related to construction of social housing within First Nation lands.

In the 1993/1994 fiscal year the Siksika Nation will receive \$687,000 in grants for housing capital from INAC, \$335,000 in grants to cover the rental payments for families eligible for social assistance and approximately \$400,000 in subsidies from CMHC for 129 non-profit units. Of this total, approximately \$500,000 is required as an equity contribution for the construction of new houses, and \$200,000 relates to subsidies for units occupied by working families. That leaves a balance of \$735,000 to cover the debt service, operation, maintenance and repair of over 390 social housing units.

When expressed on a monthly basis, the Government of Canada is currently providing an average of \$157.00/month to cover all cost related to maintenance of 390 units of housing occupied by families eligible to receive social assistance. INAC officials in the Alberta regional office have confirmed that single detached units, averaging 1,100 sq ft. in size, require a minimum of \$400.00/month to meet all management obligations. The current shortfall of \$242.00 per month for 390 units, or \$1,135,000 annually, is being met by the Siksika Nation.



It is important to note that the subsidy provided by CMHC is used to reduce the effective interest rate from market value to 2% per annum. Although CMHC provides the subsidy based on the market value of the project, the majority of the CMHC subsidy is used to cover loan payments to financial institutions. As interest rates decline, the CMHC subsidy also declines. Even though debt service cost will also decline, the need for revenues from other sources, e.g. social assistance, will increase as mortgages are renewed at lower interest rates.

In addition to the 390 units of social housing, there are 120 units occupied by families who do not earn \$20,000 per year. If the Siksika reserve boundary did not exist, the Government of Canada would provide an additional subsidy to make up the difference between \$400 and 25% of the tenants' monthly income.

*Over the past twenty years the Siksika Nation has provided the Government of Canada with a direct subsidy of more than \$12,000,000. If the Siksika reserve boundary had never existed, the Government of Canada and the Province of Alberta would have been required to provide the \$12,000,000 paid by the Siksika Nation as subsidies through CMHC. The Siksika Nation feels the Royal Commission on Aboriginal Peoples should be made aware of which Government is actually subsidizing social housing within Siksika lands.*

It is important to note that housing capital funding provided by INAC to the Siksika Nation has remained constant at \$687,000 since 1986. During this same period the level of subsidies provided to other housing corporations and authorities has increased by more than 40%. The Siksika Nation has increased its total housing stock by 160 units since 1983. Of this total increase, 92 units are currently occupied by families eligible to receive social assistance.

### **Summary - Social Housing**

The Siksika Nation has examined the full extent of investment by the Government of Canada to illustrate that housing has been used to stimulate the Canadian economy. The obligations of the Government of Canada as they are defined in Section 91 (24) of the Constitution Act took a back seat to the political aspects of stimulating growth through direct investment in housing.

Research completed by the Siksika Nation has revealed that First Nations in general, and the Siksika Nation specifically, received substantially less assistance from the Government of Canada than other jurisdictions. The most serious aspect of this double standard is the refusal of INAC or CMHC to contribute to the cost of operating and maintaining social housing units constructed prior to 1984. *In the case of the Siksika Nation, this discriminatory policy is saving the Government of Canada over \$1,200,000 per year.*

Beginning in 1911, the successive governments of the Siksika Nation have exercised full jurisdiction for the provision of housing for their membership. The Government of Canada

did not even address the issue of social housing within First Nation lands until 1966, although CMHC had been providing funding to provincial governments since 1946.

Between 1946 and 1985 the Siksika Nation was required to pay all costs related to the repair and maintenance of housing for families who required income support payments. In addition, the Siksika Nation was required to provide the balance of capital funding over and above the INAC grant. The net result was that it was the Siksika Nation that funded the majority of costs related to social housing, not the Government of Canada. The net loss to the Siksika Nation economy resulting from their direct involvement in social housing exceeded \$25,000,000 over this forty year period.

Until current policies of the Government of Canada are rectified, the Siksika Nation will be forced to spend close to \$1,500,000 per year in the maintenance and construction of social housing while housing authorities in other jurisdictions continue to receive substantial subsidies from the Government of Canada.

The final point which should be mentioned is that the value of property in communities surrounding Siksika lands has increased by more than 40% since 1983 and by more than 600% since 1946. The only Canadian citizens which have been excluded from realizing the benefits of escalating land values are members of First Nations living within First Nation lands since the lands are inalienable. If it were possible to factor out the impact of escalating land values on the net worth of most Canadians, it would dramatically illustrate why the standard of living within most First Nation communities is substantially lower than the Canadian average.

#### **4.2.5 Overview of Siksika Nation Government Functions**

The intent of analyzing specific government functions in considerable detail is to establish a firm foundation for the claim that Siksika Nation Government is not a creation of the Government of Canada but an extension of the inherent rights of the Siksika Nation membership. The Government of Canada may have established rules and regulations that affected the Siksika Nation membership, but they have never been recognized as the legitimate government for the Siksika Nation.

It would have been possible to describe every function of government in detail and to identify the full extent of the shortfall in transfer payments to the Siksika Nation based on comparable programs offered to other jurisdictions over the past 100 years. However the Siksika Nation is more concerned with the development of positive recommendations for the future than with a complete summary of past sins.

The importance of the historical review is to substantiate the continuous existence of Siksika Nation government from pre-contact until the present. The Department of Indian Affairs and the churches certainly influenced how Siksika Nation government functioned over the past 200 years. However, the membership continued to rely on their traditional leaders to meet their needs and to maintain Siksika traditions.

Research has also revealed that the Siksika Nation has consistently interpreted Treaty 7 with the Government of Canada in broad political, social and economic terms. English was not a language that Siksika Nation members understood in 1877, so the only way to evaluate the intent of the Treaty is by examining how both parties behaved after the Treaty was signed. Clearly, the Government of Canada recognized obligations to the Siksika Nation which were either defined in the Treaty or in the negotiations which preceded and followed the signing of Treaty 7. These obligations are at the root of every initiative developed by the Siksika Nation, including the negotiations for approval of the Siksika Nation Government Act.

The Siksika Nation has a very strong bond with the Government of Canada and is concerned that section 92 of the Constitution Act is taking precedence over section 91 (24). Responsibility for the well-being and interests of the Siksika Nation membership, e.g., income support, education, support for housing, child welfare and health care, should never be transferred to the Province of Alberta without consent of the Siksika Nation membership.

In recent months the Government of Canada has expressed the opinion that it is no longer responsible for looking after the interests of Siksika Nation members living outside of Siksika lands. The Siksika Nation, on the other hand, is insisting that obligations under the Royal Proclamation (1763), section 91 (24) of the Constitution Act (1867), and Treaty 7 of 1877, bind the Government of Canada to the membership of the Siksika Nation regardless of where they may choose to live.

The current political environment in Canada is very confusing. Regional interests are taking priority over national interests and as a result the elaboration of aboriginal and treaty rights within the Canadian Constitution has been placed on the back burner. Without any clear evidence of national support for Treaty issues, the Siksika Nation has elected to proceed with its own agenda and to negotiate the implementation of the Siksika Nation Government Act pursuant to Treaty 7. (Limited by the federal government's willingness to cooperate.)

The following chapter outlines the extent of recent Siksika governance initiatives and identifies the major areas where policies or legislation of the Government of Canada run at cross purposes to the objectives defined by the Siksika Nation members.

## V RECENT SIKSIKA NATION GOVERNANCE INITIATIVES (1985 - 1993)

### 5.1 Siksika Government in Transition

The detailed analysis of specific government functions illustrated quite clearly that the Government of Canada has not addressed the actual needs of the Siksika Nation membership. Responsibility for responding to the needs of Siksika Nation members has been accomplished by a series of community-based government initiatives operating within the confines of external government legislation

One of the unfortunate consequences of having to assume responsibility while operating under legislation developed by the Government of Canada is that the level of financial transfer payments for specific functions seldom meets the actual needs of the First Nation Governments who perform the functions. It is clear that most programs offered to First Nations through INAC were never funded on the basis of community needs but on the basis of an *equitable* distribution of INAC funding across Canada.

The Siksika Nation analysis of four key functions of government has uncovered several interesting features:

- (i) The existing level of funding provided by the Government of Canada is not adequate to meet the needs of most communities;
- (ii) The Government of Canada often provides a higher level of financial assistance to other jurisdictions;
- (iii) First Nation Governments are often restricted from accessing well funded development programs offered by the Government of Canada to other jurisdictions;
- (iv) The Siksika Nation has been required to spend millions of dollars of its scarce financial resources to address the needs of the membership when other jurisdictions are receiving transfer payments from the Government of Canada to address similar needs of their constituents; and
- (v) The Government of Canada's responsibilities and obligations, as they relate to funding Siksika Nation government, are founded on well established agreements with the British Crown.

The Siksika Nation has realized that it does not have access to sufficient resources to meet the social and economic needs of the membership. In order to address this important issue, the Siksika are attempting to redefine their relationship with the Government of Canada and to clarify the extent of financial support which will accompany this government-to-government relationship. One thing is certain: the Government of Canada has a fiduciary responsibility to the Siksika Nation which cannot be fulfilled under the existing terms of the Indian Act.

The Siksika Nation has never been content with the restrictive aspects of the Indian Act and has a lengthy history of trying to improve their relationship with the Government of Canada. During the past ten years the Siksika Nation has introduced a number of initiatives designed to improve working relationships with external governments. These initiatives include:

#### **5.1.1 Child Welfare Agreements (1972) (1985) (1986) (1992)**

The Siksika Nation pioneered the concept of a community-based Child Welfare Program in 1972. In recent years programs based on the Siksika model have been introduced within First Nations across Canada. The Master and Subsidiary Agreements with the Government of Canada and the Province of Alberta were amended in 1992, although the Siksika Nation remains concerned with the role of the Province of Alberta for children living outside of Siksika lands.

#### **5.1.2 Self Government Evaluation (1987)**

The Siksika conducted a thorough review of Self-Government objectives and evaluation of existing models implemented by other First Nations and aboriginal groups.

#### **5.1.3 Alternative Funding Arrangement (1989)**

The Siksika Nation was the first First Nation in Alberta to enter into an Alternative Funding Arrangement with INAC. Under this agreement the Siksika Nation agreed to accept predetermined levels of funding for the delivery of basic government services and to meet specified performance standards. The most significant features of the AFA agreement were:

- (i) the ability to redirect funding from income support to employment subsidies;
- (ii) the ability to accelerate cash flow to meet actual budget requirements;
- (iii) the ability to retain surplus in one area and redirect funding to other community priorities;
- (iv) the change in accountability from the Government of Canada to the membership of the Siksika Nation; and
- (v) the introduction of a five year budget projection.

#### **5.1.4 Indian Taxation Advisory Board and Taxation Legislation (1990)**

With so many third party interests in Siksika Lands, the Siksika Nation felt it was imperative to clarify the value of these interests in terms of lost potential. Using by-laws developed by other First Nations across Canada for reference, and working closely with the Indian Taxation Advisory Board, the Siksika Nation developed and approved a taxation by-law in 1990.

The intent of this by-law was for the Siksika Nation to occupy the jurisdiction relating to taxation so that the Province of Alberta could not use Section 88 of the Indian Act to exact tax revenue from commercial interests located within Siksika lands. In 1993 the Siksika Nation realized \$100,000 in revenue from taxes assessed to non-Indian interests using Siksika lands.

### **5.1.5 Comprehensive Education (1990-1993)**

Due to the specific wording relating to education with Treaty 7, the Siksika Nation has been very cautious about accepting additional responsibility for education from the Government of Canada. The Siksika Nation has stated that education is an ongoing process which does not begin at age five and end at age eighteen. In recent years emphasis has been shifted to provide additional programs for adults who require upgrading prior to vocational training.

The Siksika Nation introduced the concept of combining social assistance, educational allowances and unemployment insurance to provide a comprehensive long term strategy for Siksika adults who are currently unemployed.

It is hoped that construction of a new high school in 1995 and expansion of Old Sun Community College over the next five years will enable the Siksika Nation to provide close to 80% of the total educational needs of the community within Siksika lands

### **5.1.6 Framework Agreement for Self Government Negotiations (1991)**

The Siksika developed an agreement to define the scope of negotiations for development of Siksika Nation-based legislation to replace the Indian Act.

### **5.1.7 Medical Services Pre-Transfer Negotiations (1992)**

The Siksika Nation and the Medical Services Branch of Health and Welfare Canada have entered into negotiations to evaluate the health-related needs of the Siksika membership and to develop a format for transferring additional responsibility and funding to the Siksika Nation.

The first phase was completed in June 1993 and an agreement for the second phase should be reached by January 1994. The objective is to offer a more comprehensive and wholistic form of health care which incorporates Siksika cultural traditions and family values.

### **5.1.8 Tri-Partite Agreement for Law Enforcement (1992)**

The Siksika Nation, the Solicitor General's Office and the Province of Alberta have entered into an agreement to establish a fully autonomous police force on the Siksika Nation by 1994. The RCMP have agreed to complement this agreement through the assignment of three constables to assist in the training of Siksika members prior to acceptance of full autonomy.

### **5.1.9 Evaluation of First Nations Chartered Land Act (1992/93)**

The Siksika Nation recognizes that the existing provisions of the Indian Act impose upon the jurisdiction of the Siksika Nation Chief and Council in the area of land management and resource development. In order to assist their efforts at developing an alternative to the Indian Act, the Siksika Nation participated in a number of working sessions related to development of a First Nations Chartered Land Act.

Once the preliminary drafts were completed, the Siksika Nation realized that the majority of the proposed legislation dealt with the protection of property rights granted through individual certificates of possession (C.P.s). Several clauses within the optional FNCLA were incorporated within the Principles of Mutual Understanding for the Management of Land and Natural Resources under the C.B.S.G. negotiations process. At this time the Siksika Nation does not intend to present the optional FNCLA to their membership for consideration because Chief and Council does not allow C.P.s.

### **5.1.9(a) Assumption of Additional Responsibility Under Sections 53 & 60**

The Siksika Nation has been negotiating for the assumption of additional responsibility under Section 53 & 60 of the Indian Act. It is anticipated that the referendum will be completed in 1994 and that INAC will increase funding for land management to a minimum of \$250,000 per year by April 1994.

### **5.1.10 Correctional Services (1993)**

The Siksika Nation has entered into an agreement with the Province of Alberta to assume a greater level of responsibility in the provision of counselling and legal services to Siksika members appearing before Provincial courts or incarcerated in Provincial institutions. This new agreement will involve the redirection of funding from Native Counselling Services of Alberta to the Siksika Nation and is scheduled to commence April 1, 1994. The Siksika Nation has also approached the Alberta Law Foundation with a request for funding to evaluate alternative forms of justice and correctional services.

### **5.1.11 Community Based Self-Government Negotiations Process (1993)**

Based on the Framework Agreement, the Siksika Nation and the Government of Canada are currently negotiating the development of the Siksika Nation Government Act. This Act will define the legal status and capacity of the Siksika Nation and will provide the basis for

a new form of Financial Transfer Agreement between the Siksika Nation and the Government of Canada.

#### **5.1.12 Memorandum of Understanding with the Province Of Alberta (1993)**

The Government of Canada has stated quite clearly that it is no longer responsible for funding as it relates to Siksika members living outside of Siksika lands. Citing section 92 of the Constitution Act, the Government of Canada has entered into financial agreements with the provincial governments which include funding for Siksika members living outside of Siksika lands.

In order to assume jurisdiction for all Siksika members regardless of their place of residence, the Siksika Nation will be required to negotiate financial transfer agreements with the Province of Alberta. The first step in this negotiation process was to establish a formal working relationship with provincial officials through a Memorandum of Understanding. The Agreement was signed by Chief Strater Crowfoot and Premier Ralph Klein on October 5, 1993.

#### **5.1.13 Protocol Agreement with the Alberta Regional Office of INAC (1993)**

The Siksika Nation has established a formal process to discuss government issues which fall within the mandate of INAC under the terms of the Indian Act and other legislation. Under the protocol agreement the Chief of the Siksika Nation, Councillors and administrative staff will meet on a regular basis with the Director General of the Alberta Region of INAC and representatives of his staff. The majority of issues referred to these protocol meetings will relate to the fiduciary responsibility of the Government of Canada.

The most significant initiative relates to development of the Siksika Nation Government Act and the negotiation of a number of Principles of Mutual Understanding (PMU). These PMUs will clarify the legal status, capacity and jurisdiction that will be assumed by Siksika Nation government under the Siksika Nation Government Act.

While the legal aspects of the PMUs are clearly defined within Chapter VII (The Restoration of Legal Status and Capacity to the Siksika Nation Government), the financial obligations relating to each PMU are much less clear at this time. The Siksika Nation feels that it is important for the Royal Commission on Aboriginal Peoples to understand the basis of Siksika Nation requests for financial assistance from the Government of Canada. It is for this reason that the financial implications of each PMU have been included within the *Siksika Nation Governance Case Study*.



## **VI REVITALIZATION: RESTRUCTURING THE SIKSIKA ADMINISTRATION IN PREPARATION FOR SELF-GOVERNMENT.**

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### **6.1 GOVERNANCE PROCESSES**

The Siksika Nation Governance Initiative is formulating legislative frameworks that will assist First Nations in their public administrative and finance capacities. Governance is all encompassing as it provides a framework for all the sectoral initiatives that are now being embarked upon e.g. lands, taxation and the boards presupposed by them. In addition, where the sectorial initiatives only provide particular concepts, Governance's holistic approach provides an exhaustive treatment of central concepts such as *legal status and capacity* and *accountability* that are presupposed by the constitutional, self-government and sectoral initiatives.

#### **6.1.2 Presuppositions of the Siksika Nation Governance Initiatives(As listed below.)**

##### **6.1.2 (a) Legislation that is created under the Governance Initiative must:**

- (i) be optional or at the discretion of individual First Nations;
- (ii) be initiated by individual First Nations;
- (iii) be non-prejudicial to the aboriginal/treaty rights (land claims, self government, etc.) and their processes and recognition in the Constitution;
- (iv) be non-prejudicial to the Crown-Indian relationship (e.g. the fiduciary duty of the Crown to First Nations and their citizens);
- (v) promote jurisdictions for First Nations in the areas of land, laws and government;
- (vi) promote public administrative and finance structures for First Nations regardless of their being under the Indian Act, A.F.A or self-government legislation.

(b)The Indian Act, its regulations and DIAND policy fall short of providing guidelines for the administration of First Nation governments in Canada.

(c)The Siksika Nation Governance Initiative springs from the right to First Nation government as found in aboriginal and treaty rights.

(d)The Siksika Nation Governance Initiative examines and creates mechanisms and processes for workable First Nation government.

(e)The issues on which this initiative centres are the *legal status* (recognized relationship to membership and other governments) and *capacities* (powers) of First Nation government, *selection process* of First Nation leadership and *accountability*.

(f)The Siksika Nation Governance initiative dovetails and, more importantly, underpins those initiatives that attempt to achieve constitutional recognition of First Nation government and those initiatives that attempt to create sectoral legislation and

boards. The initiative provides public administrative and finance mechanisms and processes that are presupposed by all other initiatives.

(g) The approach taken by the Siksika Nation Governance Initiative provides a framework that facilitates a "pro-active, from-the-ground-up approach" whereby the community, by use of customs and traditions, constructs mechanisms that are custom-made to its needs.

(h) The mechanisms and processes would be created by legislative packages specific to the First Nation in question.

**6.1.3** Several categories of legislation are proposed by the Siksika Nation Governance Initiative with respect to implementing First Nation Government as follows:

(a) A First Nation Governance Recognition Act, passed by the House of Commons and the Senate, which would empower First Nations to write their own legislation within the window of jurisdiction sketched out in the Act. This legislation would create a Governance Board that would implement the Act.

(b) A First Nation Government Act which should be drafted by the First Nations. This piece of legislation would structure the plenary jurisdictions and powers of the First Nation in the way that is consistent with the particular cultures and traditions of the First Nation.

(c) Sectoral legislation such as land, taxation, forestry acts under the First Nation Government Act would provide detail to the administration of Siksika Nation.

(d) Central to the legislation is financial legislation: financial arrangements (federal transfer payments), financial administration, financial powers and accountability.

#### **6.1.4 The First Nation Finance Act:**

The First Nation Finance Act structures the public finance of a First Nation government along the lines of other local or provincial governments. This entails provisions for transfer payments, revenue generation mechanisms (taxation), and debt financing. A First Nation will not be placed into receivership or bankruptcy, due to protection built into the financial systems under the Siksika Government Financial Arrangements Act.

The conceptual approach to drafting the financial administration legislation is determined by several diverse factors which, taken together, fulfils Siksika Nation's present needs as to managing public moneys (under the Indian Act), addresses existing problems (how to better serve its membership) and meets the demands of the future

(a self-governing First Nation). The Siksika Governance Initiative draft legislation turns on three primary concerns:

- (a) **Legal status (recognition of relationships) and capacities (powers) of First Nation government:** It is a pre-supposition of the initiative that a unique government structure be created which supplants the Indian Act model that gives municipal powers to First Nation government. The justification for this position is that First Nation governments have a unique relationship with the Crown stemming from treaty and aboriginal rights. The aim here is to devise a formally recognized government which is not a delegate of the federal government.
- (b) **Accountability of leadership:** The direction taken here is internal accountability to the First Nation membership with less emphasis on accountability to the federal government. The rationale is that the fiduciary duty is owed to the electors and not another level of government. The mechanisms that must be developed are financial, resource and performance accountability, codes of ethics, conflict of interest guidelines, procedures, rules and responsibilities of the government.
- (c) **The definition and preservation of the traditional role of the Tribal Management Coordinator (T.M.C.):** This position serves as the chief administrative officer (likened to the Clerk of the Privy Council). This official is central to implementing the legislative wishes of Council and coordinating all activities of the service units and agencies of Siksika Nation. The by-law takes the opportunity to define and to give power to the T.M.C. by making that person the Treasurer. The treasurer is responsible for the budget, liaising with the unit managers and the membership, receiving revenue and disbursing of moneys, and monitoring the use of public money, human and material resources.

#### **6.1.5 The Terms of Reference Re: Accountability Legislation:**

The terms of reference for structuring the central mechanisms of accountability legislation for First Nation governments are as follows:

- (a) **Public interest requires the recruitment to public office of highly qualified individuals from diverse backgrounds to participate in the public affairs and public administration of First Nation governments.**
- (b) **Such office holders should carry out their official duties and arrange their private affairs in a manner that conserves and enhances public trust and confidence in government.**
- (c) **After their period of public service, such office holders should be able to return to fulfilling employment within their community at large.**
- (d) **The actions of former office holders should be cashed out in the probity and impartiality of**

the public policy process.

(e) It is essential that the above factors be considered in the establishment of the best means to guide the conduct of such office holders during and after their period of public service.

(f) The overriding criteria for evaluating standards of conduct, rules and procedures are: simplicity, fairness and reasonableness.

### **6.1.6 The Wholistic Approach to Siksika Governance:**

The governance process provides a wholistic approach to drafting legislation for Siksika Nation. Both the legal status and accountability concerns are incorporated into the by-law, as roles and offices are defined in a formal government structure that is recognizable by other governments and accountable to its membership.

The restructuring of the public administrative structure of Siksika Nation was determined by means of a S.W.O.T. (strength, weaknesses, opportunities and threats) analysis. It concluded that all the factors relevant to public administration (management, financial efficiency, accountability, legal status and level of service) were not being met by the existing "satellite" configuration. (Unconnected service delivery units.) A proposed configuration based on traditional Siksika principles (a streamlined corporate model with Chief and Council as the authorized decision makers) fulfils all the factors under the S.W.O.T. analysis. This analysis also required the central positioning and use of the T.M.C. and the use of a more structured public finance and administration procedure which only the financial administrative by-law could provide.

### **6.1.7 Memorandums of Understanding (M.O.U.):**

Tripartite agreements exist in the area of the delivery of policing and education services. These agreements serve as stepping stones in the Siksika Nation's evolution towards nation-to-nation agreements.

### **6.1.8 Alternative Funding Agreements (A.F.A.):**

Siksika has been at the vanguard in the implementation and use of A.F.A.s and has developed a practical expertise in the negotiations and daily management of its funding. A.F.A.s are a stepping stone in the evolution to "government-to-government transfer payments". A.F.A. Agreements currently exist in the areas of membership, housing, social services, band management, capital facilities, education, housing, policing and economic development.

## **6.2 Restructuring Siksika Nation's Public Administrative Structure and the Extent of**

### **Localization of the Delivery of Services:**

In the spring of 1992, a series of strategic analyses concluded that the existing satellite configuration of Siksika's public administration was inadequate for the purposes of delivering public services to the membership. In addition, Siksika Nation also embarked on a major governance process that assisted in developing its future self-government structure. In light of the present problems under the Indian Act and the future model of Siksika's government, it has become necessary to reconfigure Siksika's public administrative structure.

All First Nations are in a gray area between the Indian Act (which provides incomplete government powers) and true self-government. Siksika's problem in this context is compounded by the fact that it has become the service delivery mechanism for many of the programs that serve its members and it now lacks the appropriate legal recognition and capacity to discharge its duties in an efficient way. The problem to be remedied is how does one provide for a legal structure of government in the absence of the recognition of its inherent right to self-government. This structure would have to allow Siksika Nation to function as a government and yet be legally binding in its decisions without relying on government status.

This dilemma is resolved by fleshing out and expanding the incomplete *Indian Act* structure. This is accomplished by combining it with distinct legal entities (societies and for-profit corporations) and trusts that will provide Chief and Council with the legal authority that is needed for the running of a government. This is an interim strategy to cover Siksika's needs in the gray area between government under the Indian Act and constitutionally-recognized self-government.

#### **6.2.1** The strategy takes the following form:

- (a) Chief and Council will be given the ultimate power; this will result in the coordination of all activities and reduce any duplication of service units.
- (b) Upon legal recognition of Siksika status and capacity, redundant corporations and societies will be folded and their activities, resources and obligations will be rolled into several distinct entities with power to facilitate all the activities. Chief and Council will be the ex officio directors. Unit managers and some of the membership will be on advisory boards. These boards will be tailored to the requirements of the particular service unit (e.g. education K-12 will have members serving in a school trustee role; other unit advisory boards may just have the manager and limited community participation). Tribal employees will carry out the mandates of the directors (Chief & Council). The coordination and unification of the units should allow flexible use of the financial resources.
- (c) The structure will be pyramidal and will be legally binding as a result of the operation of the Indian Act (Chief and Council have the authority to sign agreements) and corporate structuring (Chief and Council as directors will bind all the service units to Chief and Council's mandates). A trust indenture (with Chief and Council as

trustees) shall be superimposed on all the corporate entities to cover any residual authorities and powers over the administration of public funding and resources. The trust document will be composed of terms and conditions mirrored in the Siksika Nation Government Act. The trust apparatus will bind all the corporate structures internally and externally (e.g. the corporate structures will be internally structured to be controlled by the operation of the trust). The functions and responsibilities of employees of the service units under the corporations will be structured by employment contracts including policy and procedure guidelines that will apply to all public employees.

- (d) In addition to statute, corporate and contractual structuring of Siksika's public administration, B.C.R.s and by-laws will be used to create further mechanisms (e.g. Financial Administration by-laws will fine tune the operation of the government structure just outlined). This by-law will define the T.M.C. as the chief administrative officer (with powers delegated from Chief and Council). Finally, assignments and notification to funding authorities will be required for the collapse of the activities into two or three modified corporate entities.
- (e) Upon constitutional recognition of Siksika's government authority, the corporate structures will be disregarded as Siksika Nation will have sufficient capacity in its own name to run the activities. The trust apparatus will also be disregarded as its substance will be in the Siksika Nation Government Act. All the By-laws and B.C.R.s can be carried over with modification under the Self-Government Era about to be entered by the Siksika Nation in early 1994.

## VII THE RESTORATION OF LEGAL STATUS AND CAPACITY TO THE SIKSIKA NATION GOVERNMENT

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*Governments in democracies are elected by the passengers to steer the ship of the nation. They are expected to hold it on course, to arrange for a prosperous voyage, and to be prepared to be thrown overboard if they fail in their duty. This, in fact, reflects the original sense of the word "government", as its roots in both Greek and Latin mean "to steer".*

*Canada is a democracy, a constitutional monarchy. Our head of state is the Queen of Canada,... Every act of government is done in the name of the Queen, but the authority for every act flows from the Canadian people...the Fathers of Confederation, ...freely, deliberately and unanimously chose to vest the formal executive authority in the Queen,...That meant responsible government, with a cabinet responsible to the House of Commons and the House of Commons answerable to the people.*

*Canada is not only an independent sovereign democracy, but is also a federal state, with 10 largely self-governing provinces and two territories controlled by the central government.*

*What does it all mean? How does it work?*

*The answer is important to every citizen. We cannot work, or eat, or drink; we cannot buy or sell or own anything; we cannot go to a ball game or a hockey game or watch TV without feeling the effects of Government. We cannot marry or educate our children, cannot be sick, born or buried without the hand of government somewhere intervening. Government gives us railways, roads and airlines, sets the conditions that affect farms and industries, manages or mismanages the life and growth of the cities. Government is held responsible for social problems, and for pollution and sick environments.*

*And government is our creature. We make it, we are ultimately responsible for it, ...The closer we are to government, and the more we know about it, the more we can do to help meet these challenges*

- Eugene A. Forsey

How Canadians Govern Themselves

(Ottawa: Publications Canada, 1982)

The above long quotation from an article written by Mr. Forsey,<sup>34</sup> the widely acknowledged expert

on Canada's constitution, serves to illustrate that the leadership of the Siksika Nation aspire to the same high ideals of government and the process of governing, albeit on a much smaller scale and in a different way. In the process of self-government negotiations with Canada and the Alberta government, the Siksika Nation fully desires to establish a truly responsible government: i.e. democratically elected representatives who are responsible to the Siksika people instead of to the Minister of Indian Affairs in Ottawa; "to arrange for a prosperous voyage" into the 21st century; the leadership prepared to be thrown overboard if they fail in their duty to serve the Siksika people; the authority for every act and action taken by the Siksika Chief and Council flowing from the Siksika people; the Siksika Government being answerable to the Siksika people; to achieve government status similar to but unlike the "*10 largely self-governing provinces*"; the Siksika Government being responsible for the many and challenging socio-economic problems of the Siksika people; the Siksika Government being a creature of the Siksika people under the proposed Siksika Nation Government Act instead of being a creature of the federal government under the Indian Act; and finally, the Siksika people being ultimately responsible for their own government.

That in a nutshell is what the Siksika people mean under their statement "*Rebuilding the Siksika Nation.*"

In their self-government negotiations with Canada and the Alberta government, it can easily be seen that the objective of the Siksika leadership is to establish a bona fide three branch government system, i.e. the executive, legislative and judicial. This can be accomplished within Canadian federalism via federal legislation, similar to but much more comprehensive and sovereign-treaty based than the Sechelt Indian Band Self-Government Act (1986). The next pages in this chapter describe how that might be achieved.

### **7.1 Community Based Self-Government (C.B.S.G.):**

The C.B.S.G. initiative is, metaphorically speaking, the *eye of the needle* through which a vast spectrum of defacto jurisdiction (that has been acquired by M.O.U.s, A.F.A. and Protocols) must be pulled in order to get formal recognition of Siksika's governing powers. The C.B.S.G. initiative is the only existing means of acquiring formal recognition of the restoration of Siksika's government and transfer of jurisdiction. Siksika Nation's main objective is to acquire legal status and capacity which in turn will allow it to enter into arrangements whereby it can have concurrent jurisdiction with the provincial and federal governments.

Community Based Self Government Negotiations: The objectives of the negotiations are:

- (a) to create a constitution (Siksika Nation Government Act) for Siksika Nation that will replace the operation of the Indian Act; (b) to create public institutions for the delivery of government services to Siksika Nation members; (c) to be accountable to members; (d) to promote and protect aboriginal rights, treaty rights, land, culture and language of Siksika Nation; and (e) to enhance Siksika Nation human resource potential in the areas of post-secondary education, managerial and technical skills. To further this end Siksika Nation has researched, consulted with its members and negotiated Principles of Mutual Understanding (P.M.U.) in 8



essential and 11 optional areas of jurisdiction.

Statute recognition by the Canadian Parliament and the Government of Alberta regarding the areas of jurisdiction under the proposed Siksika Nation Government Act (S.N.G.A.) include:

**Essential Matters:** (i.e., under the federal government's C.B.S.G. policy)

### **7.1.1 Legal Status and Capacity**

Siksika will have a three branch government system (legislative, executive and judicial) in which each branch balances the others as is the case under the federal, provincial and the Navajo (U.S.A) models. The government would have the capacity, rights, privileges and powers of a government and a natural person, e.g., contract, sue, be sued, hold land, raise money and do all other things necessary for governing. The Siksika Nation Government will have an existence distinct from its members. Wide powers and authorities of Siksika Nation will be carried out in accordance with S.N.G.A. The S.N.G.A. will replace most parts of the Indian Act.

### **7.1.2 Structures and Procedures of Government**

The Siksika Nation government will be composed of the council, judicial branch and administration. The Executive may delegate its powers to managers, boards and institutions. Siksika Nation will have the liability of a government. The Chief and Council will not be personally liable if they act within their authority. The government will be accountable to the members. The Siksika Nation Tribal Court will be the first court to review the actions of the Siksika Nation Executive and Legislative branches. The Siksika Nation government will be more similar to a province than a municipality.

### **7.1.3 Membership**

The existing Siksika Nation Membership Code will be carried over into the S.N.G.A.

### **7.1.4 Selection of Leadership**

The Custom Election Code will be carried over into the S.N.G.A.

### **7.1.5 Application of the Indian Act, and Other Laws and Authorities**

The S.N.G.A. will replace the Indian Act. The following sections of the

Indian Act will be carried over into the S.N.G.A. as follows: ss. 2, 5-7 and 14.1-.3 regarding registration of Indians; ss. 2, 21, 37-41, and 55 regarding land; ss. 87, 89 and 90 regarding the Indian tax and seizure exemptions. All federal and provincial laws that are not superseded by the S.N.G.A. and Treaty 7 will continue to apply to Siksika Nation land. All existing laws will apply to Siksika Nation land and persons found on those lands. The S.N.G.A. will apply to non-Siksika members.

### **7.1.6 Management of Land and Resources**

The status of reserve land will remain the same. The Crown will still have a fiduciary duty to preserve the status of reserve land. Siksika Nation will have jurisdiction over the management of all land and resources except the surrender of land which will be the same as under the Indian Act. The exercise of jurisdiction over land will be in the best interest of Siksika members. No other government can expropriate Siksika Nation land.

### **7.1.7 Environment**

Jurisdiction over planning, land use, assessments and setting standards in the area of hazardous waste, air and water pollution.

### **7.1.8 Financial Arrangements**

Long term funding is necessary for the running of a three branch government. Special provisions will be included for: start-up, dis-economies of scale, demographics and funding equality with non-Indians. Where possible, most of the transfer moneys will be outside of the appropriation process to prevent Canada from cutting back funding. Canada will be required to submit to binding arbitration if there are disputes regarding funding. The funding will be noted in the federal Estimates.

### **7.1.9 Implementation**

A factual and costing plan will be developed for the start-up and ongoing operation of the Siksika Nation government. This process will lead to the negotiation of a secure multi-year financial agreement for the operation of an effective three branch government system.

**Optional Matters: (i.e., under the federal government's C.B.S.G. policy)**

**7.1.10 Traffic and Transportation**

Authority over the operation of vehicles, traffic regulation, the transport of goods and the construction and maintenance of transport infra-structure.

**7.1.11 Public Works and Community Infrastructure**

Authority over land use, construction of transport, utilities and building infrastructure and structures.

**7.1.12 Education**

Jurisdiction over all levels of education and corresponding financial authority as it pertains to members on or off the reserve.

**7.1.13 Social Services**

Jurisdiction over all levels of social services and corresponding financial authority as it pertains to members on or off the reserve.

**7.1.14 Health Care**

Jurisdiction over all levels of health care and corresponding financial authority as it pertains to members on or off the reserve.

**7.1.15 Licensing and Regulation of Business**

The authority to raise moneys by non-tax means. Siksika's authority to establish and operate licensing, evaluation, regulation, collection and enforcement mechanisms as it pertains to the operation of business will also be recognized.

**7.1.16 Administration of Justice**

Jurisdiction over the administration of justice so as to enforce laws, interpret laws, and to adjudicate (to review the other branches of government, summary and hybrid matters under the criminal code, civil matters and all laws under the S.N.G.A.). The statute will also establish and staff a tribal court; appeals from this court will be to the Federal Court Trial Division. Siksika Nation will have its own prosecutor and Native Court Worker/Interpreter.

**7.1.17 Culture, Language and Heritage**

Jurisdiction over the promotion and protection of language, customs, and religious practices of the Siksika Nation.

### **7.1.18 Water**

Jurisdiction over the regulation of the use, diversion, conversion, purification, quality control, and marketing of water, including water beds, inflow and outflow, water tables, underground water and the fish, plants and wildlife within the water.

### **7.1.19 Financial Powers of Siksika Nation**

The financial powers of Siksika Nation will be regulated by its Financial Administration Act. Its tax powers will include but will not be limited to: interests in land, other modes of taxation, and the ability to enter into agreements with other governments. The tax and seizure exemptions of Siksika members under the Indian Act will continue. Siksika Nation and all members will remain exempt from all forms of taxation. These powers also include the management of all Indian moneys.

**7.1.20 Comprehensive Agreement-In-Principle:** provides a framework (definitions, objectives and procedures) for the Negotiation of Siksika Nation's jurisdictions in the 9 essential and 10 optional matters.

The above list clearly indicates that the Siksika Nation intends to deal with the federal and provincial governments on a government - to - government basis, and will use the terms of Treaty 7 of 1877 and section 35 of the Constitution Act of 1982 as back-drops to its self-government negotiations. The unique features of the S.N.G.A. proposals include the concepts that: (a) a three branch government system will form the framework of an independent government, (b) the jurisdiction of the tribal court will not only cover all civil and some criminal matters, but it will apply to both Siksika and non-Siksika members who violate Siksika or Canadian laws within Siksika lands, (c) Siksika Nation jurisdictions and powers will be *transferred not delegated* and it will govern concurrently with the Alberta government concerning those areas of exclusive provincial jurisdiction as they are applicable on Siksika Nation territory including off-reserve matters, and (d) transfer payments will be for long-term funding arrangements that are necessary for the operation of a three branch government system and will be on par with the funding levels of non-Indian governments.

The leadership of the Siksika Nation takes the approach that, whether or not there will ever be a constitutional amendment process established again, to recognize and affirm the existence of an *aboriginal right to self-government* within Canada, all of the past and current work accomplished under the community-based-self-government policy of the federal government are considered as

stepping stones towards the achievement of true self-government for Siksika Nation, a right which is based on Treaty 7 of 1877.

All of the functions of the Siksika Government outlined above in the proposed Siksika Nation Government Act were performed by Indian nations long before the arrival of Europeans. Granted, Indian governments prior to White contact cannot be and should not be described as being equivalent to or as being inferior to European governments. Nonetheless, those governments exercised real governing authority over their constituent populations. That type of Indian governmental authority was expressed to other Indian nations and later to the European nations.

The business of *aboriginal governance* within Canada today essentially seeks the same objectives as it is for the English and French societies. Although the ways and means of governing may not be based on the same values and priorities, *the purpose* of governing is the same for each of the *three founding peoples*, i.e., to govern a group of people joined by a common language, a common world view and history, common spiritual beliefs, common values and traditions, a common spirit, and a common allegiance to a geographically defined homeland. The fact that Indian nations did not invent the automobile nor did not go through the Industrial Revolution, is no bar to their existence as sovereign nations with their unique governments which defended their homelands against the whole world.

Political scientists define government as follows:

*The agency which administers a group of people and expresses their conduct. There is government in the family (usually a parent or the parents), in a university, a trade union, in short, in all groups. The government of state (political government) is the agency which reflects the organization of the statal (politically organized) group. It normally consists of an executive branch, a legislative branch, and a judicial branch. These three branches (and their functions) may be separate or inseparate.*<sup>35</sup>

The above modern definition of *government* holds true for the Siksika Nation especially when it is preparing to go into the 21st century. However, not all eminent Canadians agree and they are entitled to their prejudices just as First Nations peoples are entitled to theirs. For instance, Chief Justice Allan McEachern of the British Columbia Supreme Court holds the view that aboriginal peoples in Canada never lived as organized societies. He stated:

*...it would not be accurate to assume that even pre-contact existence in the territory was in the least bit idyllic. The plaintiffs' ancestors had no written language, no horses or wheeled vehicles, slavery and starvation was not uncommon, wars with neighbouring peoples were common, and there is no doubt, to quote Hobbs [sic], that aboriginal life in the territory was, at best, "nasty, brutish and short."...*

*In their opening, counsel for the plaintiffs asserted that the plaintiffs have formed a distinctive form of confederation between their Houses and clans and that they have always enjoyed a level of civilization which is at least equal to many others which have received much greater prominence. The defendants, on the other hand point to the absence of any written history, wheeled vehicles, or beasts of burden, and suggest the Gitksan and Wet'suwet'en civilizations, if they qualify for that description, fall within a much lower, even primitive order.*

*I have no doubt life in the territory was extremely difficult, and many of the badges of civilization, as we of European culture understand that term, were indeed absent.<sup>36</sup>*

Notwithstanding Chief Justice McEachern remarks, the Siksika Nation has a proud and colourful history of governance.

The following pages describe the various options available to the Siksika Nation regarding self-government arrangements in Canada.

## **7.2 Options**

This section examines the various options identified by Siksika Nation as to where its restored governance structure and legal capacities will fit within the spectrum of government: i.e. status quo, municipal, provincial, federal or sui generis (a unique order of government arising from the extension of treaty principles).

### **7.2.1 Status Quo**

The status that is afforded to First Nations under the Indian Act and existing federal policy is highly problematic and must be replaced by Indian Act alternatives and constitutional change. Under the Indian Act, First Nations have no legal status and capacity and lack powers necessary for the operation of even a municipal form of government. At best the First Nation model under the Indian Act is a service delivery unit that localizes some user end authorities when delivering services. Finally, Indian Act governments lack provisions as to the structuring roles, responsibilities and procedural guidelines for Chiefs and Councils.

### **7.2.2 Municipal**

Municipal governments are defined by the following similarities and dissimilarities with band councils under the Indian Act:

#### **7.2.2 (a) Similarities:**

- (i) Delegated form of government,

- (ii) Pre determination legislation,
- (iii) Subject to the doctrine of ultra vires,
- (iv) Subject to judicial review, principles of administrative justice and fairness,
- (v) Limited by geography,
- (vi) Rules re: Transfer of power,
- (vii) Constitutional source of power: band councils are under s.91(24) and Constitution Act (1867); municipalities are under s.92(8) and Constitution Act (1867).

### 7.2.2 (b) Distinctions:

- (i) Distinct constitutional footing for the existence of Band Council governments.
- (ii) Municipalities are subject to provincial laws,
- (iii) Appeals from a Band Council decision goes to Federal Court for resolution, whereas an appeal from a municipal board goes to the Queen's Bench,
- (iv) Band Council is the delegate of the federal Minister of Indian Affairs.
- (v) Municipal elections are governed by the Municipal Government Act, whereas Band Council elections are governed by the Indian Act, ss. 74-79, and regulations or Band Custom.

Obviously First Nations do not desire municipal forms of government as Band Council governments are similar to them already. Hence other models must be examined.

### 7.2.3 Provincial

Provincial governments have their powers defined in s.92 of the Constitution Act, 1867. The Constitution of Canada provides for a federal system with two levels of government. The provincial government essential powers turn on the delivery of government services in those areas of a local and private nature: i.e. education, social services, health care and municipal institutions.

### 7.2.4 Federal

The federal government has jurisdiction over all matters of national and international concern and residual powers regarding peace, order and good government.

### 7.2.5 Sui Generis

The objective of the Siksika Nation's government initiatives is to enhance true self-government. What it is attempting to structure are plenary, non delegated jurisdictions and powers that would ideally be entrenched in the Canadian Constitution. Within the context of the Canadian Constitution, the type of government envisaged entails powers and jurisdictions similar to those of a province. However, the form that such a government will take will be purely unique, as the cultural, social and political principles and values of the Siksika Nation would fine tune the exact form

and mechanics of such a government. This form of government would require the brokerage of three as opposed to two basic jurisdictional divisions as are now found under the Constitution. This, in turn, implies the creation of totally unique principles of Constitutional interpretation with respect to powers, jurisdictions, duties of each government and the resolution of conflicts among these factors. It is on the basis of these premises that the necessary components of a Siksika Nation Government Act are formulated. The ultimate rationale for such an Act is the *rebuilding* of the Siksika people. The structure and justification for the Act are derived and based in treaty rights, and the traditional way of delivering public services to a First Nation community according to their unique needs and ways of doing things.

The government that Siksika Nation desires is a true state similar to a state government in the U.S.A. That is to say, its government would have legal status and capacities on par with the province or, in some circumstances, on par with the federal government. In legal terms, a state is a recognized entity that is distinct from a natural or artificial person. This distinction turns on the unique powers, duties and privileges that are associated with a state. For instance, states have three branches of power (legislative, administrative and judicial) which regulate activities within their jurisdiction. In addition, a state has rules that dictate who can govern and how those who govern are accountable to the members who are represented. The characteristics of a state are underscored when one considers the manner in which legal proceedings against the state are altered. For example, in Commonwealth nations, the notion of the Crown is intrinsic to the state. As a consequence, in the interests of the public, Crown immunity prevents certain types of actions against the Crown in order to protect the state and its members. It is suggested that any First Nation government initiative that fails to incorporate the presupposition of a state in the status and capacity of the government would be philosophically misdirected. The reason is that the government would be a delegated form of government, which is what First Nations now have under the Indian Act.

The ideal *sui generis* government that the Siksika Nation envisions is defined by the following matrix: Constitutional recognition of First Nation Governments with reference to s.35 or other empowerment mechanisms in order to establish the right to self-government in the Constitution Act, 1982.

### **7.3 General Jurisdictions of First Nation Governments:**

(a) Rules with respect to the application of the First Nation Government Act regarding geographical, demographic and time jurisdictions. External relationships (federal, provincial and other First Nation governments) and internal relationships (membership, corporations and administration). Powers of a legal entity, immunities similar to the Crown and authority similar to federal/provincial government.



- (b) Administrative, executive and judicial powers of First Nation government powers serve as the pillars of government.
- (c) Public Finance - covering taxation, borrowing, planning and reporting.
- (d) Public Administration - covering the use of all government assets.
- (e) First Nation Tribal Court Act - necessary for appeals from the legislative and executive branches - check of power and also necessary for serving justice on First Nation territories.
- (f) Jurisdiction of Tribal Court - with respect to geography, demography and time elements, creation of tribal common law; provincial or federal law to be resorted to in the absence of tribal law.
- (g) Appeal to higher court - necessitated in order to bring resolution to conflicts; appeal to a tribal court of appeal and possibly to the Federal Court in order to link into the Canadian judicial system.
- (h) Application of the laws of Canada - whether the s.91 powers would apply to Chief and Council and First Nation jurisdiction would be similar to the relationship of the province and federal government. The general residual powers of peace, order and good government reside with the federal government. Furthermore, all s.91 powers would still apply to First Nation governments, with the exception of those matters dealing specifically with aboriginal and treaty rights, and First Nation territory.
- (i) Application of provincial laws - the provincial laws of general application would not apply to First Nation territories as First Nation government jurisdiction would block the application of provincial legislation.

## **7.4 Jurisdiction and Authorities of the Siksika Nation Government**

### **7.4.1 Protocol Agreement with the Alberta Government:**

Through the CBSG process, Siksika Nation will have exclusive jurisdiction over all persons and matters that are found within the geographical boundaries of Siksika Nation Lands. In order to implement Siksika Nation's self-government objectives under the CBSG process, Siksika Nation has entered into a Protocol Agreement with the Government of Alberta. That agreement is based on the following principles and processes; its overall intention is to negotiate and establish Siksika's jurisdictional reach on matters of concurrent interest.

**Principles of the Siksika Nation and Government of Alberta Agreement:**

- (a) desire to promote better understanding between Alberta and Siksika through consultation and communication;
- (b) desire the promotion of a bilateral process whereby matters of mutual importance are addressed at a level of senior management;
- (c) seek to facilitate Alberta's involvement and cooperation in the establishment of the Siksika Nation government;
- (d) have no intention to abrogate or derogate from any aboriginal or treaty rights referred to in section 35 of the Constitution Act, 1982;
- (e) have no intention to prejudice any constitutional discussions in which the parties may engage; and
- (f) agree to consult with each other in the development of policies, programs and services as they relate to the Siksika Nation government as it concerns the following subject matters.

**Class "A" matters to be addressed immediately:**

- \*Management of Lands and Resources, especially in those areas involving oil and gas developments and the use of water and waterbeds.
- \*Environment, as it pertains to trans-border pollution.
- \*Traffic and Transportation. As provincial roads run through the reserve, it is central to the integrity of Siksika Nation's jurisdiction that provincial traffic and transport policies are consistent and recognize the special interests of Siksika Nation.
- \*Public Works and Community Infrastructures. Here, too, there must be consistency between jurisdictions and there is a need to enter into cost and infrastructure sharing.
- \*Health. This requires cost sharing and policy agreements.
- \*Administration of Justice. This requires the coordination of the diversion program and the continuance of a policing and a corrections agreement.
- \*Funding for the operation of the Memorandum of Understanding, i.e. Protocol Agreement.

**Class "B" matters to be addressed at a later date:**

- \*Education, Social and Welfare Services, including Custody and Placement of Children. This requires cost sharing and policy agreements.
- \*Licensing, Regulation and Operation of Business. In order to maintain consistency in the regulation of business, a good neighbour policy will be implemented.
- \*Culture Language and Heritage. The Province is expected to assist in tourism and cultural programs on Siksika Nation lands.
- \*Financial Powers of Siksika Nation. The potential exists for shared tax and revenue arrangements.

**7.4.2 Protocol Agreement with the Siksika Urban Association:**

In order to insure that Siksika Nation's jurisdiction covers its off-reserve members, a Protocol Agreement with the Siksika Urban Association was entered based on the following principles:

- (a) Siksika Nation includes all members regardless of residence and all members are represented by the Siksika Nation Chief and Council.
- (b) It is Chief and Council's prime responsibility to enhance the quality of life of all members.
- (c) Chief and Council desire to assist non-resident members in maintaining their treaty and aboriginal rights off Siksika Nation land.
- (d) Chief and Council also desire to assist in the improvement of delivery of treaty, aboriginal and other services and programs to non-resident members residing off Siksika Nation land.
- (e) Chief and Council desire the involvement of non-resident members in the achievement of satisfactory delivery of treaty, aboriginal and other services and programs to non-resident members off Siksika Nation land.

## **VIII A NEW STYLE OF FISCAL ARRANGEMENTS WITH CANADA AND FINANCIAL IMPLICATIONS OF THE SIKSIKA NATION GOVERNMENT ACT**

### **8.1. Government Operations**

In C.B.S.G. negotiations between Siksika and the federal government, the following Principles of Mutual Understanding (PMU) define a number of responsibilities and functions that form part of government operations, i.e.

- (i) Legal Status and Capacity,
- (ii) Structures and Procedures of Government,
- (iii) Selection of Leadership,
- (iv) Application of the Indian Act, other laws and authorities,
- (v) Financial Powers of Siksika Nation,
- (vi) Financial Arrangements, and
- (vii) Implementation

The level of financial resources required to implement the Siksika Nation Government Act and to operate the legislative and executive branches of this new government will most certainly exceed the limited resources currently provided by INAC through the Band Support Funding Program.

The Band Support Funding program was never intended to provide an appropriate level of funding for operation of a fully autonomous government. INAC is aware that the existing formula used to calculate Band Support Funding discriminates against larger First Nations, particularly in the table used to calculate core funding for the elected Chief and Council.

Under the existing Band Support Funding formula the Siksika Nation receives slightly over \$80,000 from INAC to support the salaries and related expenses of the Chief and 12 Councillors. This level of funding provides less than \$6,500 for each of the 13 elected members of Council.

Total funding for Band Support within the Alternative Funding Arrangement is less than \$900,000 which works out to \$222.00 per capita for the total Siksika Nation membership of 4060, or \$320.00 per capita for 2800 members living within Siksika Nation lands.

A budget of \$900,000 will support fewer than 30 full time employees at an average salary of \$30,000/year, excluding benefits, office rent, supplies, travel or training expenses.

When Indian and Northern Affairs was responsible for delivery of services to First Nations, the Calgary and Lethbridge offices of INAC employed over 100 staff, excluding teachers. An additional 300 staff were employed at the Regional office in Edmonton covering all 43 Indian reserves within Alberta.

Although the full cost of maintaining the INAC operation in Alberta has never been revealed to the Siksika Nation, it can be stated without fear of contradiction that it most certainly exceeded \$222.00 per capita with or without government confirmation.

The Siksika Nation has reviewed the per capita expenditures for a range of government structures in Canada, particularly the recently signed agreement with the North West Territorial Government. This review would indicate that a jurisdiction with a constituency of 4000 + citizens should be receiving a transfer payment of at least \$2,800,000, or \$700.00 per capita to cover government operations. In the case of the Siksika Nation this level of transfer payment could support:

Chief	\$ 50,000
12 Councillors @ \$25,000/member	300,000
50 administrative staff @ \$30,000/employee	1,500,000
Benefits	100,000
Professional Fees	75,000
Office Space 3,000 sq. m. @\$100/sq. m.	300,000
Supplies, printing, couriers, telephone	150,000
Training and staff development	150,000
Travel	<u>200,000</u>
Total:	<u>\$2,825,000</u>

This figure represents a minimum transfer payment which should be provided by the Government of Canada to support government operations alone under the Siksika Nation Government Act.

*This figure should not be interpreted as a final request for funding from the Government of Canada. The final request will be based on a more comprehensive comparison of historical funding levels within INAC and other government service areas.*

The Royal Commission on Aboriginal Peoples should be aware that the Siksika Nation is currently spending in excess of \$2,000,000 to support Government operations. The Government of Canada cannot expect to increase the jurisdiction and responsibilities of the Siksika Nation without a corresponding increase in the level of transfer payments. The Siksika Nation is also concerned that the substantial savings realized through downsizing of INAC operations in the Alberta Region have not been reflected in the funding provided to First Nations in Alberta.

## **8.2 Social Services**

The PMU related to social services confirms that the Siksika Nation wishes to continue with a program of income support to all members who meet established criteria. Under current INAC guidelines the level of transfer payments related to Social Assistance has been based on unit costs developed by the Province of Alberta. In recent months, the Government of Alberta decided to reduce the basic unit costs for Social Assistance and to tighten up eligibility criteria. The Siksika Nation is concerned that the Government of Canada, through INAC policies, may use new Provincial criteria to reduce the level of transfer payments defined within the existing Alternative Funding Arrangement.

In 1991 INAC circulated a Memorandum of Understanding to the Chiefs and Council of First Nations within the Treaty Seven Area. The intent of this MOU was to clarify that the Province of Alberta would be responsible for the provision of Social Services to members living outside of First Nation lands. Based on their long standing relationship with the Government of Canada, the Siksika Nation refused to sign this MOU. The Siksika Nation feels that the Government of Canada cannot transfer responsibility for assisting Siksika members to the Province of Alberta without consent by the Siksika Nation. This issue remains unresolved.

The Siksika Nation has assumed full responsibility for the administration of Social Assistance programs, including social housing, and currently operates one of the most employment focussed assistance systems in Canada. In 1993/94 the Siksika Nation will provide close to \$400,000 in subsidies to employers who agree to hire social assistance recipients. By 1996/97 it is anticipated that 50 % of the total transfer payment for basic needs will be provided as wage subsidies or training allowances to Siksika Nation members.

The policy shift by the Government of Alberta is having a considerable impact on the Siksika Nation in the 1993/94 fiscal year. Many Siksika Nation members have been eliminated from the provincial pay lists and have been directed by provincial employees to the Siksika Nation for assistance. INAC did not allow the Siksika Nation to include any portion of their membership living in the City of Calgary as part of the original AFA data base. The Government of Alberta appears to be saving money at the expense of the Siksika Nation who have signed a fixed agreement with the Government of Canada. During the past six months INAC has refused all requests to increase the funding levels within the AFA to reflect the return of Siksika members to Siksika lands.

The detailed review of social housing outlined the responsibilities assumed by the Siksika Nation which include more than 300 families who are currently receiving social assistance and are not living in units constructed under the CMHC non-profit program. At the very minimum, the Siksika Nation is entitled to receive a subsidy of \$400/month/unit from the Government of Canada as the landlord responsible for maintaining these social housing units. This rental allowance has been adjusted to reflect the value of INAC capital contributions to the housing portfolio.

During the past three years the Siksika Nation has accelerated its social housing program with the support of INAC. The construction of 60 new houses over 24 months has substantially increased the population living within Siksika lands and the number of families requiring social assistance.

The existing AFA allows for a data base adjustment to reflect in migration. The financial impact of new in migration has been estimated at \$500,000 which includes \$400/month in rent for additional social housing.

The total projected increase in the data base related to social housing, including an appropriate adjustment in the service delivery component, would approach \$2,000,000 in 1993/94 and would exceed \$2,300,000 in 1994/95.

The Siksika Nation has proposed that the level of transfer payment for social services should be based on the funding required to meet mutually agreeable objectives, not on rates set by the Government of Alberta. The Siksika Nation will agree to educate, train, and employ its membership and to reduce the level of unemployment over a period of time. The Government of Canada would agree to provide a defined sum of money each year if the mutual social objectives are met.

### **8.3 Membership**

The PMU for Membership states definitively that the Siksika Nation intends to assume full jurisdiction for the delivery of services to all Siksika Nation members, including those who choose not to live within Siksika lands.

In recent years, the Siksika Nation has assumed additional responsibilities related to maintaining an accurate record of its membership. Unfortunately, funding provided by the Government of Canada through INAC has not increased in proportion to these additional responsibilities. In 1993/94 INAC provided \$31,200 to support services related to Siksika Nation membership while the Siksika Nation contributed an additional \$40,000.

Following the introduction of Bill C-31 the Siksika Nation proceeded to develop a Membership code and to establish a Membership Appeal Tribunal. The estimated level of funding required to support membership functions is a minimum of \$20.00/capita or \$81,200 in 1993-94.

### **8.4 Management of Land and Resources**

The Siksika Nation is responsible for 180,000 acres (72,000 hectares) of land which represents the second largest single holding by a First Nation in Canada. A unique feature of this holding is that the elected Chief and Council administer the entire parcel in trust for their membership.

The Siksika Nation has assumed many of the functions defined within Section 53 & 60 of the Indian Act and has funded the installation of a computer-based Geographic Information System to assist in land management. INAC has acknowledged that the Siksika Nation would be entitled to receive \$250,000, under the new funding formula, when Section 53 & 60 powers, defined under the Indian Act, are assumed. Owing to the importance of the upcoming referendum relating to the Siksika Nation Government Act, the requirements for a referendum relating to assumption of Section 53 & 60 powers must be coordinated.

Considering the complexity of a land management regime which involves more than 3,000 interests in Siksika lands and the communal nature of the land base, it is difficult to support current INAC guidelines which limit funding to \$50,000. Even expanded levels of funding related to Section 53 & 60 will address less than 30% of total land management responsibilities under the Siksika Nation Government Act. Using a combination of the per transaction costs developed by INAC and an estimate of costs to perform all functions outlined in the Management of Lands PMU it is estimated that the Siksika Nation would require a minimum of \$800,000 to assume total jurisdiction for lands and natural resources.

### **8.5 Traffic and Transportation**

The Siksika Nation has already assumed a wide range of responsibilities related to traffic and transportation through the exercise of powers defined under Section 81 of the Indian Act.

Funding for enforcement of the majority of the traffic related by-laws has been included within the tri-partite agreement related to law enforcement. One area of jurisdiction that must be addressed in more detail is the transportation of hazardous waste, toxic substances and the movement of oversize loads through Siksika lands.

The Siksika Nation is also concerned that the Government of Alberta does not recognize its jurisdiction over transportation along the Bow River and other waterways. No person who is not a member of the Siksika Nation should be permitted access to Siksika lands without the consent of the Siksika Nation. The jurisdiction to control access by water is an essential component of this policy.

### **8.6 Public Works and Community Infrastructure**

#### **8.6.1 Housing Capital**

Considering that capital funding related to housing has remained at \$687,000 for eight fiscal years and that the level of housing subsidies provided by the Government of Canada to all other jurisdictions has increased by a minimum of 40% during this same period, there is an obvious need to revise the allocation formula related to housing capital.

The Siksika Nation is also concerned that the Government of Canada has linked the provision of housing to First Nations with funding provided for Section 15 of the National Housing Act. This link is tenuous at best. If the Government of Canada continues to vacate government functions defined within Section 92 of the Constitution Act it may only be a matter of time before the Canada Mortgage and Housing Corporation discontinues the subsidies provided through Section 15 of the National Housing Act.

It is interesting that the Framework Agreement for development of the Siksika Nation Government Act is almost silent on the issue of who will assume jurisdiction for the construction and



maintenance of Social housing. In fact, given the current mindset about provincial responsibility for members who do not live within First Nation lands, it is difficult to imagine why the Government of Canada would support the construction of additional housing within First Nation lands. Clearly one way of limiting the future financial obligations of the Government of Canada is to withdraw from the financial support of social housing within First Nation lands and to shift responsibility to the provinces.

### **8.6.2 Capital Funding for Community Infrastructure**

The Siksika Nation occupies the second largest land base in Canada at 180,000 acres and is responsible for over 302 kilometers of roads; 33,730 metres of watermains; 9 water reservoirs; 8 water treatment plants; 11 community wells; 16 lift stations; 17,350 metres of sanitary mains; 13 sewage lagoons; 5 communal septic tanks; 9 lift stations and 2,600 metres of sewer mains; 2 garbage trucks, 2 vacuum trucks, 1 water truck; and 70 public buildings encompassing over 28,000 square metres. The Asset Condition and Reporting System completed in August 1993 identified the need to complete more than \$5,000,000 in capital improvements immediately and more than \$12,000,000 worth improvements over the next five years.

In addition, the Siksika Nation has accelerated its social housing program which will require an additional \$300,000 for infrastructure each year for the next 10 years.

The Government of Canada has acknowledged some level of financial responsibility for the construction of community infrastructure. However, this obligation has always been couched in broad references to cost sharing by First Nations and with emphasis on projects related to the health and safety of First Nation members. In recent years the Alberta Region of INAC has determined that the Government of Canada has no obligation to assist in the construction of additional roads within First Nation lands.

The Siksika Nation has proposed that the Government of Canada develop a more comprehensive program to support capital projects, including roads. This program would increase funding provided for the operation and maintenance of capital assets by including an allowance for a replacement reserve. In this way a First Nation could borrow funding for construction of an asset and use a portion of the operation and maintenance (O&M) funding to service the debt.

The Siksika Nation is concerned that the Government of Canada may reduce its direct financial involvement in construction of community infrastructure and introduce a municipal - style agreement based on taxation assessment to service debt related to capital projects. If such a system is contemplated, the Siksika Nation would insist that future financial transfer arrangements must include an appropriate amount to cover the Government of Canada obligations for each capital project.

Based on the confirmed condition of existing assets and the need to expand infrastructure to accommodate population growth approaching 3.0% per annum, the Government of Canada's share of infrastructure capital for the Siksika Nation should not fall below \$1,800,000 per year for the

next 10 years, unless O & M funding is increased to reflect an appropriate replacement reserve.

### **8.6.3 Operation and Maintenance of Community Infrastructure**

Funding from INAC related to the operation and maintenance of community infrastructure increased to \$1,540,000 in 1993-94. Under INAC determined policies, the Government of Canada is only responsible for 20% of the estimated O & M costs for community buildings, including government offices. It does not seem fair that the Government of Canada has saved thousands of dollars in rent for office space as a result of downsizing while forcing First Nations to continue to pay 80% of the O & M costs for former and present government buildings located on First Nation lands.

The Siksika Nation has constructed a 3000 square metre office complex to accommodate its legislative and executive functions. The total cost of operating and maintaining this complex, including a replacement fund, exceeds \$400,000. Under INAC policies, the Government of Canada's share of this cost is less than \$30,000 or 7.5% of the actual cost. If the Siksika Nation had not assumed responsibility for most government functions, INAC would still be responsible for covering all costs related to office space on-reserve, not just 7.5% or 20.0% as determined by existing government policies.

INAC is still deducting over \$100,000 from the road maintenance budget to reflect 10% of the Siksika Nation trust account deposits. Considering the fact that the Government of Canada provides substantial financial support to provincial governments and that a significant portion of this assistance has been applied to expand provincial and municipal transportation systems (e.g. rapid transit), it is difficult to justify this deduction from the Siksika O & M budget.

Even the most ardent booster of urban areas must realize that without substantial subsidies from the Government of Canada, the infrastructure of cities would be a mess. If the 2800 people living within Siksika lands moved to the City of Calgary, the Government of Canada's share of infrastructure improvements would be substantially higher than the budget offered to the Siksika Nation through INAC. It is time for both the Government of Canada and the Government of Alberta to realize that it makes economic sense to provide adequate funding to First Nation communities, particularly when the majority of the residents within these communities are social assistance recipients.

Based on a comparison with assistance offered to other jurisdictions, it is estimated that the Government of Canada's share of infrastructure O & M for the Siksika Nation should exceed \$2,500,000 or \$900.00 per capita.

### **8.7 Education Programs**

Treaty 7 contains the following clause;

"Further Her Majesty agrees to pay the salary of such teachers to instruct the

children of said Indians as to her Government of Canada may seem advisable, when said Indians are settled on their Reserves and *shall desire teachers*"

It is difficult to misinterpret the intent of this clause when placed in the context of 1877. The Government of Canada had, and still has, a legal obligation to assure that all members of First Nations who signed Treaty Seven receive an education comparable to the education of the Canadian society in general. Chief Crowfoot, and other Chiefs who signed Treaty Seven, realized that times were changing and that they would require help in teaching the children the ways to survive in this new world.

The Siksika Nation was the last signatory within the Treaty 7 area to assume responsibility for modern for educational programs. To many it may seem strange that the pioneers of Child Welfare, Health Care and law enforcement allowed INAC to operate elementary schools within Siksika lands until September 1989. However, it is important to understand the importance placed on Treaty Seven by the Siksika Nation, particularly the importance of Government of Canada support for the education of Siksika members.

In 1993/94 the Siksika Nation will receive \$3,100,000 from the Government of Canada to support elementary and secondary school education within Siksika lands. This funding is based on an enrollment of 480 students and a tuition rate of \$4900/student.

The budget also provides \$100,000 to cover low cost special education. It is worth noting that funding provided by the Government of Canada to provincially funded school boards for low cost special education of Siksika members is substantially higher than funding provided the Siksika Board of education, when expressed on a per capita basis.

The Siksika Nation is also concerned that the Government of Canada only provides 20% of the funding required to operate and maintain the offices of the Board of Education staff. In 1993/94 the Siksika Nation contributed \$31,000 to the cost of providing offices for the management of education programs.

INAC has provided funding to assess the need for a new high school within Siksika lands. It is anticipated that preliminary construction work on this new facility will be started in late 1994 and that the first students will attend in September 1996.

### **8.7.1 Education Capital and O & M**

The existing contribution agreement does not include an annual budget for capital construction or replacement funds for educational facilities. It has been estimated that the federal government should be providing the Siksika Nation with an additional \$1,800,000 per year to provide for the financing of necessary education facilities and replacement of major building components over time. The practice of submitting requests and waiting for INAC to fund the total cost of educational facilities must be discontinued. The Siksika Nation should be entitled to build the

facilities required using mutually agreed school space accommodation factors. The Government of Canada would then provide an annual budget based on the total area and including an allowance for debt service or replacement funds.

### **8.7.2 Post-Secondary Capital and O & M**

The Government of Canada has never really accepted the concept of funding post secondary institutions within First Nation lands. Funding for post secondary education based on population, including the population of First Nations, is transferred by the Government of Canada to provincial governments. The Government of Alberta has refused to release any portion of the funding to support the delivery of post secondary education programs at Old Sun Community College. This matter is currently the subject of a legal suit by the Siksika Nation against the Province of Alberta.

The Siksika Nation is concerned that if Old Sun Community College cannot be repaired, or replaced, most Siksika students will be required to move to urban centres to continue their education or incur substantial costs related to transportation. Treaty 7 commits the Government of Canada to provide Siksika Nation members with financial support for post secondary education. It makes economic sense to provide a portion of this education within Siksika lands where allowances for rent are not required.

The Siksika Nation has determined that it is far more cost efficient to provide portions of post secondary education and entrance preparation within the community. It has also been established that students achieve higher marks and attendance when they attend Old Sun Community College.

The Assets, Conditions and Reporting System (ACRS) study identified over \$2,000,000 worth of immediate repairs at Old Sun Community College, which could be completed over three years at \$700,000 per year. As Old Sun is an accredited institution, the Government of Canada should provide 100% of the O & M for Old Sun Community College, including an allowance to finance the necessary repairs over a 25 year period.

### **8.8 Health Care**

Under the terms of a contribution arrangement with the Medical Services Branch, the Siksika Nation receives a total of \$948,192 for health care as follows:

Health care personnel	\$359,944.
Security at Health Clinic	96,429.
Health committee	26,445.
Management support	21,156.
Medical transportation	301,096.

Alcohol services	<u>143,122.</u>
	<b><u>\$948,192.</u></b>

As mentioned in the detailed discussion of Medical Services, the Siksika Nation has identified a total budget of \$7,246,000 to provide health care services to its membership. This does not include approximately \$4,100,000 in non-insured health benefits which are not eligible for transfer to the Siksika Nation at this time.

The Siksika Nation has proposed the introduction of an insurance-style transfer agreement which would direct the total budget for health care to the Siksika Nation. As Siksika members receive treatment in facilities operated by other jurisdictions they would present an identity card. The facility in turn would bill the Siksika Nation based on a predetermined fee schedule. This process would limit the contribution by the Government of Canada and transfer the responsibility for controlling health care costs to the Siksika Nation.

The Siksika Nation will not assume any additional responsibility for health care without a *guarantee* of future funding from the Government of Canada.

## **IX A NEW STYLE OF FISCAL ARRANGEMENTS WITH THE GOVERNMENT OF CANADA AND REVENUE SHARING WITH THE PROVINCE OF ALBERTA**

### **9.0 Overview**

Under existing legislation, particularly the Constitution Act, the Government of Canada has both a legal and moral obligation to transfer financial resources to the government of the Siksika Nation. However this obligation cannot be met until both governments resolve a number of outstanding issues such as the following:

- How much should the Government of Canada transfer?
- Under what terms and conditions is the money to be transferred?
- How long should the terms and conditions of the financial transfer agreement apply?
- Who is accountable for the money, and to whom?
- When should the money be transferred?

These issues will form the basis of a financial transfer arrangement which will be negotiated as part of the Siksika Nation Government Act.

Under existing financial arrangements with the Government of Canada, First Nations in general, and the Siksika Nation specifically, have not been receiving their appropriate share of Canada's substantial wealth. Comprehensive research into expenditures by the Government of Canada over the last fifty years has illustrated a consistent pattern of underfunding financial agreements with First Nation governments. This is not to suggest that the underfunding was intentional, or that the Government of Canada maintained a double standard. However, once the discriminatory practices have been identified, it is incumbent on the Government of Canada to terminate all discriminatory practices and develop more equitable financial arrangements with First Nations.

The detailed analysis of social housing programs outlined in section 4.2.4 (p. 75) illustrates that the scope of financial assistance offered to First Nations by INAC and CMHC was far less generous than financial assistance offered to other jurisdictions. The Siksika Nation included this detailed analysis to illustrate to the Royal Commission on Aboriginal Peoples that discriminatory practices still exist. Without substantial research into the level of financial assistance the Government of Canada transfers to other jurisdictions, it will be extremely difficult for First Nations to request, to perhaps demand, equal treatment.

Many Canadians are of the opinion that members of First Nations receive special treatment from the Government of Canada. Research completed by the Siksika Nation indicates that this assumption is quite the opposite of that commonly held mistaken belief. Unfortunately the *special*

*treatment* offered to First Nations takes the form of reduced levels of transfer payment and the inability to access mainstream government programs.

First Nations have been systematically isolated from many benefits realized through expansion of the Canadian economy. In 1968 the average price of a 1,200 square foot, four bedroom bungalow in the City of Calgary was \$19,320. In 1993 that same bungalow was selling for an average of \$120,000, an increase of 600%. During this 25 years the owner of a bungalow may have paid a total of \$25,000 in property taxes to the City of Calgary, leaving a net capital gain of \$75,000, or an average gain of \$3,000 per year. During this same period, members of the Siksika Nation did not realize one single dollar from the rising real estate market. Canadians would do well to remember this fact when they talk about *special treatment*. There is no special treatment but only economic isolation and deprivation.

The Government of Alberta has realized billions of dollars in royalty revenue from oil and gas development in southern Alberta, the traditional lands of the Blackfoot Confederacy. A multi billion dollar Heritage Fund was established with a portion of the revenues from natural resource development. Over the past twenty five years the Government of Alberta has only supported one project within Siksika Nation lands, a \$2,000,000 Elders Lodge constructed in 1986. No area or recreation centre, no hospital, no high school, no cultural centre, no major irrigation projects, no serviced industrial parks, no loan guarantees for major economic development projects, and no grants to home owners of subsidies to reduce interest rates. In fact on a per capita basis it is doubtful whether members of First Nation received more than \$1,000 each in benefits from the Heritage Trust Fund over the past 15 years.

The Heritage Trust Fund has been used, and abused, to stimulate the economy of Alberta. Unfortunately, the *trust relationship* towards members of the First Nations has never been honoured by the Government of Alberta that continues to use the Indian Act to deflect responsibility to the Government of Canada. The Government of Canada is shifting funding for economic development from INAC to Industry Science and Technology Canada under the Canadian Aboriginal Economic Development Strategy. Now Métis or Non Status Indians living under provincial jurisdiction have access to yet another pool of development money while direct funding to First Nations is systematically reduced.

The Government of Canada introduced a similar approach through the *Pathways To Success* strategy whereby CEIC funding for First Nations was allocated to local management boards controlled by a cross section of aboriginal interests. The Métis and Non Status Indians now have access to all the programs offered through Alberta Manpower, plus a share of the CEIC funding for First Nations. First Nations have no means of accessing Alberta Manpower programs and must now compete for the shrinking funds offered by CEIC. It is impossible to conclude members of First Nations have equal access to financial resources under current government programs. The situation is discriminatory and it must be challenged immediately.

The Siksika Nation has developed an alternative approach to the funding of a First Nation government. This alternative approach was developed to assure that a First Nation such as Siksika

receive:

- Equality under the Constitution Act.
- Equality of access to all programs offered to Canadians by the Government of Canada, or by Provincial Governments.
- Funding which reflects the needs of First Nation members when compared to the needs and standard of living of Canadian citizens as a whole.
- A "guarantee" that negotiated levels of financial support to First Nations will continue over a defined period of time via binding contracted arrangements.
- Funding based on the needs of all members of a First Nation regardless of their place of residence. The Siksika Nation will reimburse other jurisdictions for services provided on behalf of their members.
- Assurance that the financial agreement will continue to recognize all obligations of the Government of Canada defined within Treaty 7, i.e., the Blackfoot Treaty.

### **9.1 Equality of First Nations Under the Constitution Act**

The Siksika Nation is of the opinion that the Canadian Constitution is based on the notion of equality for all citizens regardless of their ethnic origin or place of residence. It is unfortunate that this notion has not been incorporated by administrative departments under the direct control of the Government of Canada. Without repeating examples of inequality outlined in the Siksika Nation case study, it is sufficient to say that equal treatment under the laws of Canada has not been achieved by the Siksika Nation and should be addressed immediately.

The most glaring examples of inequality arise when the Government of Canada introduces programs aimed specifically towards *aboriginals* without understanding the substantial difference between members of First Nations in general, members of First Nations who signed treaties, members of First Nations resident on defined reserves and a wide range of other aboriginal groups living under the jurisdiction of provincial governments.

Under the current regime in Alberta, members of the Siksika Nation living within Siksika lands cannot access most provincial assistance programs, while other *aboriginal* groups have gained equal access to most Government of Canada assistance programs e.g., CMHC subsidies, CEIC subsidies, ISTC subsidies.

In order to address existing inequalities the Siksika Nation has proposed that the Government Of Canada adopt a more global approach to financial assistance based on the needs of Siksika Nation members. First Nations and the Government of Canada would compare the range of assistance available to Canadian citizens and would negotiate an appropriate share which should be transferred



to First Nation governments. The Government of Canada would agree to transfer financial resources to First Nations who in turn would agree to use the financial resources to address the needs of their membership.

## **9.2 Equality of Access to All Government Programs**

Rather than maintaining a system which requires First Nations to identify and access a wide range of government support programs, the Siksika Nation is proposing a more streamlined approach. Every form of government assistance currently offered to Canadians would be examined in considerable detail to determine the extent of assistance offered and the eligibility requirements for recipients.

Government assistance programs would be grouped into broad functional categories and the level of assistance offered to members of First Nations would be compared to assistance offered to Canadians in general, or to specific regions of the country. Once the assistance programs have been grouped by function, a more detailed analysis could evaluate the actual benefits realized by the recipients.

For example, assistance offered to Canadians in the form of home ownership subsidies or interest rate adjustments has a much greater value to the recipients when the compounding effect of escalating real estate values is factored in. Ten million dollars of government assistance to construct housing within First Nation lands does little to increase the actual net worth of First Nation members. Ten million dollars of home owners subsidies distributed outside of First Nation lands opens the door for substantial increases in net worth through escalating real estate values and non-taxable capital gains.

Under the Siksika Nation global approach to financial arrangements, the Government of Canada would have an obligation to provide a First Nation with funding at a level which was *equitable* compared to funding provided to Canadians who were not limited by the Indian Act or narrow provincial interpretations of Section 91 (24) of the Constitution Act. In essence, the Government of Canada would assume full responsibility for providing resources to First Nation governments and would adjust their transfer payments to the provincial government accordingly.

First Nation governments could continue to negotiate agreements with the provincial government to address issues of mutual concern. However, the majority of funding for essential government functions such as education, income support, social housing, law enforcement, and government operations would originate from the Government of Canada.

## **9.3 Funding Based on the Needs of Siksika Nation Members**

In 1992/93 the Government of Canada expended more than \$5.0 billion on programs intended to benefit members of First Nations living within First Nation lands. This represented an average expenditure of \$12,412 for each of the 358,028 members living on First Nation lands across

Canada. In 1992/93 there were 2650 Siksika Nation members living on Siksika lands. Using the Government of Canada average of \$12,412/capita, the Siksika Nation's share of the total Government of Canada expenditures should be near \$33,000,000.

The Siksika Nation has clearly established that the level of funding provided by the Government of Canada for Social Housing, Medical Services, Government Operations, and Economic and Employment Development is substantially lower than assistance offered to other jurisdictions. Based on the realization that many necessary functions of First Nation government are currently underfunded when compared to other jurisdictions, it is safe to assume that the Siksika Nation's proper share of Government of Canada transfer payments would exceed \$40,000,000 per year for members living on Siksika lands. A minimum of \$10,000,000 per year in transfer payments would be required to meet the needs of Siksika members currently living under provincial and municipal jurisdiction.

For comparative purposes and to show current fiscal inequities, in 1992-93 the Government of Canada transferred over \$800,000,000 to the Government of the Northwest Territories as its share of resources necessary to provide services to 54,000 citizens. This represents approximately 75% of the total requirements of the GNWT. On a per capita basis therefore, the Government of Canada provided \$14,800 for each of the 54,000 residents.

While the Siksika Nation acknowledges the higher cost of living in the Northwest Territories, it also recognizes that the GNWT has access to substantial taxation revenue from business established with substantial support from the Government of Canada. The Siksika Nation also recognizes that, with the exception of the Dene Hay River First Nation, the Government of Canada has not entered into any specific treaty obligations with the aboriginal people in the Northwest Territories like it has with the Treaty 7 First Nations.

Using the level of funding transferred to the GNWT and the current levels of expenditures for First Nations across Canada as guidelines, the Siksika Nation has determined that they should be entitled to receive a minimum of \$53,000,000 from the Government of Canada to address the needs of their 4060 members. Under a variety of financial agreements, the Siksika Nation will receive less than \$20,000,000 in direct financing in the 1993/94 fiscal year. This represents less than 38% of actual financial requirements.

The Siksika Nation is suggesting that the Government of Canada has a legal and Treaty obligation to transfer an appropriate level of financial resources to all Treaty First Nations. Once these financial resources are transferred, the First Nations will assure that the needs of the membership are addressed in a responsible manner.

#### **9.4 A Guarantee of Financial Support Over a Defined Period of Time**

Existing financial agreements between the Siksika Nation and the Government of Canada all contain phrasing which indicates that all funds are *subject to appropriation by Parliament*. In recent years this phrase has been used to justify substantial decreases in a number of multi-year

agreements between the Siksika Nation and the Government of Canada.

The Siksika Nation has proposed that financial arrangements with the Government of Canada could span a period of 25 years, or longer, and that the agreements would become legally binding on future governments. In essence, the Siksika Nation is proposing that the spirit of mutual respect which preceded the signing of Treaty 7 be continued through a legally binding arrangement. The Government of Canada has consistently refused to enter into arrangements that are legally binding on future governments and has insisted that all future funding must be subject to ratification by the government of the day.

*An important aspect of intra-governmental relations, which is often overlooked, is the relationship between First Nation governments and the Government of Canada established at the signing of the treaties. Until the Government of Canada recognizes the full extent of its legal obligations under the treaties, it will continue to treat First Nation governments as junior governments without inherent rights.*

In order to resolve the dispute surrounding the negotiations of longer term arrangements, the Siksika Nation has developed a *global* approach to the transfer of funding which is based on mutually negotiated performance measures. Through the introduction of performance measures, the financial arrangement takes the form of a contract between two parties. If the Siksika Nation fulfils its obligations under the contract, the Government of Canada must also fulfil theirs. This approach will enable the Siksika Nation to develop long term strategies and to borrow developmental funding from financial institutions. However, it will also allow the Government of Canada to accurately project future financial obligations and to increase the level of accountability related to its financial arrangements with First Nations.

### **9.5 Siksika Nation Global Funding Proposal**

The Siksika Nation has undertaken a wide range of initiatives related to improvement in the quality of life of its members. The majority of these initiatives requires financial support from the Government of Canada or from the Government of Alberta. In most instances this financial support is provided through some form of financial agreement which outlines the specific terms and conditions which apply to each party.

With the introduction of an Alternative Funding Arrangement (AFA) in 1988, the Government of Canada, through Indian and Northern Affairs Canada (INAC), moved away from defining specific budgets for specific programs and moved towards an agreement where the priorities of First Nations could be addressed in a more comprehensive manner.

The Siksika Nation entered into their first AFA in 1989 and signed a five year agreement in April 1990, which expires March 31, 1995. The most significant feature of the Siksika nation AFA was the agreement to a fixed budget for social assistance based on a projection of future caseloads. This projection of future income, and the flexibility provided within the AFA, permitted the Siksika Nation to redirect approximately \$300,000 of funding towards employment subsidies and \$200,000

of funding towards adult education and vocational training. This funding was coordinated with approximately \$600,000 provided through the Calgary East Canada Employment Center (CEIC) to support the education, training, and employment of more than 150 Siksika Nation members.

The ability to fund projects over more than one fiscal year, and to coordinate funding from a number of sources, has encouraged the Siksika Nation to broaden the scope of the AFA to include all forms of government transfer payments, including those available through the Government of Alberta. This expanded process has been defined within the *principles of mutual understanding* developed as part of negotiations preceding approval of the Siksika Nation Government Act. The process has also been defined in a protocol agreement between the Siksika Nation and the Government of Alberta signed on October 5, 1993.

During the past three years both the Medical Services Branch of the Department of National Health and Welfare and the Calgary East Canada Employment Centre have expressed their interest in developing longer term agreements with the Siksika Nation. In September the Siksika Nation initiated discussions with Corrections Canada and the Solicitor General of the Province of Alberta to develop a more responsible approach to the apprehension, trial and incarceration of Siksika Nation members. All of these expanded relationships will require a more progressive form of financial transfer arrangement to support objectives defined by the Siksika Nation.

The expansion of the existing AFA signed with INAC to include other departments of the Government of Canada and to improve the financial relationship with the Government of Alberta has been defined as *global funding*. The Siksika Nation is requesting the financial support of INAC to develop a *global funding* proposal and to complete the data collection, research and development of *performance indicators* necessary to support a *global* financial transfer arrangement.

### **9.5.1 What Does The Term "Global" Mean to the Siksika Nation?**

(i) *Global* refers to an arrangement that would include all forms of Government transfer payments. Under a global funding arrangement the Siksika Nation would receive funding from the Government of Canada for the following;

-Social Housing, including operational subsidies currently provided to provincial, municipal and non-profit housing authorities.

-Employment Development and Training, including an appropriate share of funding provided through CEIC.

-Education, including an appropriate share of funding transferred by the Government of Canada to stimulate underdeveloped regional economies, and an appropriate share of funding currently provided through the Canadian Aboriginal Economic Development Strategy.

- Law Enforcement, at a level comparable to funding made available by the Government of Canada to the Royal Canadian Mounted Police, and including funding for the purchase, construction, replacement and maintenance of capital assets; and for staff development and training.
- Administration of Justice, including the cost of operating the Siksika Tribal Court system and related capital facilities. This would require coordination of programs with the Government of Alberta.
- Correctional Services, including a predetermined budget for Siksika members who might be incarcerated in a federal or provincial correctional facility. The global funding approach would transfer responsibility for paying the cost of incarceration to the Siksika Nation and would limit the future level of expenditure by the Government of Canada.
- Medical Services, including mental health, transportation, diagnosis, prescription and supply of medicine, active treatment, insured and non-insured benefits. The Siksika Nation is negotiating an agreement that would transfer an appropriate level of funding to the Nation such that the Nation would agree to pay all expenses incurred off-reserve on behalf of the membership.
- Culture and Heritage, including an appropriate share of funding provided by the Government of Canada for the preservation of culture and historical resources. This would include the preservation of significant historic sites e.g. Blackfoot Crossing Historic Park.
- Community Infrastructure, including an appropriate share of the costs related to the purchase, construction, replacement and maintenance of community infrastructure. The Siksika Nation recognizes a responsibility to share in the cost of constructing and maintaining community infrastructure, but it also recognizes that the Government of Canada has invested billions of dollars in the development of infrastructure outside of First Nations lands.
- Land Management, including funding relating to environmental protection and natural resource management. The Siksika Nation occupies over 180,000 acres of *treaty-reserved* lands and requires a substantial budget to manage that land for the optimum benefit of the membership.
- Operation of Government, including an appropriate level of funding for the elected government, the executive branch and the legislative branch. This funding should be comparable to the funding provided by the Government of Canada to the Northwest Territorial Government.

(ii) *Global* refers to all aspects of a Government service to its constituents. For example, funding for education would include:

- salaries and appropriate benefits for teachers and support staff
- staff development and training
- educational supplies
- curriculum development, including funding related to preservation of the Siksika Language
- construction of capital assets based on enrolment
- replacement and maintenance of capital assets
- operation of educational facilities
- establishment of a Board of Education and appropriate expenses related to this Board
- travel expenses for an appropriate number of conferences and professional development workshops
- transportation of students
- reciprocal tuition for Siksika students attending schools in other jurisdictions
- adult education, literacy and upgrading
- vocational training in secondary schools

Current forms of transfer agreements between the Siksika Nation and the Government of Canada are not comprehensive, particularly in the area of constructing, maintaining and replacing capital assets. The Siksika Nation is proposing that funding for education, and other services requiring capital facilities, would include an appropriate level of funding for the capital replacement based on a mutually agreed life expectancy of each capital asset.

The Siksika Nation is also aware that INAC has reduced its total staff from more than 4100 in 1986/87 to fewer than 2800 in 1992/93. This reduction was made possible through the transfer of additional responsibilities to First Nations. This reduction in staff also reduced the requirement for office space and associated expenses for each employee. This reduction in federal expenditures for human resources and infrastructure did not translate into economic benefits nor increased transfer of fiscal resources to the Siksika Nation. The Siksika Nation is concerned that the existing formulas for calculating support funding for larger First Nations does not accurately reflect the full cost of developing new responsibilities for First Nations.

In 1990 the Siksika Nation completed a 2700 sq. metre office complex to accommodate over 100 administrative staff. The INAC contribution to this complex under existing capital funding guidelines was only \$100,000 and funding for O & M is limited to 20% of estimated costs or \$28,000 in real terms. More importantly, the partial O & M funding provided by INAC does not include any allowance for the replacement of key components of this substantial capital asset.

Under a *global* funding arrangement the Siksika Nation and the Government of Canada would reach agreement as to the appropriate share of all expenses that will be transferred to support the provision of services to the Siksika Nation members. The global funding arrangement would

reflect all expenses that form part of government functions, including expenses which may not form part of existing financial transfer arrangements.

(iii) *Global* refers to the provision of services to all Siksika Nation members, including those who do not reside on Siksika lands. Given the transient nature of most Canadians, including members of the Siksika Nation, it is difficult to base long term financial arrangements on residency. Members of the Siksika Nation, particularly post-secondary students, often move into urban areas for sustained periods, only to return when housing or an employment opportunity becomes available.

The Siksika Nation recognizes that this agreement must include performance indicators to measure the quality of services provided to the membership. These performance measures are required by the Government of Canada to satisfy the Auditor General and the Public Accounts Committee that funding has been used for the purposes defined by Parliament. The performance measures are also necessary to assure the membership of the Siksika Nation that their needs are being addressed.

(iv) The term *global* means that funding will be provided as a single amount and will not be provided on a program by program basis. For example, the Siksika Nation could enter into a global agreement for a total of \$55,000,000. The negotiations which led up to determining the value of the agreement would be based on unit by unit costs, per capita formulae, etc. However, once the total amount of the agreement has been determined, the program boundaries dissolve and the funding becomes a *global transfer payment*.

*The Siksika Nation will agree to meet specific program requirements or social objectives. Those will be defined in the Financial Transfer Agreement (F.T.A), and they will not be bound by any other restrictions or pre-conditions. The Government of Canada can adjust the cash flow to Siksika Nation only when the predetermined social objectives, or performance measures, are not being met or when Siksika Nation has not developed an action plan to address the concerns of the Government of Canada.*

## **9.6 Summary - Global Funding**

The *global* funding approach proposed by the Siksika Nation is a substantial improvement over the existing system of unconditional grants and year to year contribution arrangements. While *global* funding incorporates many of the benefits of an Alternative Funding Arrangement, it adds another dimension of accountability by clearly defining the obligations of both parties.

The Siksika Nation realizes that the Siksika government must be fully accountable to the membership and must base its functions as a government on community priorities. The Siksika Nation also realizes that INAC is coming under increasing pressure to improve accountability to Parliament for funding transferred to First Nation governments. Considering that both the Siksika Nation and the Government of Canada require some means of evaluating how financial resources are utilized, the concept of *global* funding

should be seriously considered as an alternative to existing arrangements.



## X CONCLUSION AND SUMMARY

As already expressed in the previous pages of this report, it is abundantly clear that any new relations between the First Nations of Canada and the Canadian people in general must be founded on entirely new principles, especially within the area of self-government. Since the Royal Commission on Aboriginal Peoples has already concluded that "...Aboriginal peoples have the inherent right of self-government within Canada."<sup>37</sup>, and since that concept has now become part of federal policy, the time has arrived when Parliament and Canadian society should also recognize and respect that Indian treaties, both pre-Confederation and post-Confederation, constitute the root source of existing and future legal relations between First Nations and the New-Comers to this land.

By natural and logical extension, any newly created legal relations between First Nations and Canada should be made pursuant to the existing treaties, including the right to self-government. In other words, First Nations such as Siksika, could and should be able to pursue a *self-government treaty* with Canada and the Government of Alberta under section 35 of the Constitution Act (1982) and Treaty 7 (1877). As the Royal Commission on Aboriginal Peoples reports:

From ancient times, *treaties* have been the preferred method for regulating relations between Aboriginal peoples and the Crown. It seems appropriate that in many instances they should form a central part of the modern process for implementing self-government.<sup>38</sup> (emphasis mine)

As far as the Siksika people are concerned, the root source of their fundamental legal relations with the Crown and their collective rights within Canadian society stem from Treaty 7 (1877) itself. Therefore, important matters such as jurisdiction, financing, fiduciary obligations, and transitional arrangements should be negotiated, mutually agreed to and ratified under the banner of Treaty 7 and to be respected and upheld as section 35 rights and not as mere legislated rights made at the goodwill of Parliament or of the provincial government.

Therefore, this case study on Siksika Nation governance has hopefully demonstrated that a new relationship between the First Nations and Canada must be based on a new footing that not only recognizes and respects the following principles, but should also form part of any new negotiations, consultations and agreements:

- (1)The political and independent sovereignty of First Nations;
- (2)The Indian title to the entire Canadian soil;
- (3)The international law aspects of pre-Confederation Indian treaties with European sovereigns;
- (4)The Indian view and understanding of the land cession Treaties No.'s 1-11, especially as constitutional and legal instruments to facilitate modern self-government treaties with Canada and the provinces;
- (5)The fiscal and economic significance of the post-Confederation Indian treaties and their

constitutional basis for resource revenue sharing arrangements with the provinces, e.g. renegotiation of the Natural Resources Transfer Agreements with the prairie provinces based upon the equitable notion that *Indian consent and fair compensation* was totally absent no different than the Quebec Boundaries Extension Act (1912) which gave no fair consideration either for the *Indian title* question in the province of Quebec.

- (6)The inherent right to establish Indian governments and governance as *sui-generis orders of government* within Canadian federalism under s.35 of the Constitution Act (1982);
- (7)Government - to - government relations similar to but unlike federal-provincial relations;
- (8)The reference of treaty issues and land claims, both comprehensive and specific, to a truly independent quasi-judicial hearing and decision-making body in order to remove the Crown from its present conflict of interest position of being the trustee and protector of Indian lands and interests on the one hand, and also being the defendant in such claims on the other hand, and serving as judge through the federal Department of Justice regarding Crown misdeeds, omissions, negligence, etc.
- (9)The right of First Nations to a fair and equitable share of Canadian wealth generated from the natural resources found upon and underneath traditional Indian territories, notwithstanding the narrow and self-serving Canadian interpretation given to all Indian land cession treaties, and the Natural Resources Transfer Agreements of the 1930's as they affect the prairie provinces.

The attainment of Indian governance through the establishment of Indian governments will greatly enhance and facilitate the full realization of the above principles. Therefore, the yoke of the Indian Act must be removed at once from those First Nations pursuing such a course as is the present case for the Siksika Nation.

It is expected that the federal and the provincial governments in Canada will continue to resist such principles as stated above. However, no real justice will be achieved in our time unless there is some real movement towards acceptance of such principles and objectives. As long as the Canadian governments, both federal and provincial, continue to ignore such justifiable and legitimate First Nation principles, we shall all continue to suffer such agonies as the 1990 Oka crisis, the Innu of Labrador situation, and a host of other problems created by *Third World like* living conditions and economies which characterize all First Nations communities.

The following quotation, borrowed from the Oklahoma Indian Affairs Commission's office, supports the basic thesis of this case study on Siksika Nation Governance:

**OKLAHOMA INDIAN AFFAIRS COMMISSION**

***TOPIC: The Nature of American Indian Tribal Governments***

**RESOURCE:**Native American Legal Resource Centre (n.d)

*It is a common notion among those unfamiliar with American Indian nations and people to think of Indians as a single group of people operating under a single government and sharing languages, customs, and religion. This could not be further from the truth. At the time of Columbus, there existed in what is now the United States 600 Indian nations speaking 300 distinct languages. Today over 300 tribal governments are meeting the needs of their people through systems which generally combine traditional forms with standard American forms.*

*While there are certainly regional and even nation-wide similarities among Indian government forms, it is a wise idea to take a cue from the names of many Indian nations give themselves, "the people," or "the principle people"--and to consider each Indian government as a distinct entity exercising sovereign powers to meet the present and future needs of its people.*

*The question arises, what is a tribal government like? Is it similar in function to a county government or a state government? To an independent nation? To a business? The answer is a little of all three.*

*It is a national government in that it is sovereign, asserts jurisdiction over its people and land, owns land and has at the heart of its mission meeting the needs of its people; it is like state and local governments in that it administers many federal programs; and it is like a business in that it can manage its resources, products, and services for profit.*

*The power and source of Indian nations and their governments is the same today as it was before the coming of the Europeans--their inherent sovereignty. This means that the powers of tribal governments predate the coming of Europeans to this continent, the signing of the Declaration of Independence, and the adoption of the United Stated Constitution. The sovereignty of tribal governments has been repeatedly recognized and affirmed by the United States government through treaties, statutes and judicial decisions.*

*Still, there are some who ask the question, "If the tribes want to be self-governing and self-sufficient, why do they ask for federal subsidy?" The answer is quite simple. As governments, the tribes receive assistance on the same basis that state and other local governments receive federal subsidies for road and school construction, for impact aid in education, for public transportation, for urban renewal, and for other projects and services. Their purpose is the same as any government--to meet the needs of their people. The tribes receive federal assistance for many of the same reasons that private industries receive assistance in the form of tax relief or direct funds for research and development, and payroll and overhead subsidies for participating in job training programs.*

*The tradition of self-government is not a foreign idea, but one of the fundamental concepts that guided the founding of the United States. As they have from time immemorial, tribes will continue to be permanent on-going political institutions exercising the basic powers of government necessary to fulfil the needs of tribal members.*

The above quotation makes the point that socio-political concepts such as Indian sovereignty, Indian governance and Indian self-government have long been constitutionally and legally recognized in the United States of America at least since the 18th century. For those reasons, the sky has not fallen in that country. American Indian governments form an integral part of the dominant American government, political and legal systems; they directly negotiate agreements with the energy and industrial sector; the President and members of Congress directly and routinely negotiate with Tribal Chairmen (equivalent to Chiefs in Canada); their tribal courts have cross-deputization arrangements with the state courts; their treaties are honoured to protect tribal interests, natural resources and assets. If those kind of American Indian - U.S. governmental relations can be established south of the border, why can it not be done in Canada?

As far as the Siksika Nation is concerned, it has always taken the position that Treaty 7 of 1877 already provides the framework for such American-type of economic and political arrangements as described above. This author has written a seminal paper entitled, Treaty Federalism,<sup>39</sup> wherein the treaty process to achieve Indian self-government is outlined and described. The concept of treaty federalism can be implemented to achieve modern Indian self-government treaties in Canada and as a continuation of the historic treaty negotiations process. There should be no questions or doubts anymore that Treaty 7 recognized and confirmed original Indian sovereignty in 1877 and Indian land ownership. The treaty is a living document meant to ensure the political and economic survival of the signatory First Nations, not only during the 19th century but also for future centuries, for *as long as the sun rises in the east, the rivers flow and the grass grows*. There are ample reasons to support the proposition that First Nations should negotiate their self-governing arrangements with Canada and the provinces pursuant to their post-Confederation treaties, after all, succeeding generations of Canadians have greatly prospered using lands and resources that originally belonged to the First Nations such as the Siksika Nation. This type of negotiations process can be successfully implemented without the necessity of another constitutional amendment simply because, in this case, the Treaty 7 inherent right to self-governance is already entrenched in the 1982 Canadian Constitution.

The Siksika Nation wishes the Royal Commission on Aboriginal Peoples well and prays that our Creator will guide its research findings and report to Parliament so that real and positive changes will occur for First Nations and First Nations will have their rightful place within Canadian society established and secured once and for all.

*The awe-inspiring man standing in the clearing was Chief Crowfoot. The place was Blackfoot Crossing near the present town of Siksika; the time, 1877. In front of him, seated under the shade of an awning, David Laird, Governor of the North West Territories, Colonel Macleod and other representatives of Queen Victoria and Canada. Directly behind him, the mighty Chiefs of the Blood, Peigan, Sarcee, and Stoney. In spite of opposition by a number of Chiefs, who felt signing a treaty with the whites would lead to disaster, the great Chief slowly raised his arm to the sun; a hush fell over the multitudes gathered on the banks of the Bow.*

*With eyes fixed beyond the distant horizon, he began to speak. "If the Police had not come to this country, where would we be now? Bad men and whiskey were killing us so fast that only few of us would be living today. The Police have protected us as the feathers of a bird protect it from the frosts of winter." With those words, Crowfoot, Old Sun and Heavy Shield, along with all the other Chiefs, signed the white man's paper. 40 years earlier the mighty Blackfoot Nation had controlled an immense area of land, extending from just south of Fort Edmonton on the North Saskatchewan River all the way down to the Missouri River in Montana and east from the Rockies to Saskatchewan.*

Source: The Old Alberta Times, Vol.1, No.1  
(July, 1994), p. 14

## **XI RECOMMENDATIONS**

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**11.0** The community - based - self - government process of the federal government should be abandoned and be immediately replaced by a *treaty based* self - government negotiations process that will bind the federal and provincial governments to bargain in good faith. This process will not only restore *existing* treaty rights that have been unilaterally eroded, derogated or abrogated by the operation of discriminatory federal and provincial statute law, but it will also add new treaty rights that were not apparent when the world was less complicated and less technologically advanced as we know it today.

*Indian self-government treaties* should and could include both *existing* treaty rights that were in place at the time of signing of the original treaty plus any new treaty rights or self-government rights that would enhance the principle of self-determination within First Nations such as Siksika.

**11.1** Constitutional Amendments and Quasi-Constitutional Processes That Would Accommodate Aboriginal Governments:

**11.1 (a)** Constitutional Entrenchment:

- (i) Constitutional entrenchment of aboriginal self-government in s.35.(1), transforms the right into a basic law of Canada and any law that is less basic and conflicts with the right will be inapplicable to the extent of the inconsistency (the effect of s.35 and s.52). This does not mean that the right is absolute, as there are many competing rights and interests also found in the Constitution that may conflict with an elaboration of the right of self-government, e.g. the fundamental right to equality (We shall comment on this issue below.);
- (ii) The recognition of the right has been promoted by a series of *parallel processes* undertaken by national aboriginal associations;
- (iii) The failed Charlottetown Accord was the first time that the aboriginal associations were invited to participate in the discussion of the full range of the constitutional issues. Since the failure of the Charlottetown Accord in the fall of 1992, no constitutional initiatives have been undertaken.
- (v) Generally, this right stems from the political, legal and social realities found in Canada. This right is recognized; it is not created, since it is assumed to have existed prior to the occupation by the Europeans. Thus, one can say that the right is an aboriginal right since it is, to use the *Sparrow* terminology, based on practises that existed prior to, and in modified form (limitation of the right) after, the occupation.
- (vi) An argument can be made that the aboriginal right of self-government already

exists via common law; this position has been posited by the AFN since the failure of the Charlottetown Accord.

**11.1(b)** The constitutional amendment should place the inherent right in the following context:

(i) Aboriginal governments should be recognized as one of three orders of government;

(ii) The legislative authority of First Nation governments should be defined in the Constitution;

(iii) The jurisdictions of First Nations should be placed within the context of: *"to safe guard and develop their languages, culture, economies, identities, institutions and traditions and to develop, maintain and strengthen their relationship with their lands, water and environment"*;

(iv) The in-road of provincial jurisdiction allowed by s. 88 of the Indian Act should be terminated in the new era of self-government. This could be done if the jurisdictional scope and quality of First Nation governance is adequate such that neither the provincial government nor the federal government can create conflicting legislation with First Nation legislative competence;

(v) The "Peace Order and Good Government" power will have to be redefined in light of the more general question of the jurisdiction of First Nations and the development of a doctrine of paramountcy (rule to determine the supremacy of laws) that can accommodate three and not just two orders of government;

(vi) There should be several models of government for a First Nation government structure with a land base. An urban native government is, by its nature, a totally distinct creature. As to the paradigm of self-government, the federal and provincial governments are contemplating that aboriginal government will be of a lower order than a provincial government paradigm. Generally, in the context of First Nations, the two models that arise by analogy are the provincial and municipal paradigms. In fact, neither can adequately address the *sui generis* (unique) nature of First Nation governments. However, as illustrative

mechanisms, the paradigm of the provincial governance, with radical changes, should be the model for First Nation governments. All First Nation governments should direct their energies to acquiring jurisdictional powers with the scope and quality found in the provincial paradigm. An aboriginal government that is based on the municipal paradigm will be no better than a government under the Indian Act or under the provincial Municipal Government Act.

**11.1(c)** The basic legal concerns that should be addressed in any self-government proposal are as follows:

- (i) Devolution of responsibility (ensure that the federal government does not relinquish all of the fiduciary obligations that it owes to the First Nations).
- (ii) Broader by-law power (more than those allotted to a municipal council).
- (iii) New funding for self-government arrangements should give First Nations more powers and rights than are now recognized under the Indian Act.
- (iv) The jurisdiction of First Nations should be set (The reserves should become a federal district and the provinces' jurisdiction on reserve land should be limited).
- (v) The Band Council should be a distinct legal entity, unlike what is now the status quo under the Indian Act and more importantly, for Indian governance purposes.
- (vi) Tax and seizure exemptions should be continued so as to preserve the Indian land base.
- (vii) The effect of s.25 in the Charter of Rights should be elaborated for Indian governance purposes.
- (viii) Aboriginal rights as recognized and affirmed in s.35 of the Constitution Act, 1982 should be incorporated by reference.
- (ix) A land holding unit amenable to economic development should be devised.
- (x) First Nations should have exclusive control of membership.
- (xi) A retraction provision is necessary to allow for a way out if the agreement becomes untenable in practice.
- (xii) All of the above considerations should be codified in a piece of enabling legislation or some other form of agreement.
- (xiii) Superimposed on all of the above and other considerations, as they are found in a piece of enabling legislation, there should be a system of public management customized to First Nations which would take into consideration traditional Indian management.
- (xiv) Any self-government agreement should contain a settlement provision with respect to any outstanding land claims.

The above list is by no means exhaustive. It is only meant to illustrate the diversity of concerns



involved in devising self-government agreements and arrangements.

**11.1(d)** There are five mechanisms available for legal recognition of self-government agreements:

- (i) Constitutional entrenchment of treaties;
- (ii) Recognition of First Nations' powers by the provincial and federal government;
- (iii) Legislation;
- (iv) Inter-governmental agreements; and
- (v) Administrative arrangements.

## **11.2 Quasi-Constitutional Processes: Community Based Self-Government Process and Levered Processes.**

DIAND's centralized policy and service delivery structure is not consistent with aboriginal self-government. In light of initiatives taken by First Nations over the last two decades, DIAND'S self-government policy has resulted in a half-hearted and misdirected attempts at facilitating self-government for First Nations. The basic problem with DIAND's policy is that it comes far short of self-government envisaged by First Nations. DIAND's use of the term *self-government* entails an exercise of delegated mandates, authorities and responsibilities to First Nations. First Nations in turn, view self-government as autonomy with respect to policy formulation, administration, adjudication and enforcement of laws. The view of First Nations is that tribal governments must form a third order along with the federal and provincial levels of government. The powers and jurisdiction of First Nation governments would be somewhere between a province and municipality. The primary criticism levelled against the federal government is that its *concept of self-government* is reducible to a form of municipal government whereby the federal government's legislative responsibilities are taken over by provincial governments and eventually watered down by the time they reach First Nations.

## **11.3 Principles Underlying the Strategies of the Siksika Nation C.B.S.G. Negotiations Process Which Could Be Used to Lever Self-Government Initiatives.**

The following factors distinguish the Siksika Nation approach from the current federal perspective and approach:

- (a) Central to the Siksika Nation approach is a detailed proposal for a three branch government system (legislative, executive and judicial) which will form the framework of a relatively independent government.
- (b) Siksika Nation's approach involves a full blown judicial system that will exercise jurisdiction over all civil and lower order criminal matters that occur on Siksika Nation lands. This

jurisdiction covers non-Siksika members who violate the laws made under Siksika Nation Government Act (S.N.G.A.) and Canadian laws that the Siksika Nation enforces.

- (c) The terminology used in Siksika Nation self-government negotiations has shifted from the use of the term: "*delegation of jurisdiction*" to "*transference of jurisdiction and powers*". This shift in terminology is significant as it paints the government created out of the negotiations as more of a *stand alone* government, as opposed to a service delivery unit that the federal negotiators originally envisioned.
- (d) Siksika Nation has initiated discussions in the area of finance that turn on the concept of *equality with non-Indian governments* as opposed to *adequate funding for the continuation of the delivery of services*. This shift in the approach to negotiating funding has forced the federal negotiators to realize that the *Charter and the principles of equality* demand that funding in the *Financial Arrangements P.M.U.* be similar to that received by provincial governments. These negotiations should remedy the long history of inequality in the area of post-secondary education that Crowfoot v R is now addressing through the courts.
- (e) Another shift in the negotiations process is the concept of *acquisition of jurisdiction* rather than merely being a delivery unit for various services. Siksika Nation has been very ambitious in the *acquisition of jurisdiction* in all essential and optional matters. Siksika Nation has now submitted P.M.U.'s in all of the jurisdiction areas that are available under the C.B.S.G. process.
- (f) Through unique funding formulas, the Siksika Nation has attempted to have its jurisdiction apply in an extra-territorial way. As an example, Siksika Nation is requesting program funds for its members who live off the reserve and to give service delivery in such areas as health care, education and social services. This will allow Siksika Nation to enter into service delivery agreements that would bind other governments to deliver services in ways that meet Siksika Nation's priorities.
- (g) Siksika Nation's jurisdiction and laws will apply to non-members found on Siksika Nation lands.
- (h) Siksika Nation views the outcome of the C.B.S.G. negotiations process as only a stepping stone into true self-government.
- (i) Siksika Nation is restructuring its public administration functions in preparation for an advanced management structure under its self-government regime.

The points (a-i) above serve as a checklist for those matters that would have to be amended in the C.B.S.G. negotiations process and which could be levered into the next generation of self-government policy.

#### **11.4 How Treaties and the Treaty Making Process Affect and Reflect Patterns in Aboriginal Governance**

Treaties are a means of bringing First Nations into the constitutional fold. Treaties recognize the self-governing nature of First Nations in so far as they presupposed Indian representatives as being legitimate governmental representatives with the *legal status and capacity* to act on

behalf of their members.

The aboriginal and treaty right to self-government is recognized as an historical and legal fact by all aboriginal leaders. Over the years, a series of constitutional processes has examined the right to aboriginal self-government. The following is a summary of the constitutional processes (Beaudin-Dobbie Parliamentary Committee, Royal Commission on Aboriginal Peoples, Treaty Resolution, Unity Commission and Land Claims Resolution):

- (a) Recognize an inherent right to aboriginal government based on the history and the constitutional status of First Nations and the entrenchment of self-government as soon as possible;
- (b) A process by which to negotiate the jurisdictional brokering among the federal, provincial and First Nation governments;
- (c) The emergence of self-government as a necessary adjunct of comprehensive land claims settlements with the view to promote the social and economic advancement of First Nations;
- (d) Individual rights must be protected in Aboriginal governments, e.g., the applicability of the Charter;
- (e) Representation of Aboriginal peoples in the Senate and House of Commons;
- (f) Source of the right is inherent to the First Nations; it is not created either by the federal or provincial governments via the constitution;
- (g) The scope of the right is circumscribed by the constitution. Hence, no powers exist outside of the constitution;
- (h) Aboriginal governments have sovereign status rather than being subordinate to the other recognized governments;
- (i) Self-government must be implemented only with the consent of the directly affected individual First Nations. Such implementation must be consistent with s.35 constitutional rights, treaty rights and also with the fiduciary obligations of the Crown; and
- (j) The application and interpretation of the Treaties in modern contemporary terms which are consistent with an approach that promotes the social and economic independence and advancement of First Nations;

### **11.5 Land Claims Agreements - Comprehensive Claims, Specific Claims and Treaty Land Entitlement**

The Government of Canada has an obligation and policy of settling land claims.<sup>40</sup> Its policy is

structured to deal with two types of claims: comprehensive claims based on aboriginal title (use and occupancy of the land in question) and specific claims based on specific obligations arising from treaties, other agreements and the Indian Act. DIAND provides funding for research and the negotiations of claims.<sup>41</sup>

The primary objective of the government in negotiating settlements is to ensure certainty as to ownership (to "resolve the legal ambiguities associated with the common law concept of aboriginal rights"<sup>42</sup>). Hence, they provide for surrender of aboriginal title and rights. Upon reaching a negotiated settlement, all parties involved must ratify the agreement.<sup>43</sup>

Specific claims are made for the following reasons: the non-fulfilment of treaty or other agreements between Indians and the Crown; breach of an obligation under the Indian Act or other statute or regulations pertaining to Indians; breach of obligations arising from the government's administration of Indian moneys or other assets; and the illegal disposition of Indian land or insufficient consideration for, or fraudulent disposition of, Indian land.

Treaty Land Entitlements (TLE) are a subset of specific claims that determine the exact land area that should have been set aside for the use of First Nations. The grounds for the addition to reserves usually turns on the erroneous measurement of band populations which determined the amount of reserve land to be set aside. TLE has been implemented with some success in some prairie reserve situations<sup>44</sup>. TLE involves the following steps: preliminary (research and validation), negotiation (agreement in principle), ratification (final agreement and survey) and implementation.

Whereas the specific claims process has met with some success<sup>45</sup> the comprehensive land claims process has had little. The exceptions here are those settlement arrangements which were necessitated due to economic development (James Bay) or those agreements in principle which have arisen due to demographic necessity (e.g., Yukon and Northwest Territory agreements where the aboriginal population is the majority in both)<sup>46</sup>.

The existing comprehensive land claims process in the NWT is running into problems on the basis of intra community disagreements over the extinguishments of aboriginal title. As extinguishment of aboriginal title is a requirement of the existing claims process, Deh Cho First Nations and NWT Treaty 8 First Nations will not enter into comprehensive claims agreements.

This track record leads one to question the integrity of the process behind the policy of land claims settlement in Canada. The track record indicates the necessity for the establishment of an impartial tribunal such as an international tribunal.

## **11.6 Treaty Commissions and First Nations Treaty Review**

By the sheer weight of aboriginal and treaty claims in many provinces, governments have been forced to establish treaty commissions. Due to the lack of treaties in British Columbia, that province has more outstanding comprehensive claims than the rest of Canada combined. Consequently, a

five member Treaty Commission was created with a mandate to facilitate the negotiation of treaties in B.C. This opened the claims process for 22 claims by all First Nations in B.C. The principles that guide the negotiations involve: fairness, neutrality, affordability, protection of third party interests and social and economic stability. To further this end, in June of 1993, B.C. entered into a cost sharing Memorandum of Agreement with Canada to fund the claims resolution process.

### **11.7 Opening Up of Natural Resource Transfer Agreements**

The prevailing theory posited by the courts is that treaty rights have been merged and consolidated by the Natural Resource Transfer Agreements. What this means in practical terms is that NRTAs are taking the place of the numbered treaties, i.e. No.s 1-11. It is the NRTAs that govern the relationship of the special rights of Indians. For instance, hunting rights have commercial aspects to them under Treaties 6 and 8, but the effect of the NRTA is to restrict them to sustenance hunting rights that can be exercised only on unoccupied Crown land (which is very difficult to find south of Treaty 8).

The Court of Appeal of Alberta recently ruled on the NRTA and its effect on Treaty 8 in R.v.Badger<sup>47</sup>. Although the decision upheld the conviction of an Indian for a violation under provincial legislation, Mr. Justice Kerans noted that the theory of merging and consolidating treaty rights under the NRTA is problematic as that notion was reached without the participation of First Nations in the negotiations process. This judicial consideration of the NRTA may be interpreted as promoting the brokerage of jurisdiction and rights over traditional lands within the Treaty 8 area. One means of addressing the damages (the loss of the commercial aspects of treaty rights) inflicted by the NRTAs is to open up the NRTAs to renewed discussions and negotiations and allow First Nations to participate in the royalties that the prairie provinces are now taking as the sole beneficiaries of the NRTAs. This participation in the NRTAs could be the primary means of funding treaty-based Indian self-government.

### **11.8 The Ways and Means of Aboriginal Governance's Contribution Towards the Political and Economic Self-Sufficiency of Aboriginal Peoples**

- (a) First mover advantage; [proactive strategy] the scope and quality of jurisdiction proposed by the initial First Nations to enter into negotiations will set the standard as to the scope and quality of jurisdiction by which other First Nations will be limited and judged. Hence, such initial self-government models should be expansive and liberal on the issues of jurisdiction.
- (b) Act like a government and you will be treated like a government. It will be more difficult for the federal government to reject the models and other proposals of those First Nations that are independent and have a good track record at public administration and financial management.
- (c) Provide sound and functional government legislation and the federal government will have to take First Nation aspirations to true self-government more seriously.

- (d)The self-government models will have to be connected to the mainstream institutions and processes; e.g. tribal courts will be required to have their appeals addressed by the Federal Court Trial Division or The Court of Queen's Bench;
- (e)All government agreements should have escape clauses that allow opting out if the agreement does not work out for First Nations.
- (f)All community based self-government negotiations processes, A.F.A.s, and other processes involving devolution of responsibility should be examined in the negotiations stage.
- (g)The First Nation leadership has to inform its membership at all stages of self-government negotiations and mechanisms for accountability to the membership must be in all models of self-government.
- (h)Treaty and land issues should and must become part of self-government negotiations.

**XII. APPENDICES:**

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- 12.8** Treaty 7 of 1877
- 12.9** Sections 81 and 88 of the Indian Act (1970)
- 12.10** Section 35 of the Constitution Act (1982)

**12.0 FOOTNOTES**

1. Hugh A. Dempsey, Crowfoot: Chief of the Blackfoot (Edmonton: Hurtig Publishers, 1972), p. 107.
2. Ovide Mercedi & Mary Ellen Turpel, In The Rapids: Navigating the Future of First Nations (Toronto: Penguin Books Canada Ltd., 1993), pp. 130, 131.
3. The proper noun "Blackfoot" has been in usage both during pre-treaty and post-treaty (i.e. 1877) times. The proper noun "Blackfeet" has also been used especially by American Indian historians such as John C. Ewers and Thomas E. Mails. See John C. Ewers, The Blackfeet: Raiders on the Northwestern Plains (Norman: University of Oklahoma Press, 1958, and \_\_\_\_\_, The Horse in Blackfoot Indian Culture (Washington: Smithsonian Institute Press, 1955); Thomas E. Mails, The Mystic Warriors of the Plains (New York: Doubleday & Co. Inc., 1972). Hugh Dempsey, the Blackfoot historian, states, "Although the term *Blackfeet* is used here, (i.e. his book Crowfoot: Chief of the Blackfeet (1972)) *Blackfoot* is the official name now used by the Canadian government." *ibid.* p.5.)
4. Hugh A. Dempsey, *op. cit.*, p.3.
5. J. Rick Ponting, Rebuilding the Siksika Nation: A Framework Proposal for Negotiations for the Siksika Indian Government Act. Prepared for Chief and Council and the Department of Indian and Northern Affairs (Gleichen: Siksika Indian Government Division, 1989).
6. HHC TEAM Consultants, Inc. Enterprise Strong and Free: Blackfoot Support Documents. Vol 1 "Facts and Figures", Vol. II "Household Survey Results" (Gleichen: ENA Division, 1986).
7. \_\_\_\_\_. Blackfoot Alcohol and Drug Consultations: Feasibility Study (Gleichen: Community Support Services Division, 1987).
8. Thomas E. Mails, The Mystic Warriors of the Plains (New York: Doubleday and Company, 1972), p.16. (See also pp. x, 2 *ibid.*)
9. *op.cit.*, at p. 12.
10. Hugh A. Dempsey, *op. cit.*, pp. 3,4.
11. Thomas E. Mails, *op. cit.*, page x.
12. John C. Ewers, The Blackfeet: Raiders on the Northwestern Plains (Norman: University of Oklahoma Press, 1958), p. 8.
13. *ibid.*



14. \_\_\_\_\_, The Horse in Blackfoot Indian Culture (Washington: Smithsonian Institute Press, 1955), p.17.
- 15.op.cit., p.300
- 16.op.cit, p.302
- 17.Thomas E. Mails, op.cit., p.2.
- 18.John C. Ewers, note 12, p.19.
- 19.For further reading into this interesting subject, refer to: James G. MacGregor, Behold the Shining Mountains (Edmonton: Applied Art Products, Ltd, 1954), esp. pp. 147 - 166.
- 20.op.cit., p.31.
- 21.Thomas E. Mails, note 11, p.xv.
- 22.John C. Ewers, note 14, p.19.
- 23.John C. Ewers, note 12, p.5.
- 24.ibid.
- 25.John C. Ewers, note 14, p.248.
- 26.Hugh A. Dempsey, note 1, pp.94,95.
- 27.John C. Ewers, note 14, p.245.
- 28.ibid.
- 29.Thomas E. Mails, note 11, p.xii.
- 30.John C. Ewers, note 14, p.240.
- 31.ibid.
- 32.John C. Ewers, note 12, p.30.
- 33.Thomas E. Mails, note 11, p.xv.
- 34.Eugene A. Forsey, How Canadians Govern Themselves (Ottawa: Publications Canada, 1982), p.1.

35. Joseph Dunner, Dictionary of Political Science (Totowa, N.J.: Littlefield, Adams & Co., 1970), p.217.
36. Supreme Court of British Columbia, Delgamuukw v. B.C. and Canada, "Reasons for Judgement of The Honourable Chief Justice Allan McEachern", 8 March 1991, pp. 13, 31.
37. Royal Commission on Aboriginal Peoples, Partners in Confederation: Aboriginal Peoples, Self-Government, and the Constitution (Ottawa: Canada Communication Group, 1993), p.49.
38. op, cit., p. 45.
39. Andrew Bear Robe, Treaty Federalism: A Concept for the Entry of First Nations Into the Canadian Federation (Gleichen: Siksika Nation, 1992).
40. See Pac Fishermen's Defence Alliance v. Can. (Min. of Indian Affairs and Nor. Dev., [1987] 3 F.C. 272 (T.D.) as to the federal government's legal obligations to settle land claims.
41. Information Sheet No. 1, February 1989, Indian and Northern Affairs Canada.
42. Federal Policy for the Settlement of Native Claims, 1993 Canada D.I.A.N.D. Q-5303-02-EE-A1 at 1.
43. Such parties usually include provinces in which the land in question is found: St. Catherine's Milling Co. v. R. (1888), 14 A.C. 46, 4 Cart. B.N.A. 107 (P.C.); A.G. Canada v. A.G. Ontario; A.G. Quebec v. A.G. Ontario, [1897] A.C. 199 (P.C.); Ont. Mining v. Seybold, [1903] A.C. 73, 3 C.N.L.C. 203 (P.C.); Dominion of Canada v. Ontario, [1910] A.C. 637.
44. Under an umbrella agreement, 27 Federation of Saskatchewan Indian Nations settled a claim in September 1992 which involved \$450 million and the establishment of a treaty commission. Bill C-104, the Saskatchewan Treaty Land Entitlement Act, implements the Saskatchewan Treaty Land Entitlement Framework Agreement and the Nekaneet Treaty Land Entitlement Settlement Agreement. The legislation amends the Natural Resource Transfer Agreement by releasing Saskatchewan from providing unoccupied Crown land for reserve and gives bands the ability to deal with the money from the settlement. Although no umbrella agreement exists in Alberta, Manitoba and N.W.T., several bands in these jurisdictions have entered into the TLE process.
45. Specific Claims Concluded (cumulative to 1991/92)

Settlement Agreement	66
Rejected	48
Litigation	28

Administrative Referral	72
File Closed	<u>52</u>
	266

**46.**The following claims have been settled:

- \*The James Bay and Northern Quebec Agreement(1975): \$231M. compensation, property rights to more than 14,000 sq. km. of land, exclusive harvesting rights to 150 sq. km., self-government, protected hunting and fishing rights to 1M sq. km.
- \*The Northern Quebec Agreement(1978),
- \*The Inuvialuit Final Agreement(1984): 91,000 sq. km. of land, \$162M in compensation and social development funding, hunting rights and management powers in environmental matters.
- \*The Gwich'in Final Agreement(1992): 22,422 sq. km. of land in N.W.T. and 1,554 sq. km. of land in Yukon, share of resource royalties, \$75M tax free capital transfer paid over 15 years, hunting rights and right of first refusal on wildlife matters.
- \*Tungavik Federation of Nunavut(1993): 350,000 sq. km. of land, \$1.14B in compensation over 14 years, right to share in royalties, hunting rights, and power over management of the environment.

The following claims are in negotiations:

Council for Yukon Indians,  
 Sahtu Dene and Metis Claim,  
 Dogrib Treaty 11 Council,  
 Nishga'a Tribal Council,  
 Council des Atikamekw et des Montagnais,  
 Labrador Inuit Association,  
 Innu Nation.

**47.**R. v. Badger, (1993) 8 Alta L.R. (3rd) 354 (C.A.)

## **12.1 BIBLIOGRAPHY**

Bear Robe, Andrew. Treaty Federalism: A Concept For The Entry of First Nations Into The Canadian Federation. Gleichen: Siksika Nation, 1992.

Dempsey, Hugh A. Crowfoot: Chief of the Blackfoot. Edmonton: Hurtig Publishers, 1972.

- Dunner, Joseph. Dictionary of Political Science. Totowa, N.J.: Littlefield, Adams & Co., 1970.
- Ewers, John C. The Horse in Blackfoot Indian Culture. Washington: Smithsonian Institution Press, 1955.
- \_\_\_\_\_. The Blackfeet: Raiders on the Northwestern Plains. Norman: University of Oklahoma Press, 1958.
- Forsey, Eugene A. How Canadians Govern Themselves. Ottawa: Publications Canada, 1982.
- Hanks, Lucien M. & Hanks, Jane R. Tribe Under Trust: A Study of the Blackfoot Reserve in Alberta. Toronto: University of Toronto Press, 1950.
- HHC TEAM Consultants, Inc. Enterprise Strong and Free: Blackfoot Support Documents. vol.1 "Facts & Figures" and vol. II "Household Survey Results." Gleichen: ENA Division, 1986.
- \_\_\_\_\_. Blackfoot Alcohol and Drug Consultations: Feasibility Study. Gleichen: Community Support Services Division, 1987.
- MacGregor, James G. Behold the Shining Mountains: The Travels of Anthony Henday 1754-1755. Edmonton: Applied Arts Products, Ltd. 1954.
- Mails, Thomas E. The Mystic Warriors of the Plains. New York: Doubleday and Company, 1972.
- Mercredi, Ovide & Turpel, Mary E. In the Rapids: Navigating the Future of First Nations. Toronto: Penguin Books Canada Ltd., 1993.
- Ponting, J. Rick. Rebuilding the Siksika Nation: A Framework Proposal for Negotiations for the Siksika Indian Government Act. Gleichen: Siksika Indian Government Division, 1989.
- Royal Commission on Aboriginal Peoples. Partners in Confederation: Aboriginal Peoples, Self-Government and the Constitution. Ottawa: Canada Communication Group, 1993.

## 12.2 METHODOLOGY

This particular case study on aboriginal governance sheds light on Siksika Nation's creative efforts and initiatives, since the latter part of the 1980's, to achieve progressive self-determination, to implement its evolutionary visions for governance, and to end federal and provincial domination under the much despised and out-dated Indian Act, R.S.C. 1985, c. I-5. The Indian Act is now looked upon by many First Nations in Canada as an unwanted barnacle on their progress towards self-government, governance capacities, and self-respect.

This case study has attempted to emphasize "what can be done" rather than "what has been done," throughout its chapters. However, this forward looking perspective was somewhat balanced by a necessary historical perspective in order to look at the "big picture." Throughout its pages, it attempted to answer the Royal Commission issues such as:

- How can we rebuild the relationship between Aboriginal and non-Aboriginal people in Canada?
- Upon what principles and values should the above question rest?
- How will the lives of Aboriginal and non-Aboriginal people change as a result?
- To whom will Aboriginal governments be accountable and for what?
- How will Aboriginal self-government lead to political and economic self-sufficiency?

The answer to the above questions are to be found within the text of this report itself, although not in a direct question and answer method. Hopefully institutions such as school boards, churches, government agencies, business and professional groups, including the media, will come to know what steps they should take in order to bring about change within themselves regarding their perceptions and relations with Aboriginal peoples by listening to them, by reading books, articles, and study reports written by Aboriginal people such as this document.

This case study on Siksika Nation Governance resulted from a collaborative effort by a number of individuals that are and were intimately involved in the planning stages, negotiating and brain-storming session in regards to charting a path for the Siksika peoples' road to freedom from federal and provincial bondage. Those individuals are acknowledged as follows:

- (a)The Introduction, Executive Summary and including chapters II, III, X, and XI (jointly with Robert A. Reiter for the latter chapter) were written by Andrew Bear Robe, the study coordinator and principle author;
- (b)Chapters IV, V, VI, VIII and IX were written by Richard Hankinson, the Economic, Financial and Program Analyst and Planner for the Siksika Nation Tribal Administration;
- (c)Chapters VII and XI (jointly with Andrew Bear Robe for the latter chapter) were written by Robert A. Reiter.
- (d)All additional work for the finalization of this report in its present form, format and layout such as the content pages, footnotes, bibliography, appendices, quotations, illustrations and interview of Siksika elders were designed, edited, written and prepared by Andrew Bear Robe.

Since the above individuals are experts and professionals in their respective areas of competence, much of this project study report is based on their existing knowledge, work experience, previous and on-going research, and their personal views regarding the future possibilities of aboriginal governance within Canadian society. The direct contributors to this case study project on aboriginal governance all have direct working experience at the community level as well as negotiating and diplomatic experience at the federal and provincial levels. They are amply

qualified, both professionally and academically, to make qualitative observations, analyses and conclusions regarding the nature and substance of aboriginal governance; how to make it work within the Canadian legal and political systems; and how to revitalize Siksika governing structures, utilizing both their traditional and modern forms.

In addition to the above, use of existing data and previous research was included for this present study and those are listed in the bibliography, e.g. J. Rick Ponting, A Framework Proposal for Negotiations for the Siksika Indian Government Act (1989); HHC Team Consultants, Inc., Blackfoot Alcohol and Drug Consultations Feasibility Study (1987); and HHC Team Consultants, Inc., Enterprise Strong and Free (1986). The Siksika elders' interviews that were taken from the 1989 Ponting study are also included in the appendices which contain questions and answers pertaining to the traditional patterns of decision-making; problems with the form of government prior to the signing of Treaty 7 of 1877; the sacredness of the treaty; the nature of important ceremonies and rituals in the Siksika culture; needed changes in Siksika politics and administration; and the interviewee's understanding of the Creator's will for the Siksika people.

### **12.3 Interview of Siksika Elders**

Note: The following interviews with the elders were taken during the course of research and development of a study entitled, A Framework Proposal for Negotiations For The Siksika Indian Government Act (May, 1989), by Dr. J. Rick Ponting, Department of Sociology, University of Calgary. The following are selected items only from those interviews due to their length.

List of Interviewees: Mark Wolf Leg Sr. (M.W.L.)  
 Henry Sun Walk (H.S.W.)  
 Jim Many Bears (J.M.B.)  
 Beatrice Poor Eagle (B.P.E.)  
 Alex Standing at the Door (A.S.D.)  
 Russell Wright (R.W.)  
 Margaret Bad Boy (M.B.B.)

#### **Introductions**

Mark Wolf Leg Sr.:(Age 75 in 1994) Full blooded Blackfoot. Went to residential school to grade 7. Learned spiritual skills in Blackfoot sacred societies. Qualified and trained to help people, i.e. sweats, pipe, painting, etc. Has sacred bundle and was initiated into the Horn society.

Henry Sun Walk:(Age 80 in 1994) Raised by grandparents. Went to school at age 5 until 18 years old at the residential school. Had mostly religious training. Did work for white people and learnt English.

Jim Many Bears:(Aged 78 in 1989, passed away on July 21, 1990) Born in Calgary near the current General Hospital site. Married in 1934. Has 47 descendants. Raised by grandparents. Farmer and rancher. Holy man in Blackfoot culture. Sold a medicine bundle to a museum in Edmonton.

Beatrice Poor Eagle:(Age 81 in 1994) Raised by Crowfoot's daughter who died in 1943. Spent 10 years at Crowfoot School. Lived in tents all year round. Has 26 grandchildren. Has 9 children of her own and lost 3.

Alex Standing at the Door:(Aged 65 in 1989, passed away on February 23, 1991) Raised in the Indian way by grandparents. Went to residential school for 9 years until he reached grade 5. Did labour work. Worked at the Calgary Native Friendship Centre for 3 years. Member of the Prairie Chicken Society.

Russell Wright:(Age 72 in 1994) Born in North Camp in 1921. His family were farmers and ranchers. Went to Old Sun residential school for 9 years until 1939. An

air frame mechanic during World War II. Married in 1942. Farmed from 1942-50 and then ranched.

Margaret Bad Boy:(Age 94 in 1994) She had 3 brothers. She was sickly as a child. Her brothers are dead now and one was Julia Wright's dad. ( Julia is the wife of Russell Wright.)

**Question #1:Have you heard anything about self-government?**

(M.B.B.)Yes, the late Emily Duck Chief explained it and she understood. The former Chief Leo Youngman explained long time ago that we have to take self-government because the federal government won't take care of us anymore and we'll be on our own. The former Chief went to England for self-government but the Queen wasn't interested. Self-government would mean medi-care and services.

(M.W.L.)We are not ready for self-government. We still don't understand what it means to us.

(H.S.W.)Sees self-government as breaking the treaty. His son Robert explained self-government and the problems with farming such as farmers who don't farm the land or who don't contribute to the Band. His son described self-government as the federal government won't take care of Indians anymore and they will just give a sum of money.

(J.M.B.)The elders say we had our own self-government but when the white people came they told us what to do. The younger people have lost the sense of being an Indian because we don't have our self-government.

**Questions#2:Please tell me how the Blackfoot people governed themselves or made decisions before the whiteman came?**

(M.W.L.)They had a leader whom they now call Chief. Certain young men were taught how to hunt, survive the winter and support the people that way. Decisions were made by a group of elders. The community had discipline and they obeyed orders.

(H.S.W.)We had lifetime Chief and not the two year term. Chiefs were not elected. Sometimes we had a big general meeting on the reserve where people would go up and talk and that's how they made a decision.

(J.M.B.)They camped where they liked in clans. Each clan had a Chief or a Councillor. When the whole tribe meets, the Chiefs decide where to camp and who to send to hunt. The Chief was selected and remained Chief until his death. In those days, the one chosen is kind-hearted, he loved and respected his people.



(B.P.E.)Chief Crowfoot was chosen because he stopped the fighting and horse stealing with enemy tribes. Everyone respected his decisions and followed his advice. He was chosen as Head Chief because of his bravery.

(A.S.D.)Chief Crowfoot and his Councillor were on duty for their lifetime. If the Chief got too old, he retired unless he passed away before retirement. The office of Chief would pass down through the family line just like the Royal Family. If there was a decision to be made, the Chief would consult with the Elders unless he was sure of his decision to go ahead.

(R.W.)All communication was oral. Elders were cultural and historical experts. Leaders were not elected. The position was earned due to the leader's knowledge and skills. The people went to him for advice and would gradually pick him as their leader. All the older people were the wise ones. Each clan had a spokesperson. There were two Chiefs, one for the West end and one for the East end.

(M.B.B.)Each clan that camps together had a Chief. He told the people what they would do, where to camp and where to hunt buffalo. The leader was chosen because he was wealthy and he had horses. Everyone agreed there was no voting.

**Question #3:If people disagreed, what was done?**

(M.W.L.)Keep talking until they reached a consensus. They find another way to solve the problem.

(H.S.W.)Everyone agrees with the decision.

(J.M.B.)When we signed the Treaty, we had great leaders who sat and talked among themselves. Chief Crowfoot was chosen because he was outstanding. He had guidance from the Elders and he listened to them. Before a decision was made, each Councillor had to go back to their clan and ask them. That's why it took a long time to sign the Treaty.

(A.S.D.)Like any place, they would disagree. They would argue or debate and dispute until they reached a decision.

(R.W.)Decisions were confined to clan groups. People would tell their leaders if they disagreed. In extreme cases, they would leave. The people always camped in a semi-circle facing east. If someone needed to be punished, their tipi was separated from the semi-circle. If clans disagreed, they would just keep their distance.

(M.B.B.)If someone disagreed with a decision, he had a choice whether to join them or go by himself.

**Question #4: What were the main problems with the old government system before the Treaty?**

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(M.W.L.) Discipline was the crucial element to keep the Tribe together. People had to obey orders.

(H.S.W.) None. At first we had lifetime Chiefs who gave us the right path. Not like the two year term. Now everything comes from the white people. With the lifetime system, the people had the power to rule.

(R.W.) It was too liberal, there was a lot of freedom. If a person was dissatisfied, he just left.

(M.B.B.) There was no problem. They lived day to day.

**Question #5: In what ways is the Treaty sacred?**

(M.W.L.) Who said it was sacred? They did not have peace pipes. I am not very familiar with it, but I know how it was signed. Many of the promises in the Treaty were lies with the purpose of getting the Indians to sign. Many promises were broken.

(H.S.W.) We have a monument where the Treaty was signed. The Treaty is for as long as the sun shines, grass grows and now the government is trying to break the promises.

(J.M.B.) We signed the Treaty and we lived up to the Treaty but the government does not. Why is that? Why are we always classified as second class citizens by the government? We take Canada as our country, we fought in Canada's wars. We paid for the pride we hold in Canada. A lot of promises were broken like the protection of our mineral rights. We only sold one foot down. They did not own everything and that had to be written down.

(B.P.E.) Most of the Indians did not want the Treaty and Crowfoot neither. There was a lack of communication and much was misunderstood. At first we got \$7 per head and now it is \$5. We were also given ammunition and rations of flour, beef and tea.

(R.W.) It is a sacred agreement to keep up the Queen's obligations. We have fulfilled our part but we do not see it coming from the government especially in the verbal agreements. It is hard for us Indians to verify an oral statement. We respect the Treaty as a solemn agreement. Indian people prayed that the Treaty be maintained forever.

(M.B.B.) There is nothing sacred about the treaty. Her father said that the people camped there and signed the Treaty. After the Treaty, the whiteman laws came to the reserve. She hears that the Treaty was signed at the Blackfoot Crossing. The Treaty was not translated well. The interpreter was a half-breed. That is why some things are not correct.

**Question #6: If you could change one thing about the Blackfoot people, what would it be?**

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(J.M.B.)The fault is how we elect Chief and Council. Before each clan chose one Chief who was committed to the clan. At present, the two year system is not good because most of us are left out. Mostly the large families get in and they buy votes with alcohol and promises. Before we had two Chiefs, one for the East and one for the West. Now we have no opposition and we have one government. It is written in our Treaty books that a Councillor cannot: (1) drink, (2) have a love affair, (3) has to help the people, (4) cannot lie. Now Chief and Council do all of them and we cannot enforce those rules because Indian Affairs is right behind them.

**Question #7: What are the main changes that you have seen come over the Blackfoot community in the last 10-15 years?**

(M.W.L.)Losing the language. Young people do not respect the Elders. Now they ask for money to help Elders. Before they helped for no money and only received prayers from the Elders.

(J.M.B.)We want each clan to choose a Chief and those Chiefs to choose a Head Chief with the help of the Elders. In our clan, we would know immediately who would be Chief.

(B.P.E.)We used to get rations every Thursday, now we don't. Then we got money, now we don't. Before we could not drink. Anyone found drinking received a heavy fine. Now we have liquor, it's very bad. Many young people have died. I lost 3 children to alcohol.

(A.S.D.)We were once the richest Indian nation. Now we have lost a lot of money. It was quiet and peaceful before we had our liquor rights, now it is everywhere.

(R.W.)Cultural decline in the use of language and rituals

(M.B.B.)When the Treaty was signed, they promised rations which were delivered for years. Then it stopped and the government gave us \$10. per head. Then the ration money was reduced and then completely stopped.

**Question #8: Who is the most important person in the community? Why?**

(M.W.L.)The Chief of the Band makes decisions and has the final say.

(H.S.W.)The Elders because they have the power to have a meeting. Like me, I have power in my tongue to speak.

(J.M.B.)Our Chief is educated but has no Blackfoot culture.

(B.P.E.)The Head Chief because he is chosen by the people.

(R.W.)Traditionally it is the Chief. Also the oldest person in the tribe. Today it is hard to say.

(M.B.B.)The old Chief Crowfoot who signed the Treaty. He is considered equivalent to a King. There is no one like that today, they are all dead. Earl Calf Child is one of the oldest members, he is 104 but this thinking is not clear.

**Question #9:Over the last 10-15 years, what are the most important things that the Band itself had to decide without direction from the Department of Indian Affairs?**

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(R.W.)In May 1968, our Band Council was informed that the federal government was going through the process of devolution. Part of this process was self-government. The DIAND office was transferred from the reserve to Calgary. They told us that self-government was coming but DIAND would be on stand-by. They had a self-government advisor on the reserve. In the 1980's, at the First Ministers' meetings, there was reference to Indian self-government but it was never clearly defined. We are adamant in maintaining our aboriginal and treaty rights. The spirit of the Treaty is a sacred agreement, especially to the Elders. The Queen at that time had no knowledge of Indian people and may not have said those things. Our ancestors were sweet talked into signing the Treaty.

**Question #10:Should the Band be trying to encourage members who have moved away to return to the reserve?**

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(M.W.L.)That's the Councillor's work to see if people want to come back. But the biggest problem is the housing. It is the people's own decision if they want to live in Calgary.

(J.M.B.)A person moves away to find a way to survive. In Calgary they can get a job and a place to stay. They have to go where they can survive.

(R.W.)The Elders think families should be close at hand but they also realize younger people can't find appropriate opportunities on the reserve.

**Question #11:Should the Band offer programmes or services to its members who live in Calgary?**

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(M.W.L.)People in the city miss out on a lot, e.g. they can't vote. They want to be treated the same as the ones on the reserve. It's up to the Band Council.

(R.W.)This will be the big question with self-government, i.e. who will the money be for? There will be problems of accountability. I would rather have DIAND allot money to urban members separately. We discuss that even to the point of forming a sub-tribal office in Calgary. We have problems with funding. I think it is a good idea. It must be truly representative of local tribal administration.

(A.S.D.)It has been done with vocational training for people to upgrade themselves in education and life skills. They should offer programs of how to have clean living (hygiene) and parenting programmes for single parents.

**Question #12:Do any living off-reserve have an important role in the Band? Who and in what role?**

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(M.W.L.)Andrew Bear Robe lives in Calgary but I don't see him too often.

(R.W.)Yes because of the lack of suitable homes. Director of welfare. Clement Bear Chief and Andrew Bear Robe.

**Question #13:Let's say that the Blackfoot people sent a team of people to Ottawa to negotiate with the bureaucrats at Indian Affairs. They are there to negotiate self-government for the Blackfoot. Who are the members of the Band who could do a good job for the Blackfoot people in those negotiations? How many others could also do a good job for the Blackfoot?**

(M.W.L.)Our young Chief, he is educated. He fights speaks for his people. He needs more time to organize himself. His dad drinks less now. His grandpa was the former Chief. Mervin Wolf Leg went to university and knows the Blackfoot culture. Leo Youngman knows the culture and politics and is well known. Bob Breaker knows the culture and is fluent in Blackfoot. Many Councillors know Blackfoot but they want to be whitemen.

(H.S.W.)It is up to the people who have education like Leo Youngman and Andrew Bear Robe, the Councillors and the Chief. The Chief and Council make a vow to be good, not to drink and if they do, they will be kicked out.

(J.M.B.)The government should come here to negotiate.

(R.W.)Not more than four. One to relate to the constitution; one who is traditional with authentic qualifications; one dealing with costs and benefits; and one who is very

open-minded, receptive, good listener, able to maintain order and convince parties that it is possible to work ways and means of forming efficient and democratic self-government.

**Question #14: If you were in charge of Indian Affairs and the Band Council, what kind of changes would you make?**

(M.W.L.) The Councillors make promises and when elected, nothing happens. (a) Enforce to have the Blackfoot language come back. (b) Blackfoot people to be able to camp wherever they want without worrying about land allotment. (c) Councillors work to get young people off alcohol and drugs. It spoils everything.

(J.M.B.) There are 3000 members on the reserve, only 10% or 300 benefit. Indian Affairs bought off local officials. They are the ones who benefit. In the old days, everyone benefitted.

(A.S.D.) Better medical attention on the reserve.

(R.W.) Culture: maintain and revitalize cultural heritage and help people determine contemporary culture. Education: school is only 25% of the education process; need to consider informal education with influence on human development such as leadership. Economic: establish industrial and commercial development and domestic economics; ways to assist people to meet their own basic needs. Social: not give food stamps but to foster human development. DIAND officials need to dialogue with people and be honest. Also to develop a sense of being a citizen.

**Question #15: In what areas is the Band ready, or almost ready, to move in and take on much more control from Indian Affairs?**

(M.W.L.) Medicare and housing is sort of controlled by the Band. They are working on education.

(H.S.W.) They must understand the funding from DIAND, how much and when will it run out. Housing is the most costly and should be focused on.

(R.W.) There is a great need for coordination, prioritizing, implementation of procedures within the Departments and to implement pilot projects with proper assessments. Wholistic approach to government and necessary elements, i.e. education; cultural relevancy that is language based; organizational development to form an organized system; collaborative cultural component to have us stay together, plan and work together.

**Question #16: How will the community respond to the idea of self-government? For what kinds of reasons might the Band members oppose self-government?**

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(M.W.L.)There are many different interpretations of self-government. Many of us do not understand it. We need more education. We need to start from the bottom and go slowly. It is a long drop from the top. The government will give us self-government and then forget us and stop funding us.

(H.S.W.)We would rather have our own government look after it. Indian Affairs will owe us money for two years and then they will stop. The people don't like it because they do not understand it. The Councillors are largely responsible because they talk negatively about self-government.

(J.M.B.)I still go by the Treaty and I do not want self-government. We will get the money for self-government and when the money is gone, the reserve will be wiped out.

(B.P.E.)I do not think the community is for self-government. They say self-government will be bad because we won't get help.

(A.S.D.)It will be hard to decide on that because of the lack of business minded people like lawyers. I'm not prepared for self-government because I'm not business or politically minded.

(R.W.)The Band will respond positively. They are ready to accept self-government in terms of the seven criteria I had mentioned. The term Tribal Government is more culturally relevant. There has been a psyche of dependence upon the Department of Indian Affairs, with people trapped on welfare. However, I agree that the government should not be left off the hook. The government should provide opportunities. Tribal codes: we must make laws that coincide with existing federal and provincial legislation.

(M.B.B.)It is up to the people, those who go to conferences. I do not really know. The people think that self-government and all the major changes are too hard to deal with.

**Question #17:How do you feel about self-government? Will it help the Blackfoot people?**

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(M.W.L.)It might help in the long run. We still have a long way to go to before we get into this. We need educated people. The older ones don't have enough education and it is hard to express oneself in English.

(H.S.W.)I'm really against self-government. The government won't look after us anymore. The Elders are strong people here. We should sign our names and send it to Ottawa to say we don't want self-government.

(B.P.E.)I do not like it. Just like we used to get money before Christmas. Now we don't have

anything. They say we got no more funds from the government.

(A.S.D.)I'll never go for it myself because I'm not prepared for it.

(R.W.)Indian Government is needed so we can govern ourselves in a meaningful way. I am leery of the term "self-government", but I am for the idea of *Tribal Government* due to public opinion from our people. They believe that Indian self-government will lead them to termination of aboriginal and Treaty rights and the allotment of reserve lands.

(M.B.B.)I do not like it. In the olden days, I liked the government before the whiteman took over. There will be too many changes.

**Question #18:Are you nervous about self-government? What is your worst fear?**

(M.W.L.)People will suffer the consequences. We try small things but they don't succeed. It is like crossing an ice lake in the winter. What if the ice breaks? Bill C-31 will spoil the reserve.

(H.S.W.)It will hurt the children, the families. Where will they get money to pay for school and lunches for the kids.

(B.P.E.)It will be hard for us.

(A.S.D.)I'm not nervous because I don't even know what it is.

(R.W.)I am nervous if we keep calling it self-government. I am really afraid of devolution. Don't let them off the hook.

(M.B.B.)Yes, there are rumours that makes me afraid. They say we will be moved from the reserve.

**Question #19:If positive about self-government, what other areas do you think the Band should try to take over from Indian Affairs?**

(J.M.B.)The administration needs an overhaul because so many jobs are duplicated.

(R.W.)I don't like the term "take over". I prefer the establishment of partnerships. In child welfare we were the first to sign a tripartite agreement. Public works is already largely in our control and that system is our own. Health is a priority and I would like more say but not necessarily taking over.

**Question #20:What do you see in the future for the Blackfoot people?**



(M.W.L.)Children. I don't want them to forget their heritage, culture and to remember what the Elders told them. To teach discipline to their children and to set a good example. Keep the Blackfoot Nation proud and strong.

(H.S.W.)I don't want self-government. I want it to continue as usual.

(J.M.B.)I would like to see an improved standard of living.

(B.P.E.)In the olden days, we were well-off. Now I don't know how it will be.

(A.S.D.)I hope we have lots of money and more sober people. I would like to see alcoholism dealt with and done away with, especially among the young people.

(R.W.)We need a lot of realignment of the youth and to prepare them for the future and to become better educated.

**Question #20: What is Creator's will for the Blackfoot people?**

(M.W.L.)To strengthen our ways of living and not to lose our culture.

(H.S.W.)When we have our pipe ceremony, the first thing we pray for is not to have self-government.

(J.M.B.)Good health.

(A.S.D.)A better life and to become more spiritually thinking people, which had already started with the Cursillo.

(R.W.)Our people historically, and even today, have searched for the meaning of life. Our people believe in a Greater Power and we are still very spiritual by adhering to our code of ethics and our beliefs.

(M.B.B.)Only the Creator knows.

## 12.6 SIKSIKA NATION COAT OF ARMS

A Royal Grant from the Governor General of Canada, dated January 10, 1990.

The buffalo is the symbolic animal of the Siksika Nation because it offered our ancestors food, clothing, shelter and spiritualism.

The arrow in seven pieces within the buffalo represents the artist's rendition of the presently functioning and remaining seven traditional societies of the tribe: the Horn, Crow, Black Soldier, Motoki, Prairie Chicken, Brave Dogs, and Ma'tsiyiiks.

The medicine pipe symbolizes peace, and crosses the tomahawk, the weapon of war, which was put to rest forever when the Siksika Nation signed Treaty 7 with Queen Victoria.

The circles represent the everlasting duration of Treaty No. 7 signed by Chief Crowfoot in 1877. By this Treaty, we agreed to share our lands and resources (see maps 12.5(a) and 12.5 (d) at pp.138, 141), and in exchange, by which Queen Victoria and Her Government promised to protect us, provide for our needs in areas of health, education, social and economic endeavours, inter alia, *for as long as the Sun shines, the Grass grows, and the Water flows*. (The yellow disc represents the Sun, the green circle represents the Grass and the blue circle represents the Water.) The two eagle feathers represent the honour and dignity of the Siksika Nation.