



October 31, 2023

Standing Committee on Indigenous and Northern Affairs
Sixth Floor, 131 Queen Street
House of Commons
Ottawa ON K1A 0A6

Dear Standing Committee on Indigenous and Northern Affairs:

RE: Written Submission on Restitution of Land to First Nations

On behalf of the File Hills Qu'Appelle Tribal Council, we write to provide you with this submission to assist the Committee with its study of the restitution of land to First Nations.

Background

The File Hills Qu'Appelle Tribal Council (FHQTC) is a non-profit organization established in 1982 that provides service delivery programs to its Member First Nations. FHQTC represents 11 First Nations and over 20,000 Citizens in the vast territory that Treaty Four spans through the provinces of Saskatchewan, Manitoba and Alberta. FHQTC Nations are comprised of distinct and diverse multilingual cultural identities of the Lakota, Dakota, Nakoda, Cree (Nehiyaw), and Sauteaux (Anishinaabe) Nations. FHQTC First Nations have systems of individual autonomous governance, collective governance and have ancestral occupation of lands beyond Treaty Four Territory.

As our First Nations govern in duality as individual sovereign Nations and as collectives of sovereign Nations, the FHQTC receives and advances the collective interests of the 11 Member First Nations and their Citizens who are the true rights holders. It is with the First Nations consultation that FHQTC provides this submission on the restitution of land to First Nations.

This brief is divided into three (3) sections:

1. Land Restitution:

Land restitution in its simplistic form is the return or restoration of land to its rightful owners - the original inhabitants of Turtle Island and whose ancestors followed. Our First Nations' ancestors who occupied this region for millennia were self-governing peoples who relied on the bountiful resources within their ancestral and traditional territories to provide for their peoples – medicines, water, food, laws, shelter, clothing and implements for co-existence in harmony with the lands upon which they had an interconnected relationship. However, this relationship changed as the influx of immigration prompted the urgency to acquire land for settlement.

Treaty #4 was entered into on September 15, 1874 with the Cree and Saulteaux tribes of Indians. One of the most controversial differences between the Treaty Four oral and written accounts is the surrender clause. Treaty Four provides that “the Cree and Saulteaux tribes of Indians . . . do hereby cede, surrender and yield up to the Government of the Dominion of Canada . . . all their rights, titles, privileges whatsoever to the lands . . .”¹. This is in direct contrast to oral history accounts from the First Nations, particularly what was agreed to was to share the land to the depth of a plow. The surrender of land was a foreign concept for First Nations and this misconception remains in dispute and has been for the last 150 years.

In 1876, two (2) years after the signing of Treaty #4, Canada implemented the *Indian Act*, which broke Treaty promises, particularly that they (Indians) would be able to live as they always have by hunting and providing for their peoples. Rather than sharing the lands to the depth of a plow, the First Nations were dispossessed of their lands and became prisoners on the small tracts of lands called reserves.

¹ *No Surrender: The Land Remains Indigenous*, Sheldon Krasowski, 2019 at p. 157-158

FHQTC submits that the restitution of lands would require the recognition of the paramountcy of historical treaties and the outstanding Crown obligations including land restitution to the original inhabitants-First Nations peoples of what is now Canada actuated by the dismantling of colonial legislation and policies that have subjugated our Member Nations for the last 150 years. Article 8.2 of the *United Nations Declaration of the Rights of Indigenous Peoples* (UNDRIP) provides that, “States shall provide effective mechanisms for prevention of, and redress for (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources...”². FHQTC submits that the work required for redress begins with an accounting of the following:

- Costs of Treaty Land Entitlement and Additions to Reserve for Shortfall Acres;
- Loss of use of lands not fully acquired under Treaty;
- Loss of reserve lands through the Soldier Settlement Act;
- Loss of all Natural Resources as a result of the 1930 Natural Resource Transfer Agreement (NRTA) that illegally transferred the natural resources to the three provinces; and
- Revenues realized as a result of permits and licences for the extraction of all natural resources pursuant to the NRTA.

2. Traditional and Treaty Territories:

If true reconciliation is to occur, then the return of land to the First Nations must take place. That is not to say that First Nations will take control over all the land in Canada; rather, First Nations must re-establish their relationship with the land and the resources of which they were dispossessed. Re-establishing that relationship not only requires First Nations to connect and/or reconnect with cultural norms geared towards balance and harmony, but to assume a more

² *United Nations Declaration of the Rights of Indigenous Peoples*, GA Res. 61/295 (13 September 2007) at Article 8

safeguarding role for the protection of the lands and the resources from overdevelopment, industrial waste, climate change and project cumulative environmental effects. This requires First Nation Traditional Knowledge and First Nation decision-making authority over the lands and the resources.

Free, prior and informed consent must be provided to First Nations before government undertakes projects that impact First Nations peoples' Inherent rights to their lands, territories, and resources. This includes resources development projects, such as mining and other undertakings that exploit resources. Impacts to the environment negatively affect the First Nations' ability to exercise their rights to harvest wildlife, to gather the plants that provide for their medicines, and to keep their customs and ways of living thriving through ceremonies. This exploitation cannot continue unless the First Nations provide their free, prior and informed consent on projects.

The province of Saskatchewan has been auctioning off Crown lands and minerals, and as well, is entering into long-term leases of lands situated in the ancestral and traditional lands that do not expire for decades. These sales and leases impact the First Nations greatly by reducing the amount of lands which they can acquire for reserve creation and on which they can practice their traditional subsistence rights. If these sales and leases continue, the only land on which the First Nations can hunt, fish, trap and gather will be on their home reserves. This is a breach of Treaty, one which government continues to ignore so long as they benefit by the sales and leases.

3. Recommendations:

As a result of the foregoing, FHQTC recommends the following:

1. Co-development of policy frameworks in accordance with Nation to Nation treaty covenants to determine the following:
 - a. Costs of Treaty Land Entitlement and Additions to Reserve for Shortfall Acres;

- b. Loss of use of lands not fully acquired under Treaty;
 - c. Calculations for the loss of illegally surrendered lands;
 - d. Loss of reserve lands and/or loss of use of reserve lands through the Soldier Settlement Act;
 - e. Loss of all Natural Resources as a result of the 1930 Natural Resource Transfer Agreement (NRTA) that illegally transferred the natural resources to the three provinces. Obligations of Canada to ensure lands are made available to First Nations to firstly satisfy that outstanding treaty obligation & right; and
 - f. Revenues realized as a result of permits and licences for the extraction of all natural resources pursuant to the NRTA.
2. That Canada re-construct their legislation and policies to provide for the inclusion of First Nations decision-making on matters at all levels that impact their Inherent rights, which includes lands and resources;
 3. That there is a legal recognition to the paramountcy of historical Treaties lands restitutions before any other land restitutions are considered;
 4. That the free, prior and informed consent be given by First Nations before government undertakes projects that impact their Inherent rights to their land, territory, and resources;
 5. That all sales and leases of Crown lands and mineral cease until First Nations are meaningfully consulted;
 6. That there be an immediate cease and desist granted to any further transfers of Crown lands to provinces and that Canada provide reacquisition of lands from the provinces to ensure that the Treaty obligations of the Crown to First Nations are fully met: and
 7. Utilize the accounting in recommendation #1 as a restitution model with First Nations when the restitution of land cannot occur.

All of which is respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeremy Fourhorns". The signature is fluid and cursive, with the first name "Jeremy" written in a larger, more prominent script than the last name "Fourhorns".

Tribal Chief Jeremy Fourhorns
FILE HILLS QU'APPELLE TRIBAL COUNCIL