PIMICIKAMAK
NFA WORKING GROUP: WORKING PAPER
A NEW RELATIONSHIP - STANDARDS AND STRUCTURES

The purpose of this working paper is to outline a new relationship between Pimicikamak and the Crown parties which is consistent with the spirit and intent of the NFA. It focuses on *Standards* and *Structures* for the new relationship, and includes notes from a *Cree Perspective*. This working paper may also contribute to shared terminology, which should help the parties in building the new relationship. It is seen as a step in assisting the Crown parties to establish implementation standards and structures for the NFA.

This working paper derives from and should be understood in the context of a Cree understanding of the NFA. From a Cree perspective, the NFA expresses a relationship. This relationship is a matter of honour. The Cree view of this relationship calls for a shift in focus:

- away from adversarial positions and toward mutual understandings;
- away from categorical distinctions and toward holistic thinking;
- away from problems and toward opportunities;
- away from arbitrary authority and toward honourable standards;
- away from dishonourable "settlements" and toward honourable actions;
- away from dependency and toward dignity;
- away from legalistic interpretations and toward spirit and intent.

Pimicikamak believes that this new relationship will be consistent with policy initiatives announced in January of this year by the Minister for Indian Affairs. Pimicikamak expects such a relationship to be consistent with its constitution, laws and treaties, and with the culture, traditions, aspirations and dignity of its people.

Such a relationship needs a foundation in what the Crown parties already undertook. Anything less would be to build a new relationship on a foundation of dishonour. For Cree people (as for the courts of Canada), the honour of the Crown has deep meaning and implications which must be explored and mutually understood in the NFA context.

In this spirit, Pimicikamak submits this paper for discussion by the NFA Working Group. It is organized under headings, in no particular order, around the themes of standards and structures (the basis for discussion) and Cree perspective (for information) with cross-references to related headings. This approach is intended to convey, as best may be in documentary form, a holistic approach which is reconcilable with the Cree understanding.

This working paper represents the best efforts of many people to express what the whole Nation has expressed in many ways, including written communications, phone calls and verbal messages, Circle Groups, general assemblies, TV call-in programs, and a "did we get it right" check before it was finalized. The task of compiling (and in some cases translating) it was not difficult because the message, though not unanimous, was almost entirely consistent, as *The Pimicikamak NFA Implementation Law* would suggest.

The constitution of Pimicikamak provides for a high degree of accountability of Pimicikamak officials to our people. But our past relationships with Crown parties (especially Canada; see: CANADA) have been characterized by a lack of accountability of Crown officials. Correspondingly, these relationships have been colonial, exploitive, manipulative, and intended to eradicate Cree culture. Pimicikamak sees this kind of relationship as not beneficial for any of the parties, and not tolerable in today's society.

Crown parties act through officials entrusted with specified responsibilities. Pimicikamak expects that the Crown parties will identify circumstances in which officials may be subject to fiduciary duties, and ensure that officials are aware of their fiduciary duties and accountable for their actions (see: FIDUCIARY DUTIES). This will be an essential contribution to realizing the new relationship.

Pimicikamak has adopted a strategy of visibility. Pimicikamak is (and will continue) implementing measures to focus public attention on the NFA performance of Crown parties and officials. In Cree terms, Pimicikamak relies on the sacred Law of Consequences. Visibility is seen as a more effective approach to accountability (see also: WILL) than alternatives such as arbitration or court actions. Pimicikamak expects to phase out the use of these alternatives, but intends nevertheless to keep its accountability options open (see also: CLAIMS).

The NFA-related conduct of Crown officials in their official capacities is subject to legal standards (see: LAWS; see also: FIDUCIARY DUTIES; see also: FUNDAMENTAL HUMAN RIGHTS; see also: GOOD FAITH; see also: THE HONOUR OF THE CROWN; see also: NON-ADVERSARIAL; see also: UBERRIMA FIDES). While continuing to respect the sacred Laws of Humility and Forgiveness, Pimicikamak will if necessary bring legal action to correct consistent disregard of these legal standards by any Crown official which may injure the survival of the Nation. In the view of Pimicikamak, the fundamental principles of accountability and the legal principles of equity require that any such action be brought personally against and answered personally by the Crown official whose decisions are at issue.

Of course, Pimicikamak would prefer that there be no need for such (or other) legal action to achieve accountability. Realistically, avoiding the need for legal action will require that Crown officials receive appropriate guidance or training. In two decades we are unaware of any. Pimicikamak has also expressed a concern that lawyers of the Department of Justice, who advise as to both federal self-interests and official fiduciary duties, may be acting in a conflict of interests, and has suggested that it may be appropriate for independent counsel to advise Crown officials on fiduciary aspects. Independent counsel could provide Crown officials with full, unambiguous and vigorous advice on fiduciary duties, which Pimicikamak believes would be in the interests of all parties.

Because of our special vulnerability to abuses by federal officials, and Canada's past record (see: CANADA), we will especially attend to the accountability of federal Crown officials.

Notes:

ACTIONS [STRUCTURES]

The NFA relationship calls for actions by the parties to give it practical effect. In general it calls for concerted actions to address a man-made disaster (see: THE PROJECT) and to assist Pimicikamak in rebuilding its society and economy (see also: AGREEMENTS).

Notes:

AGREEMENTS [STRUCTURES]

Pimicikamak seeks no new agreements with the Crown parties. It already has an agreement -- the NFA. There is widespread skepticism and even hostility in Cross Lake toward any further agreements with Crown parties. The Crown parties and their officials are widely regarded as untrustworthy. For this reason, agreements are not seen as useful tools at this time. Future experience may change this perspective.

There appears to be an assumption by Crown parties that an "agreement" is a necessary aspect of NFA implementation. Pimicikamak does not share this assumption, which is based on the "settlement" approach (see: SETTLEMENT). Pimicikamak expects the parties to focus on their relationship in the context of the NFA, and on actions which express the spirit and intent (see: SPIRIT AND INTENT) of this relationship (see: ACTIONS).

Notes:

Canada is a G7 country which consistently maintains the highest overall development standards in the world. In this context, a sea of overall wealth, well-being and material comfort, our people suffer under permanent and inflicted conditions of dispossession, mass poverty, unemployment and despair, in breach of our fundamental human rights (see: HUMAN RIGHTS).

Pimicikamak Cree Nation has a special relationship with the Crown in right of Canada. This relationship exists because of the events of history and the terms of the Constitution of Canada. It also exists by virtue of Treaty 5 and the Northern Flood Agreement (see: THE TREATIES BETWEEN US).

In addition to the Crown in right of Canada, Pimicikamak has relationships with other governments and entities. By virtue of the Northern Flood Agreement, we also have a special relationship with the province of Manitoba and a Crown Corporation: the Manitoba Hydro-Electric Board.

It was not our first choice, or even our choice at all, to enter in the Northern Flood Agreement (see: THE NFA TREATY OF 1977). We did so because we had no other choices under circumstances of extreme pressure and duress, which were applied to us by Manitoba Hydro and the government of Manitoba as well as the government of Canada.

In all of these contexts, our relationship with the Crown in right of Canada is the primary relationship among all other governments and entities with which we relate. This relationship is a special relationship and is unlike any other relationship that we have as a nation with any other party. It is a beneficial relationship which by its nature also renders us vulnerable to abuses by Canada, which abuses have been publicly recognized and acknowledged as widespread, systematic and sustained.

The promises made to us in Treaty 5 are the sole responsibility of the Crown in right of Canada, for as long as the sun rises, the grass grows and the rivers flow (even those that are dammed, diverted or otherwise destroyed). Canada's responsibility for these treaty rights were recognized and affirmed in Preambular Article G of the Northern Flood Agreement.

We know that under s. 91(24) of its own Constitution, Canada has responsibility for Indians and lands reserved for Indians. This is not the jurisdiction of any other party, and the Northern Flood Agreement did not vary this constitutional principle. And since 1977, federal Crown officials have repeatedly acknowledged that Canada has overall responsibility for ensuring that the NFA is implemented in accordance with its spirit and intent.

The treaty rights we have arising out of the Northern Flood Agreement are the responsibilities in varying ways of the three Crown parties. We continue to expect the Crown parties to honour these responsibilities in spirit and intent, in good faith and consistent with a large and liberal interpretation according to the law. However we have

learned in the two decades since we entered into the Northern Flood Agreement treaty relationship with the Crown parties, that the Crown parties refuse to honour their responsibilities in good faith (see: GOOD FAITH) or, in most cases, at all. And the leader of this travesty, systematically, time and again, from the first days after the NFA was ratified, has been Canada. We do not intend to permit this state of affairs to continue.

We intend to work with the Crown parties and with Crown parties who are concerned about human rights to change this situation. However, we have also resolved that by virtue of our special relationship with the Crown in Right of Canada (see: CANADA), the history between us, her fiduciary status, her constitutional responsibility for our peoples and lands reserved for us, and Preambular Article G of the Northern Flood Agreement, *we hold her and her officials fully responsible for the fulfillment of the treaty obligations of all of the Crown parties towards us*. We are no longer prepared to go from Crown party to Crown party in search of our rights, and see them fall between the chairs. The buck stops with Canada.

We have no quarrel with the people of Canada, including those who live in Manitoba. We know that when they are aware of our story and situation, and the way the Crown parties have conducted themselves towards us, they are disgusted, they side with us, and they offer to assist us. Some of these same citizens, however, are officials of the Crown who have specific responsible roles but may be inclined rather to their own self-interests. Where necessary we will hold Crown officials, especially federal Crown officials, whose actions or inactions are in gross violation of legal standards respecting their roles, and who in Pimicikamak experience have rarely been accountable for their actions and inactions (see: ACTIONS), personally responsible (see: ACCOUNTABILITY).

Notes:

CLAIMS [STRUCTURES]

The NFA is not a claim, it is a treaty -- that is, a relationship. While it does provide for claims by individuals and also as a potential problem-solving mechanism as between parties, in general, the NFA does not require or even favour claims. The Crown parties are not entitled, by the mere device of refusing to implement the NFA in accordance with its spirit and intent, to reduce it to "claims". Canada is not entitled to reduce the NFA to a "claim" by administering it through its Office of Specific Claims.

The claims process as practised by the Crown parties is adversarial (see: NON-ADVERSARIAL) and is painful and distasteful to Pimicikamak citizens.

Pimicikamak does not accept the claims process as a substitute for a good faith relationship. Statements to the effect that "the alternative to settlement (see: SETTLEMENT) is arbitration" are regarded as intimidation and are inconsistent with the treaty relationship (see: THE TREATIES BETWEEN US).

It is the intention of Pimicikamak to phase out the use of claims (to the extent of its control or influence) as the new relationship emerges. However, it will not be appropriate to formalize this intention.

Notes:

Pimicikamak has a constitution. It comes from the Creator. It is founded on inherent values and principles, and incorporates sacred laws, of the Cree peoples. It is an integral part of Pimicikamak culture. It is almost entirely unwritten, customary law, and should stay that way -- an attempt to codify the constitution of the Nation in writing would inflict irreparable damage. In general, Pimicikamak is likely to keep its constitution more or less as it is for the foreseeable future. Pimicikamak may choose to express specific evolving constitutional aspects, (such as *The First Written Law,* or *Pimicikamak Citizenship Law*) in writing.

Traditional knowledge passed down through the generations indicates that traditional law was largely made by the Council of Elders and that the Women's Council played a large role in day-to-day (i.e., executive) decision making under the Pimicikamak constitution. These traditional governing responsibilities and powers were recently re-distributed in part (see: THE FIRST WRITTEN LAW) and four Councils (including Chief and Council and the Youth Council) now participate in Pimicikamak governance. Each is master of its own affairs, and Pimicikamak governance is based on their cooperation. For example, each has an effective veto over Pimicikamak laws. By this redistribution of responsibilities and powers the people of Pimicikamak and CLFN has succeeded in reconciling the constitutional dilemma which was their inheritance from generations of imposed governance under the *Indian Act* -- a dilemma which has torn some First Nations communities apart.

Pimicikamak expects the Crown parties to respect its constitution. This is a fundamental underpinning of the new relationship (in much the same way as Crown parties expect Pimicikamak to respect the Constitution of Canada.) The treaty relationship has constitutional significance for Pimicikamak (as it does for Canada). The treaty relationship provides a basis for reconciling the constitution of the Nation and the Constitution of Canada -- and indeed may be the only viable basis for reconciling them.

Notes:

A position has evolved over the past 20 years which regards the NFA as merely a contract (see also: THE NFA TREATY OF 1977). This position was illuminated by many factors: including a desire to find a way to avoid NFA obligations entirely or, at least to crush them into the narrow mold of contract law. This position reveals more of self-interest than of honour.

The notion that the NFA is only a contract can now be seen as at best strained, and at worst plainly fraudulent.

The contract-law concept of the NFA has no credible basis, is inextricably associated with fraudulent attempts (see: SETTLEMENT) to extinguish constitutionally-protected treaty rights (see: THE TREATIES BETWEEN US) and to violate internationally-protected human rights (see: FUNDAMENTAL HUMAN RIGHTS), is based on tainted legal advice (see: FIDUCIARY DUTIES), and is inconsistent with the Crown parties' own pronouncements on the NFA.

Notes:

CLFN is legally and constitutionally distinct from Pimicikamak (see Table: Comparison of CLFN and Pimicikamak, in appendices).

CLFN is a band, defined by and constituted under the *Indian Act*. It functions as the operational arm of Pimicikamak government (see PIMICIKAMAK CREE NATION). Of course, CLFN is presently, for many practical and legal purposes, the agent of INAC rather than an "arm" of Pimicikamak. Increasingly, the people of Pimicikamak recognize that CLFN is not theirs but, like other bands, it is INAC's. But it can be foreseen that, as Pimicikamak adopts laws under its inherent jurisdiction which incrementally replace aspects of the *Indian Act*, CLFN will increasingly become an "arm" of Pimicikamak and will be less subject to control by INAC.

CLFN has a primary relationship with the reserves set aside for the use and benefit of the band, by virtue of the *Indian Act* (Canada). It has a membership which is defined by Parliament, with scant regard to the human realities of the Nation's values and its families. This definition is now widely recognized to have been one of the intellectual sources of *apartheid* in South Africa, and is a continuing violation of the right of self-determination (see: FUNDAMENTAL HUMAN RIGHTS).

Pimicikamak has, and for the foreseeable future plans to have, no other operational arm for overall direction and delivery of programs and services. CLFN will therefore be a significant structure for NFA implementation activities in Cross Lake. However the new NFA relationship is fundamentally a relationship between Pimicikamak and the Crown parties. The lawful role of CLFN in NFA matters is limited to matters concerning reserve land. (See: THE NFA IMPLEMENTATION LAW).

Notes:

Throughout this document we refer to "the Crown parties", meaning of course Canada, Manitoba and Manitoba Hydro. But our use of this term carries other meanings.

It means that in Pimicikamak's view all of the Crown parties are subject to legal standards applicable in law to the factual circumstances of their relationship with us. It means that officials of each of them are subject to legally binding standards of conduct in all that they do (or choose not to do) in deciding any part of our fate in accordance with the NFA (see: ACCOUNTABILITY).

It means also that although we have a fiduciary relationship with all three Crown parties, we regard Canada as having the chief responsibility and as being, so far, the chief culprit (see: CANADA).

It means that we understand that with our acceptance of the NFA relationship with the three Crown parties we took another great step like the one our forefathers took in reliance upon the honour of Her Majesty Queen Victoria. It was not lightly done, after a century of abuse of this relationship, but the promises from the Crown parties (see: THE CROWN PARTIES) and the pressures of the moment on our people were overwhelming (see: THE PROJECT).

It means that we understand that for the past decade and a half the Crown parties have in the midst of your differences made common cause to bend us to your will, to starve us into submission, to defeat us, to inhibit the preservation and development of our Nation, and to serve the lowest common denominator of your mutual interests. We see Pimicikamak's mutual interests with each of the Crown parties as stronger and as holding more promise than you seem to see in your shared interests.

It means that we understand that we must work with you together to ensure our survival (see: JOINT UNDERTAKING).

Notes:

The Preamble to the NFA states that we "shall be dealt with fairly and equitably". On May 8, 1998, the Crown parties solemnly re-affirmed their commitment to this standard. For Pimicikamak, this is a central aspect of the spirit and intent of the NFA treaty.

We believe that EuroCanadian society understands the concepts of "fairness and equity". From an examination of legal texts, we are able to assert that from the EuroCanadian legal and ethical perspective governing the NFA Crown parties, "fair" and "equitable" treatment involves at the least the following:

- it is done with good conscience;
- it conforms objectively with morality and universal truths;
- it uses a flexible and comprehensive approach to the situation being remedied;
- it considers the individual or group's understanding of its own context and its own ideas as to the appropriate processes and remedies to be applied to the particular situation;
- it substantively remedies the situation to which it is applied; and
- it produces a substantively fair result, having regard to the full context of the individuals or groups involved.

Fair and equitable treatment, we believe, imposes an objective and moral obligation upon the Crown parties to meaningfully address past, present and future hardships and to put the Nation in a full position to cope with, address and overcome the devastation it has suffered and continues to suffer as a result of the project. We know that you believe this too.

Fair and equitable treatment in the context of the NFA has relational, procedural and substantive content.

Relationally, it means that the Crown parties will treat Pimicikamak with dignity and will respect the laws and perspectives of Pimicikamak (see: PIMICIKAMAK LAWS), including the Pimicikamak view of the NFA treaty as a sacred promise. It means that the Crown parties will enter discussions with and behave towards Pimicikamak honestly and openly in good faith (see: GOOD FAITH), with honourable intent (see: THE HONOUR OF THE CROWN) and in a non-adversarial manner (see: NON-ADVERSARIAL).

Procedurally, fair and equitable treatment means that Pimicikamak will be put on equal ground with the Crown parties, including the creation of conditions and approaches for working-group and treaty-implementation processes which reflect Pimicikamak values and in which Pimicikamak representatives can feel comfortable. It means that the working-group and treaty-implementation processes must be flexible, and attentive to the needs of Pimicikamak.

In the present context, such requirements will include (for example) paying all necessary costs for the process, on a basis which allows adequate and consistent work to be done (rather than in a stop-start-stop way that is inefficient, disillusioning and a source of renewed mistrust). It will include many or most of the process meetings being held in Cross Lake so that absence of representatives from the community does not unnecessarily strain its resources, so that the community has a direct sense of what is going on, and so that Crown party representatives can report their positions and their progress directly to the community. It will include timely and frank provision of relevant information, including information that may be of use to Pimicikamak but has not been requested.

Substantively, fair and equitable treatment requires that effective and meaningful structures will be put in place (see: STRUCTURES) and enabled to address the past, present and future hardships of Pimicikamak and to put the Nation in a position to overcome the effects of the project and other forces which have combined to devastate the Nation's spirit, culture and economy and dispossess it of its lands.

The substantive content of this fair and equitable treatment must be considered within the context of the full range of facts under which the project occurred (see: THE PROJECT), the current conditions of Pimicikamak, and all other considerations which bear upon the survival and revival of the Nation. In particular, fair and equitable treatment of the Pimicikamak must account for and be measured in relation to the facts that:

- The project was undertaken against the will of Pimicikamak;
- The NFA Crown parties have reaped enormous monetary and other benefits from the project undertaken on Pimicikamak traditional lands;
- Pimicikamak and its people have reaped few benefits from the project over the past 24 years;
- The project has caused environmental, social, cultural and economic devastation which together with continuing actions and omissions of the Crown parties have allowed Pimicikamak to stagnate in poverty and have caused a condition of spiritual, cultural and economic crisis which threatens the viability of the Nation (see: VIABILITY; see also: THE NFA IMPLEMENTATION LAW);
- The Crown parties have a fiduciary relationship with Pimicikamak (see: FIDUCIARY DUTIES);
- Over the past 24 years, the NFA Crown parties have never substantively sought to implement the spirit and intent of the NFA, they have never introduced legislation to give effect to Article 2.1, and indeed the only NFA-related legislation consists of Acts which while reciting an intention to implement the NFA have instead sought to extinguish it (see also: SETTLEMENT); and
- The project, combined with the failure by the Crown parties to substantively comply with their obligations under the NFA, is part of a systemic, consistent

and deliberate pattern of government-sponsored dispossession and alienation of the Pimicikamak from its lands and traditional culture.

Having due regard to this context, the Crown parties have a large opportunity to improve their achievement of substantive fair and equitable treatment.

Notes:

FEDERAL POLICY INITIATIVES [STRUCTURES]

In January, 1998, the Minister of INAC announced new policy initiatives under the title "Gathering Strength". These initiatives (together with the May, 1998, Crown-parties undertaking; see also: JOINT UNDERTAKING) offer a basis for beginning to develop a new relationship.

Unfortunately, these initiatives have so far had little or no discernible effect on the actions of INAC officials. For example:

- INAC continues to fail to respect NFA rights as treaty rights (see: THE NFA TREATY OF 1977);
- INAC officials state that they have no authority to address NFA root causes of CLFN financial difficulties;
- INAC recently threatened, without objective justification, to force CLFN into receivership;
- INAC continues to be unsupportive of Pimicikamak governance (see: CONSTITUTION OF THE NATION);
- INAC continues to address the NFA as a "claim" (see: CLAIMS);
- INAC continues to approach NFA implementation as a matter of "negotiating" the quantum of a "settlement" (see: SETTLEMENT);
- INAC has no written guidelines for conduct of its officials when exercising discretionary powers which may give rise to fiduciary duties (see: FIDUCIARY DUTIES).

Pimicikamak expects federal Crown officials to act in a manner which is consistent with the federal policy initiatives. This will include formally acknowledging that the NFA embodies a treaty relationship (see: THE NFA TREATY OF 1977) which must be implemented in a manner which is consistent with applicable laws (see also: LAWS). This acknowledgment will allow the parties to develop their new relationship in a way which reflects and builds upon the federal policy initiatives. (Repudiation of the treaty relationship has been poisoning the relationship for all of the parties; and in Pimicikamak's view is illegal; see also: CANADA.)

Notes:

It is clear now that the relationship of the federal Crown with aboriginal peoples in Canada is fiduciary in character and that this has legally enforceable consequences. It is also clear that the existence and nature of a specific fiduciary duty to a specific aboriginal entity depends upon specific circumstances.

The courts have provided a variety of descriptions of circumstances which have given rise to specific fiduciary duties. For example, they may be seen to arise where a Crown official exercises a discretion or makes a decision, under authority conferred for the benefit of an aboriginal beneficiary, especially where the beneficiary has no control. Such specific fiduciary duties include a duty to exercise the discretion or make the decision for the benefit of that beneficiary, and other specific fiduciary duties may also arise.

At least for now, the courts have resisted providing an all-encompassing codification of fiduciary duties, but rather have seen them as a product of circumstance. Pimicikamak is of the view that this creates an opportunity -- and an obligation -- for the Crown parties and especially their officials, who exercise decision-making authority over NFA implementation, to consider the fiduciary duties which may arise in the circumstances of their NFA responsibilities. Pimicikamak believes that not only Canada but also the other two Crown parties have fiduciary relationships with Pimicikamak (and with CLFN) relating to the NFA, and that conscientious adherence by Crown officials to their fiduciary duties is integral to the new relationship (see: UBERRIMA FIDES; see also: GOOD FAITH).

As is implicit in the above, Pimicikamak is also of the view that, in appropriate circumstances, Crown officials may have personal fiduciary duties which, where they arise in the course their official responsibilities, are legally enforceable. The courts have not yet been asked to decide whether this is the case. Pimicikamak seeks an improved understanding of fiduciary duties in the NFA context from legal analysis and constructive dialog (see also: ACCOUNTABILITY).

Until now, officials of the Crown parties who may have fiduciary duties in respect of NFA implementation have been advised by the same legal counsel who are responsible for the corporate interests of their employers. Pimicikamak believes that these legal counsel may be acting in a conflict of interests. In these circumstances it is not surprising that responsible officials of the Crown parties have been known to deny that any personal fiduciary duty exists. Nor is it surprising that none of the Crown parties is known to have undertaken any professional analysis of potential fiduciary duties for which their officials may have personal liability.

As potential NFA-related fiduciary duties are identified, it will be appropriate for Crown parties to document them, and to provide appropriate training for officials. Leaving fiduciary duties to personal whim is just a systematic way of ensuring that they are

breached. The new relationship will need systematic ways of ensuring that fiduciary duties are honoured. (See also: THE HONOUR OF THE CROWN; and: UBERRIMA FIDES.)

Notes:

The First Written Law of Pimicikamak (see appendices) is based on, and expands upon, existing traditional law. It is based upon (then-) existing traditional law as to how laws were made -- namely by the Kiseyak Iskotew Otaskonakanak ("Council of Fire" in rough translation) or, in modern terms, Kiseyak Otaskonakanak -- the Council of Elders. It expands upon this basis because it comes to terms with the (offensive) existence of and also the (practical) need for Chief and Council as an executive arm of government. "Offensive" because it was a violation of our human right of self-determination by means of the *Indian Act*, which is widely perceived as having no more moral legitimacy than did apartheid in South Africa (see also: FUNDAMENTAL HUMAN RIGHTS). "Practical" because the world has changed much and normal evolution of Cree governance has been suppressed for generations (see also: STRUCTURES).

After considerable debate, it was accepted in 1996 that Chief and Council (which traditionally did not exist) now have a necessary role. This view is reflected, in *The First Written Law*, by a constitutional compromise devolved upon Chief and Council significant powers (including the exclusive power to initiate written Laws under inherent jurisdiction) formerly exercised by the Council of Elders. By approving *The First Written Law*, the Council of Elders conferred these powers on Chief and Council. (Ishwawak Otaskonakanak -- the Women's Council -- and Oskatisak Otaskonakanak -- the Youth Council -- also have constitutional roles. *The First Written Law* implicitly adopts a historical shift for the Women's Council from an executive to a legislative role in governance and confers a new legislative role on the Youth Council.)

The First Written Law offers significant benefits for the Crown parties. For example, it reconciles Indian Act government with inherent governance, allowing for an orderly transition. It eliminates the expense and uncertain legitimacy associated with attempts to negotiate aboriginal self-government. Traditionally Cree laws were oral, and of course in Cree, and so were relatively inaccessible for Crown parties. *The First Written Law* provides improved opportunity for Crown parties and others to comprehend the democratic (but culturally different) concepts of Cree government.

It is the intention of Pimicikamak to build upon traditional concepts of democracy so as to avoid problems which typically afflict new governmental structures in Third World countries with histories of colonialism and poverty (and which also afflict many Bands under the *Indian Act* in Canada).

Notes:

FUNDAMENTAL HUMAN RIGHTS [CREE PERSPECTIVE]

Human rights are a fundamental aspect of the relations between us and other peoples of Canada and their governments.

We are human beings, and our society constitutes a people, in the senses intended in the international law of human rights. We have inalienable fundamental human rights as individuals and a people.

The wholesale, continuing, deliberate and systematic dispossession of our people is simply not consistent with fundamental precepts of civil, political, social, economic and cultural rights. We know that laws protecting these human rights are binding on Canada (see also: LAWS).

Our human rights include civil, political, social, economic and cultural rights. Our aboriginal rights, and our treaty rights under the NFA and Treaty 5, are also human rights. Our human rights are recognized and protected by section 35 of the Constitution Act, 1982, and by Articles 1.1 and 1.3 of the International Convention on Civil and Political Rights, and also by Articles 1.1 and 1.3 of the International Convention on Social, Economic and Cultural Rights. We intend from this time onwards to subject the conditions facing our people to ongoing human-rights scrutiny, as is entirely appropriate (see: ACCOUNTABILITY).

There is an additional important consequence of the human rights dimension of our rights. It is established that the human rights of peoples and nations are the legitimate business of other peoples and nations, and that any intervention concerning fundamental human rights is not interference. We will continue to call on others, including in the international community, who are concerned with human rights to intervene to ensure that our human rights are respected.

We also intend to take all legitimate steps to ensure that the human rights of our brothers and sisters in other communities, arising out of the NFA and Treaty 5, are respected according to their spirit and intent. We cannot accept efforts to deprive our family members of their aboriginal, treaty and other human rights. It is our obligation to intervene and help to ensure that they are restored and respected.

Notes:

We understand that there is a concept of good faith in the EuroCanadian system of laws. We have read that good faith is sometimes defined in writing as honesty of intention, an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.

We believe, after having these words explained and illustrated to us, that this concept of good faith is similar to our concepts of respect and honour.

We are all the results of Creation. Our respect for each other and honourable conduct bring honour to the Creator. We have a great belief in the obligations of respect and honour.

It is dishonourable not to do what one has undertaken to do, especially where promises were made as a result of having caused serious harm to others, and especially where one is in a strong position and the others are vulnerable.

In such circumstances, such as the relationship between Pimicikamak and the Crown parties, we believe that only the highest standards of respect and honour will suffice. We have been told that there is a EuroCanadian concept called "uberrima fides" that details this requirement for absolute good faith (see: UBERRIMA FIDES). In other words, we know that this is not just our idea, it is also yours.

We know from experience of our relationship with the Crown parties from the past 20 years, and indeed since 1876, that there is often little or no good faith in the Crown parties' treatment of us. We can now see that this has resulted in our lands, waters, resources, economies, culture and way of life being progressively ruined and destroyed. We can now see that it has prevented our National preservation and development.

We cannot accept this any longer. We will challenge the absence of good faith on the part of the Crown parties to the NFA, whenever it occurs and by all legitimate means, because it is disrespectful and dishonourable, because it gravely harms us and our children and will cause grave harm to their children and their children's children, and because it harms the environment on which we all depend (see: ACCOUNTABILITY).

Notes:

This working paper takes a holistic (as distinct from a compartmentalized) approach to the NFA and its relationships with other matters concerning Pimicikamak and CLFN, such as self-government and INAC programs. This approach reflects a Cree understanding of the world.

Pimicikamak believes that this approach is integral to the NFA. The NFA is not limited to effects of the Project -- for example, it requires a holistic approach to joint action for ensuring viability, and eradicating mass poverty and unemployment.

Canada's abrogation of its NFA responsibilities, once the ink was dry on the NFA, effectively killed the holistic approach to joint action by Crown parties (see: CANADA; and see: JOINT UNDERTAKING.) We welcome the policy initiatives announced by Minister Jane Stewart in January, 1998, which offer new promise for a responsible approach by Canada, and a holistic approach to joint action by all parties (but see: FEDERAL POLICY INITIATIVES), as recognized by the Crown governments in the 1969 Northlands Agreement (see: appendices).

A holistic approach offers benefits for all parties. Pimicikamak looks to the Crown parties to collaborate in a holistic approach as an affirmative basis for the new relationship.

Notes:

The central significance of the *honour of the Crown* as setting legal standards for the conduct for the Crown (and so, we believe, for its officials) is outlined by numerous decisions of the Supreme Court of Canada, including: the *Calder*, *Sparrow*, *Mitchell*, *Badger*, *Lewis*, *Nikal*, *Van der Peet*, and *Delgamuukw* cases.

Though still far from fully elaborated, these standards establish legally enforceable requirements for the conduct of Crown officials. Conscientious personal observance of these standards is a fundamental requirement of the new relationship. This will require at least two activities which have been notably absent in the past: careful and dispassionate analysis on behalf of the Crown parties and their officials (see also: FIDUCIARY DUTIES), and adequate training of Crown officials who may have legal duties with potential legal consequences (see also: ACCOUNTABILITY).

The courts have also provided other guidance concerning the relationship between the Crown and aboriginal peoples (see also: GOOD FAITH; see also: UBERRIMA FIDES). Pimicikamak expects officials of the Crown parties, and especially Canada, to give serious, systematic and transparent consideration to this guidance (see: CANADA).

Notes:

Pimicikamak is aware that officials of Canada have in the past set up claims to possession of moneys payable by Manitoba Hydro to CLFN pursuant to the NFA. The alleged basis for such claims was that these moneys were or might be "Indian moneys" within the meaning of that term in the *Indian Act* and that such moneys must be paid to Canada. Although the officials declined to provide legal support for their assertion, Manitoba Hydro insisted on acting in compliance with their expressed wishes.

The *Indian Act* defines "Indian moneys" as "all moneys collected, received or held by Her Majesty for the use and benefit of Indians or bands." So moneys are not Indian moneys until they are collected, received or held by Her Majesty [in Right of Canada]. Others who hold moneys for the use and benefit of Indians or bands are not required to pay them to Her Majesty.

Of course the Crown parties have had concerns about the possibility of fraudulent appropriation of funds, given Canada's record of in failing to make adequate provision for financial control at the community level and actual experience of financial abuses. As has often been stated, Pimicikamak shares these concerns. For this reason Pimicikamak has implemented financial reforms (with little aid and much hindrance from Canada) and has legislated the requirement that every penny of its National revenues is subject to "gate-keeper" control by a corporate trustee (Royal Trust; see: THE PIMICIKAMAK OKIMAWIN TRUST) and that every expenditure must be authorized by Pimicikamak law (see: the FIRST WRITTEN LAW, which gives effect to standards of democratic accountability as high as any in the world).

Officials of Canada have sometimes associated the claim to possession of CLFN moneys with an assertion that these moneys arise from a sale of a surrendered interest in reserve lands (i.e., an easement under Article 3 of the NFA). This is a fraudulently inaccurate misrepresentation (sometimes supported by reference to a similar inaccurate representation in a Privy Council Order; see also: THE HONOUR OF THE CROWN). Under the NFA, the consideration for the easement interest in reserve lands is exchange lands, and nothing else, certainly not money (see also: THE NFA IMPLEMENTATION LAW).

Pimicikamak is of the view that:

- the claims to possession mentioned above *were advanced and maintained by officials of the government of Canada unlawfully and without colour of right*, on the basis of tainted legal advice, and in violation of their fiduciary duties;
- these claims constituted a scheme to unlawfully deprive CLFN and Pimicikamak of possession of their moneys, by a malicious (i.e., self-interested) abuse of authority;
- in complying with these claims over objections of CLFN, Manitoba Hydro officials violated their fiduciary duties and thereby subjected CLFN to arbitrary and unlawful dictates of officials of the government of Canada, to the serious injury of its, and Pimicikamak's, people.

With the re-emergence of Pimicikamak and the reactivation of its government, it becomes clear that the collective NFA rights and entitlements of our people, other than exchange (reserve) lands, are entirely owned by and subject to the laws of Pimicikamak (see also: THE NFA IMPLEMENTATION LAW).

Pimicikamak will not tolerate unlawful claims by federal officials to its property or to moneys of CLFN and, having given warning that such claims are without colour of right, will regard any such claim which is backed by coercive action as attempted theft.

Notes:

The new relationship must approach the NFA in the spirit in which it was entered into (see: SPIRIT AND INTENT) -- as a joint undertaking.

The NFA was signed in the context of a disagreement about the facts. The Crown parties had confidently predicted that the effects of the project would be negligible, or even beneficial. The NFC feared a catastrophe. What was agreed was that the parties would take joint action to achieve agreed public policy objectives in light of what actually happened. What happened was and is a man-made catastrophe (see: THE PROJECT; see also: SPEAKING FOR YOURSELVES).

For example, in Cross Lake people remember that an engineer held up a pencil in a public meeting showing about 6 inches and said that the water level would not vary by more than this. In 1979, a year after ratifying the NFA, the community saw the water level on Cross Lake drop by 9 feet in one month -- *the largest fluctuation ever on any lake in recorded history in Manitoba*. Our people are a "river people". We found that our river was a mile away from our shores -- a mile of impassable mud. We cannot deal with this and other such problems by simply labeling them "the project". They affect every aspect of our lives (see also: A HOLISTIC APPROACH).

The NFA did not speak of the mud because the Crown parties did not accept that it would happen. But the NFA did agree on public policy objectives applicable if this (or any other) catastrophe should occur. For example, the public policy objectives of the NFA include that our community will be viable (see: VIABILITY), that we would be dealt with "fairly and equitably" (see: FAIRNESS AND EQUITY), and that the Crown parties would participate in "the eradication of mass poverty and unemployment" (see: SCHEDULE E). The NFA provides a framework for cooperation of all parties in meeting such objectives.

The main problem of implementing the NFA in accordance with its spirit and intent is <u>not</u> (as often claimed by Crown parties) that it is vague or uncertain in its terms -- it is more specific than most of the historic treaties pursuant to which Canadians enjoy rights which go to make Canada the "best country in the world" (see: THE TREATIES BETWEEN US; see also: CANADA). It is that, confronted with the gross errors of their predictions (see: THE PROJECT) and the magnitude of the disaster they had wrought on us and our environment (see: SPEAKING FOR YOURSELVES), the Crown parties were simply not willing to do what they had promised to do (see: WILL).

In the light of NFA history, the undertaking of the Crown parties on May 8, 1998 (see: appendices), is an appropriate kind of document, even though its words fell far short of the need (and Canada's actions have not lived up to its words), because it is a joint undertaking by the Crown parties to work with us to implement the NFA in accordance with its spirit and intent (see: SPIRIT AND INTENT). This joint undertaking is what the NFA relationship calls for.

Notes:

Pimicikamak is entitled to have a relationship with the Crown parties that is governed by the highest standards of respect for law.

Actually, this should go without saying, but our experience in the last 20 or so years leads us to conclude that there is a flexible standard of respect for laws in Manitoba and Canada when it comes to their treatment of aboriginal peoples.

Three related examples from our experience will illustrate this point.

The Chief Justice of the Supreme Court of Canada stated in the *Sparrow* case that the James Bay Hydroelectric Project was initiated and constructed without any regard for the constitutionalized rights of the native peoples concerned. The Supreme Court was using James Bay as an example in *Sparrow;* similar legal rights, the constitutional rights of Pimicikamak members, were violated in a similar way, at a similar time in history, by Manitoba Hydro and Manitoba and by the governments of Manitoba and Canada when the Lake Winnipeg, Churchill and Nelson Rivers Hydroelectric Development was initiated and constructed. In addition, in our case our rights arising out of Treaty 5 were violated.

One result was our acceptance of the NFA. We were led to believe that the NFA was our "Charter of Rights and Benefits" (see the CHARTER OF RIGHTS AND BENEFITS signed by the Minister of Indian Affairs on the front cover), and that the solemn signatures of the Crown parties were our guarantees. In 1982, existing aboriginal and treaty rights arising out of both Treaty 5 and the NFA were constitutionally recognized and affirmed. In 1991 two judges of the Manitoba Aboriginal Justice Inquiry affirmed that NFA rights are treaty rights.

Yet, in 1996 the Royal Commission on Aboriginal Peoples confirmed what we have known all along, that most if not all of the promises contained in the NFA have been ignored by the Crown parties. And then in the last few years, the Crown parties have come to a process that would have extinguished our NFA treaty rights while pretending not to affect them, and have continued to state without any respect for binding legal standards that our treaty rights are not treaty rights at all (see: THE TREATIES BETWEEN US; see also: FIDUCIARY DUTIES; see also: THE HONOUR OF THE CROWN; see also: GOOD FAITH).

There are many other instances in which we see laws being bent and broken when our rights are concerned. *We believe that what emerges is a pattern of Crown party conduct which has brought into question respect for the Rule of Law.* This is why we must now say that we are seeking a relationship based on respect for laws.

Which laws? Of course we expect that the Crown parties will respect all laws and legal standards that are binding on them, Canadian law and Manitoba law, and our laws, including our Pimicikamak constitution and our written laws, including *The First Written Law*, and the *Pimicikamak NFA Implementation Law* (see: PIMICIKAMAK LAWS; see also: THE FIRST WRITTEN LAW; see also: THE NFA IMPLEMENTATION LAW).

In light of the past, we can see that positive change in this regard has usually only been achieved where the courts have forced governments to respect the law. Where necessary and where we judge it to be appropriate we will turn to the courts. But we can see that this often serves also the interests of diversion from and delay in achieving fair and equitable treatment (see: FAIRNESS AND EQUITY).

We will ensure that the Crown parties come to see and understand that full respect for their own and our laws is in their own best interest, and that continuing violation of these laws and our rights will bring them further dishonour (and also loss of economic and financial opportunity far greater than if they promptly, fully and enthusiastically respect their obligations to us; see: WILL; see also ACCOUNTABILITY).

It must also be stated in this context that certain laws that have been applied to us are discriminatory and unjust, for example the *Indian Act*. There are numerous unjust and discriminatory laws and practices that apply or have been applied to us, and laws that have been applied to us in an unjust manner, in denial of our Aboriginal and treaty rights, or in breach of our own laws (for example, Manitoba hunting laws). It is our fundamental human right to oppose such laws and their application to us (see: FUNDAMENTAL HUMAN RIGHTS), by all legitimate means. Eliminating these injustices will be an important contribution to the new relationship between Pimicikamak and the Crown parties.

Notes:

The NFA expresses a binding treaty relationship (see: THE NFA TREATY OF 1977) between the Northern Flood Committee, the governments of Canada and Manitoba, and Manitoba Hydro. We find the NFA easy to understand; we don't need to get into legal technicality to understand its spirit and intent.

Pimicikamak and its people are entitled to the Crown parties' conscientious respect for the NFA relationship.

But Pimicikamak has now come to realize that the NFA is unlikely to be implemented according to its spirit and intent, despite repeated promises, unless we undertake concerted efforts to bring this about. We have learned that you don't do what you promised to do because it's the honourable thing to do (see: WILL; see also: THE HONOUR OF THE CROWN). Evidently, you need other motivations. We are seeking to provide them.

Given the conduct of the Crown parties (see: SETTLEMENT), we determined to set some basic matters straight about our NFA implementation. Accordingly, in December 1997, Pimicikamak enacted (see: THE FIRST WRITTEN LAW) the *Pimicikamak NFA Implementation Law*. Among other things, this Law (see: THE NFA IMPLEMENTATION LAW):

- *declares a state of National emergency* in respect of deprival of the Nation and its citizens of their Aboriginal, treaty and other human rights (see: FUNDAMENTAL HUMAN RIGHTS) and their survival as a Nation (see: PIMICIKAMAK CREE NATION);
- requires the Nation and the Band to continue to pursue implementation of the NFA, according to its spirit and intent (see: SPIRIT AND INTENT), in good faith (see: GOOD FAITH);
- requires persons with fiduciary duties or conflicts of interests to act appropriately and according to law (see also: PIMICIKAMAK LAWS);
- declares that every discussion or decision in respect of implementing the NFA shall be done in the name of Pimicikamak (as distinct from the Band) and shall be subject to its express approval by Law (including, of course, *The First Written Law*) (see: CROSS LAKE FIRST NATION; see also: PIMICIKAMAK CREE NATION);
- declares "settlement" such as the Comprehensive Implementation Agreement (CIA) which would terminate rights under the NFA to be fraudulent and directs Chief and Council to have nothing to do with the CIA (see: SETTLEMENT);
- directs representatives of the government of Canada not to conduct any referendum or plebiscite in respect of "Settlement" (see: SETTLEMENT);

- declares that the Law is evidence, expressed by the people of the Nation, of the matters set forth in the Preamble to the Law.

We do not intend to debate this Law with the Crown Parties.

We have been disappointed at continuing insistence by certain of the representatives of the Crown parties since the enactment of this Law that it is only a matter of time or money that our people accept "settlement" of the NFA (see: SPEAKING FOR YOURSELVES). Some have even openly derided this Law. The Crown parties insist in their own spheres on respect of their laws, including by our own people where they apply to us. Respect from the Crown parties for our laws, and in this case, the Pimicikamak NFA Implementation Law, will be an important part of the new relationship between us (see: LAWS**)**.

Notes:

The Northern Flood Agreement of 1977 was an after-the-fact, minimal response to externally (and illegally; see: THE HONOUR OF THE CROWN) imposed circumstances, namely the devastation of our traditional and Treaty 5 lands (see: THE PROJECT; see also: THE TREATIES BETWEEN US). This treaty was not our choice; we entered into it under duress in an attempt to ensure the social, cultural, economic and spiritual survival of our people in the face of a "travesty" (see: SPEAKING FOR YOURSELVES) being perpetrated against our environment and our people.

As with Treaty 5, these is no single authoritative version of this treaty, but we are determined (especially in light of the benefits that our traditional lands and resources have brought to the people of Manitoba and Canada; see: SPEAKING FOR YOURSELVES) that the spirit and intent (see: SPIRIT AND INTENT) of this treaty will be meaningfully respected and implemented.

Little difficulty is raised by the lack of a single authoritative version of the NFA treaty terms. The Cree oral understanding of the spirit and intent of the NFA treaty is reflected in the English and syllabic written texts, when these are understood as expressing a treaty relationship. This common understanding can provide an adequate, unambiguous and legally-binding basis for the Crown parties to undertake with us considerable, positive and constructive work that will make an immense difference to the conditions facing our people.

Fundamentally, the spirit and intent of the NFA embodies three things as the foundation for the relationships between the Crown parties and our people:

- it acknowledges that *adverse effects [had] occurred, and may continue to occur, on the lands, pursuits, activities and lifestyles* of our people;
- it promises that *the Crown parties will treat us fairly and equitably in light of these impacts, and take concrete steps to ensure the viability of NFA communities* -- in particular, that we will be afforded affirmative access to lands and resources, that mass poverty and unemployment will be addressed jointly, and other actions to this end;
- and it covenants that *it will remain in effect while the Project exists.*

Since entering into this treaty, we have lived with a succession of disastrous adverse impacts, some feared and some unexpected, which constantly affect every aspect of our lives. The flooding and related events of the past twenty years have been a cataclysm for our people (see: THE PROJECT).

It has been suggested by certain Party representatives that the social and cultural conditions we are facing, the mass poverty and unemployment and other desperation, are not unique to our people and are suffered in other aboriginal communities in Canada. These statements appear to be intended to somehow imply that the project cannot be blamed for the conditions we face, because these conditions exist elsewhere.

We reject this implication as shallow and ridiculous thinking. The flooding of Nitaskinak was a deliberate act of dispossession (see: FUNDAMENTAL HUMAN RIGHTS) within a larger pattern of dispossession. Of course, other aboriginal peoples who have suffered dispossession through other means have suffered similar consequences.

Notes:

NON-ADVERSARIAL [STANDARDS]

Canadian courts have repeatedly stated that the relationship of the Crown with aboriginal peoples in Canada is non-adversarial (see, e.g., *Sparrow*). Pimicikamak believes that this is a legal standard, binding upon, and with practical implications for the conduct of, Crown officials (see: ACCOUNTABILITY). To date, Pimicikamak's experience is that Crown officials give at best lip-service to this standard. For example, Crown officials including particularly those of Canada have in the past unlawfully categorized the NFA as a "claim", thereby calling into play all of the attributes of an adversarial relationship, while purporting to carry out their duties under the NFA. The new relationship calls for an honest re-examination of such practices consistent with the honour of the Crown (see: THE HONOUR OF THE CROWN).

Notes:

OBJECTIVE STANDARDS [CREE PERSPECTIVE]

In considering the standards governing our unique relationship with the Crown parties (see: A UNIQUE RELATIONSHIP), certain external or objective standards apply.

First, it is absolutely material to this exercise of determining applicable standards that Canada is a G7 country with the highest standards of social development in the world. It is also absolutely material that the Province of Manitoba has one of the lowest rates of unemployment in Canada. It is absolutely material that Manitoba Hydro's revenues last year were $1 billion. These facts provide context for the standards that will apply in determining what should be done.

Second, elements of the Constitution of Canada which govern the behaviour of the Crown parties requires them, for example, in section 15, not to discriminate on the basis of race or nationality and, in section 36, commits them to the elimination of regional social disparities in Canada. Objective standards will avoid the unconscious or intentional application of race-based standards.

Third, many rights arising out of the NFA and Treaty 5 are also human rights, and universal human rights standards must apply (see: FUNDAMENTAL HUMAN RIGHTS).

For these reasons, it is unacceptable and illegitimate to try to impose "standards" upon us based on conditions which afflict other Aboriginal communities or peoples in Canada. None of these Aboriginal peoples or communities have the same legal rights we have, including those arising out of the NFA, for example binding access to fairness and equity.

We intend that the efforts that will be made with respect to our future, and the results we will have opportunity to aspire to, will be compared to universal standards of respect for human rights and to the unacceptability of discriminatory access to the benefits of living in this land. We will insist on this, because any other approach will not be equitable, fair, or lawful (see: FAIRNESS AND EQUITY).

Notes:

The existence of Pimicikamak rests in an important sense on its aboriginal right of self-determination, which is recognized and protected by Articles 1.1 and 1.3 of the International Convention on Civil and Political Rights, and also by Articles 1.1 and 1.3 of the International Convention on Social, Economic and Cultural Rights (see: FUNDAMENTAL HUMAN RIGHTS; see also: SPEAKING FOR YOURSELVES).

Pimicikamak is working on Laws to: a) delineate its citizenship; b) establish electoral arrangements for Chief and Council of the Nation; and c) provide that Chief and Council of the Nation shall be the Chief and Council of the Band for the purposes of the Indian Act (at present the reverse is the case under Pimicikamak Law). Pimicikamak believes that these Laws will by operation of Canadian law displace contrary provisions of the *Indian Act*, without the need for legislation by Parliament.

Respect and support from the Crown parties for Pimicikamak's law-making processes will be an important contribution to the new relationship. As well, Pimicikamak expects that Canada will, as an integral part of the new relationship, provide remedial assistance after more than a century of legislating, administering and funding systematic efforts to suppress Cree culture and governance (see: CANADA).

Notes:

Pimicikamak is obviously a person for all of the purposes of the NFA (see: PIMICIKAMAK CREE NATION). So are various Pimicikamak groups and associations which fall within the NFA definition. Driven by comprehensive default of almost all NFA obligations, a claim-oriented view of the NFA has bedeviled them with endless legalisms which, to the great benefit of the defaulting parties, have tended to "disaggregate" (or break up; see: SPEAKING FOR YOURSELVES) these entities into a collection of personal interests (see also: CLAIMS).

Pimicikamak's groups and associations, traditional and new, are essential to the viability of the Nation and the community (see: VIABILITY). Reorienting thinking to be respectful of their cultural roots and especially their collective nature and functions may be a challenge for all concerned, but it will be necessary because groups and associations are integral (i.e., not separate) aspects of the Nation and the community.

Incorporation under Provincial laws has contributed to the decline of some groups and associations which are important to the vigour of the Nation. Consideration is being given to a return to traditional corporate status under Pimicikamak laws (see: PIMICIKAMAK LAWS).

Pimicikamak asks the Crown parties and their officials to understand these needs and to cooperate actively and fully within their functions with the reinvigoration of its groups and associations.

Notes:

Pimicikamak is legally and constitutionally distinct from CLFN (see: TABLE: COMPARISON OF CLFN AND PIMICIKAMAK, in appendices). "Pimicikamak" is not a new name for "CLFN". Under Pimicikamak law, CLFN is, in effect, an operational division of the Nation's government (see also CROSS LAKE FIRST NATION).

For many generations, Pimicikamak endured active suppression by laws policies and programs of Canada. In recent years, as some of the repressive laws were repealed and as traditional knowledge re-surfaced, the concept of the Nation was expressed in the name "Cross Lake First Nation" but this name was soon linked to the Indian Act and INAC's program funding. For a while, the name "Cross Lake Nation" was used to distinguish the aboriginal entity, which continued to exist under traditional law, from the Band, which is wholly a creature of the Indian Act and a dependent and agent of INAC. In 1996, the enactment of *The First Written Law* (see: THE FIRST WRITTEN LAW) reasserted the Nation's continuing existence and constitutional viability (see: CONSTITUTION OF THE NATION).

The name of the Nation now in common usage, as rendered in English text, is "Pimicikamak Cree Nation", often abbreviated as "Pimicikamak".

Pimicikamak is a Nation under traditional Cree law, as impacted and inevitably affected, even constitutionally, by more than a century of "disaggregation" (see: FEDERAL POLICY INITIATIVES). The Cree people have never surrendered their aboriginal right to self-determination. It has never been legally extinguished. Now it is protected by both domestic Canadian constitutional law (see: LAWS) and by international law, binding upon Canada (see: FUNDAMENTAL HUMAN RIGHTS).

Pimicikamak's existence is based on law; but it is also based on fact: after everything which has been inflicted upon it, the Nation still exists, has its people, speaks its own language, identifies with its traditional lands, has its law-making capacity, is defined by its own culture, is able to adapt, and has its own laws (see also: PIMICIKAMAK LAWS).

Pimicikamak consists of its citizens and traditional lands (which is to be understood as one thing not two). The relationship between Pimicikamak and the community of Cross Lake is that it is their National community, where many of its citizens reside. This relationship does not legitimize any claim to have dispossessed the Nation of its traditional lands or to have segregated and confined its people to reserve lands. But for its part, Pimicikamak continues to respect its treaty relationship with the Crown whereby it accepts the sovereignty of the Crown and shares the resources of its traditional lands (see: THE TREATIES BETWEEN US).

While it is not a named party in or a person under the NFA, Pimicikamak (not CLFN) is the legitimate beneficial party in respects of its people's interests for all NFA purposes other than Article 3 (see also: THE NFA IMPLEMENTATION LAW).

The Pimicikamak Okimawin Trust (see: PIMICIKAMAK OKIMAWIN TRUST) is an integral (but new) part of the Nation's reactivated traditional government.

Notes:

PIMICIKAMAK OKIMAWIN TRUST [STRUCTURES]

The Pimicikamak Okimawin Trust is quite different from trusts which the Crown parties have, for their own purposes, caused to be instituted for certain NFA First Nations (i.e., bands; c.f., PIMICIKAMAK CREE NATION). It is, in effect, the consolidated revenue fund of the Nation. It is different because money was no part of the traditional economy, and because Pimicikamak is not a band (see also: THE CONSTITUTION OF THE NATION). But it is deeply rooted in the values of the Nation as especially insisted upon by the Elders (who have a veto in such matters, exercisable by lack of consensus) that the Nation's property must be administered for the Nation as a whole according to its Laws and must not be vulnerable to corrupting pressures (to which they are now accustomed) from *Indian Act* structures.

The Trust is governed by community trustees (one appointed by the Elders Council and four elected at large) and financially managed by a Corporate Trustee (Royal Trust has agreed to be the Corporate Trustee) under an arrangement which, in effect, provides the Nation with basic services of a Department of Finance. Trust expenditures are required to be authorized by Law of the Nation (see: THE FIRST WRITTEN LAW; see also: PIMICIKAMAK LAWS). The Trust is governed by the trust laws of Manitoba and is further specifically authorized and governed by *The Pimicikamak Okimawin Trust and Hydro Payment Law*.

The Trust is an integral part of the Nation's government and its income should not be subject to taxes under existing law. For greater certainty, Pimicikamak may negotiate a treaty with Canada in this regard.

The Trust provides a significant structure for the new relationship. In the past, transfers of NFA-related funds by Crown parties have involved, at best, an awkward process (and at worst massive illegalities). The Trust provides means for the Crown parties to transfer funds to the Nation, without intruding on its decision-making processes, but with confidence in their integrity (see also: INDIAN MONIES).

Notes:

In its 1975 report on the project, then underway, the Lake Winnipeg, Churchill and Nelson Rivers Study Board (jointly funded by Canada and Manitoba, and jointly representing them and Manitoba Hydro) asked rhetorically:

> *Who are the principal recipients of the benefits*, and *who bears the burden of the costs*? [Italics added; see also below.]

(See: SPEAKING FOR YOURSELVES.)

We have come to understand that Manitoba Hydro and the Government of Manitoba regard the project as a good thing. They are proud of it. For Manitoba Hydro, for Manitoba, and also for Canada, the project is a huge money-maker. *Two decades later, there is no doubt who are the principal recipients of the benefits.* But for us it is a man-made catastrophe. It has turned our lands into an environmental slum. It pollutes our waters, it erodes our shorelines, it destroys our livelihood, it steals our health, it kills our people. It offers our families a lifetime of welfare, and it leaves our children a legacy of despair. It threatens to extinguish forever our existence as a Nation.

The Provincial Minister recently said:

> No one's going to deny that, you know, there were travesties, that there was the victimization of a people, which has had terrible effects on them.

(See: SPEAKING FOR YOURSELVES.)

For these reasons, we live in a state of National emergency (see: THE NFA IMPLEMENTATION LAW). *There is no doubt who bears the burden of the costs.* A key reason for this continuing gross injustice (see: FAIRNESS AND EQUITY) is that we are left to fall between the chairs while the Crown parties pretend to distinguish between the effects of the project and other conditions which affect our lives. The artificial concept of the project-in-isolation is inconsistent with the spirit and intent of the NFA (see also: SPIRIT AND INTENT; see also: JOINT UNDERTAKING). It makes no more sense than Manitoba Hydro trying to prove that the deadhead which killed one of our people was not a "Hydro" deadhead. Deadheads have no labels; even less do the artificially categorized aspects of the conditions in which we live (see also: A HOLISTIC APPROACH).

The NFA calls for joint action by the Crown parties, originally to avoid, and now to address, the state of emergency we live in. It requires a holistic approach to matters which involve governmental as well as project-related considerations (see also: SCHEDULE E). In this, obviously, Canada has a special responsibility to ensure that these considerations are addressed.

Since the early 1970s, Manitoba and Manitoba Hydro have been, with justification in our view, suspicious that Canada's designs for the NFA would off-load its responsibilities onto them. Since 1977, Canada has repeatedly acknowledged its primary responsibility for NFA implementation in word (e.g., see: SPEAKING FOR YOURSELVES) but dishonoured

it in deed (see: CANADA). In these circumstances, it is not realistic to expect that the other two Crown parties, who have no constitutional responsibility under section 91(24) of the *Constitution Act, 1982*, will be willing to take the necessary actions which will address the effects of the project in the broader context of governmental policy and programs. For this reason we hold Canada and its officials ultimately accountable for the new relationship and for the effects of the project on us (see: ACCOUNTABILITY).

Notes:

In 1994 the people of Pimicikamak undertook an extensive community consultation process based on Circle Groups, which draw on traditional processes. The focus of the process was NFA implementation, and the consultation was undertaken as an exercise in community planning (designed and guided by one of Canada's most experienced and respected community planners) consistent with Article 16 of the NFA (see also: SCHEDULE E). The Circle Groups provided an unprecedented opportunity for all parts of Pimicikamak society to contribute their views, in their own words. When read carefully and understood in their context, these views, collected and bound in a document which has come to be known as the Red Book, speak to a collective vision of a strong and viable future which is shared by our people as a whole.

The Red Book continues to provide a guide for NFA implementation in a context of self-determination. Of course it will need to be updated for the purpose of specific current plans (such as, for example, a community-mandated Recreation Plan). We see this as an opportunity to further build upon our traditional governance processes (see: SELF-DETERMINATION).

Notes:

In recent years, other peoples who are now represented by the governments of Canada and Manitoba have come to these lands and now greatly outnumber us in population and demands for lands, resources and power. In our relationships with these other peoples, we have sought to be caring, respectful, sharing, tolerant, fair, equitable, and above all honourable.

Sadly, for the past few hundred years, continued and systematic efforts have been made through laws, policies, practices and strategies to dispossess us. These efforts have attempted, sometimes successfully, to deprive us of:

- our lands, waters and resources,
- our right to govern ourselves and determine our own future as peoples,
- our languages, culture and spirituality,
- our social fabric and our community and governance structures,
- our economies, our ways of life and own means of subsistence,
- and even our family and personal links with each other.

See: SPEAKING FOR YOURSELVES.

This is a terrible and ongoing condition that faces the people of Pimicikamak Cree Nation. It continues to this day through the present-day actions of the Crown parties, and also as a result of the continuing impacts of the enormous past history of dispossession and abuse.

We do not refer to this history of dispossession and abuse of our people as accusation or propaganda. This history is fundamentally important, because it shapes our response to the circumstances that face us now, and determines the steps we must now take to ensure our future, our survival, our development, and our renaissance as a People and a Nation.

The processes and practices of dispossession and abuse of our people have taken place mostly little by little, and through very small events but also very large occurrences. Small events have included the hunting of individual animals by others and the inappropriate use of resources by one person or another in Nitaskinak. Large occurrences have included the flooding of our traditional lands without our consent and without respecting our rights under our own and the other peoples' constitutions (see: THE PROJECT).

Our Elders, leaders and people have tried as time went by to take various actions to influence and affect the efforts that have been made to dispossess us. These actions were occasionally positive in small ways, and served to assist our people to keep the flame of our culture and society alive (see: PIMICIKAMAK CREE NATION). Few of these actions if any were made freely; mostly they were made as desperate responses to overwhelming external pressures that threatened to leave our people with nothing -- no land, no

resources, no community structures (see: STRUCTURES) with which to survive, no future, no hope.

Notes:

The spirit and intent of Schedule E are very important to us. It is in Article 16 and Schedule E that we can see most clearly the holistic approach of the NFA (see: A HOLISTIC APPROACH).

This Schedule must of course be read and understood in conjunction with the rest of the NFA and the relationship it expresses. It must be read and understood in conjunction with the NFA spirit and intent (see: SPIRIT AND INTENT) that we would be treated fairly and equitably (see: FAIRNESS AND EQUITY) in light of the adverse impacts of the Project on our people, economies and way of life (see: THE PROJECT).

It must also be read and understood with other NFA public policy requirements including that Canada will play an active role in providing continued opportunities for the viability of the community; that it is in the public interest to ensure that Pimicikamak be compensated for the adverse effects of the Project; and that it is in the public interest to employ our people to the maximum extent possible in all works related to the Project.

For Pimicikamak the NFA as a whole speaks to a "joint action program for the eradication of mass poverty and unemployment and the improvement of the physical, social and economic conditions and transportation".

Where and in what form these objectives can be found in any of the versions of the NFA (see: THE NFA TREATY OF 1977) is not very important, because we know that honour, fairness and equity require that these things be done no matter how they may be expressed (see: THE HONOUR OF THE CROWN; see also: FAIRNESS AND EQUITY; see also: A HOLISTIC APPROACH). We were deprived of our economies, traditional lands and our own means of subsistence by the actions of the Crown parties. The conditions under which we now live are a breach of our human rights (see: FUNDAMENTAL HUMAN RIGHTS).

There must now be timely and effective joint action (see: JOINT UNDERTAKING; see also: ACTIONS) to address the social, economic and other issues faced by our people. Schedule "E" contains guidance (admittedly a little outdated, but read as a treaty this does not present any difficulty) regarding standards and the structures that should be involved. With respect to standards, it was certainly clearly intended that all "unacceptable" conditions facing our people would be described, identified, studied and assessed; remedial policies and measures proposed and appraised; and that coordinated measures including community development would be undertaken by the Crown parties.

It has been stated by representatives of the other Crown parties that the NFA was never intended to be a basis for those parties to provide forever for the needs of our people.

Fundamentally, we agree with this view, because we reject dependence and are seeking self-sufficiency and dignity. The spirit and intent of Schedule "E" (in context of the many other NFA provisions to which it relates) are intended to coordinate practical remedies for the harm that the Crown parties and specifically the project have caused to

our people (see: THE PROJECT), and to put us onto a course of increasing social and economic independence.

We are not looking for perpetual handouts. We know the NFA to be the "Marshall Plan" for our people, following the cataclysm and travesty of the project on our lands and our people. We intend to require the Crown parties to now do (in cooperation with us) what they must, late as such efforts now are, for as long as it takes, and if necessary as long as the project or any substantial redevelopment continues to have adverse impacts on us.

Schedule E calls for a "governmental" plan to be developed in concert with the ideas and aspirations of the residents of Cross Lake (expressed via a "community" plan; see: THE RED BOOK). Developments in Pimicikamak governance (see: SELF-DETERMINATION) provide enhanced opportunities for intergovernmental planning which were not available in 1977.

Schedule E contemplates that the governmental plan will be regional in scope (i.e., involving five NFA communities). Implications of subsequent developments for the participation of other communities will need to be considered.

Notes:

Pimicikamak is rediscovering itself, after enduring more than a century of governmental repression, disaggregation and assimilation. Despite all, Pimicikamak survives. Its cultural roots are deep. Pimicikamak's traditional government, by which it has governed its own affairs since time immemorial (see: CONSTITUTION OF THE NATION) has re-awakened and has modernized its structure and methods (see: THE FIRST WRITTEN LAW). Its right to do so is recognized and affirmed by the Constitution of Canada. More fundamentally, it is based on its people's right of self-determination. This fundamental human right is recognized and protected under international laws, which are legally binding on Canada (see: FUNDAMENTAL HUMAN RIGHTS). Pimicikamak expects the Crown parties to respect the Nation (see: PIMICIKAMAK CREE NATION) and its laws (see: PIMICIKAMAK LAWS).

Though based on inherent jurisdiction, Pimicikamak government has nothing to do with the federal "inherent right policy". Pimicikamak has come to understand this policy, and the federal "dismantling" initiative, as an attempt to delegate government from the federal government to Indian people. The jurisdiction of Pimicikamak government comes from the Creator and from its people.

Pimicikamak's policy is to seek to avoid conflicts with other governments and to resolve any conflicts through consultation.

Notes:

Notwithstanding the May 8, 1998, joint undertaking (see: JOINT UNDERTAKING), it is evident that officials of Crown parties (including personal signatories to that joint undertaking) continue to think (and speak) in terms of the NFA as a "claim" (see: CLAIMS), and of "settlement" as its "resolution" (see: SPEAKING FOR YOURSELVES). This terminology is subtly directed at denying and at ending a relationship which the Crown parties solemnly undertook for the lifetime of the project and any substantially similar redevelopment. It is part of a larger pattern of sharp dealing -- including a wholesale refusal to implement the NFA according to its spirit and intent, used as an excuse to dismember the NFA into a collection of claims as a prelude to extinguishing it. It is, among other things, inconsistent with the honour of the Crown (see: THE HONOUR OF THE CROWN).

Aside from issues of good faith (see: GOOD FAITH) relating to the May 8, 1998, joint undertaking, it may be beneficial for Crown parties and their officials to achieve a better-informed understanding. The concept of settlement (whether comprehensive or piece by piece) is thoroughly discredited in Cross Lake. Thoughts of reviving it are, at best, wishful thinking. We believe that any adherence to it by Crown officials is also illegal.

Settlement was never a reputable strategy. Pimicikamak believes that "settlements" which the Crown parties entered into with four NFA First Nations are frankly illegal and that it is legally as well as politically inevitable that they will be re-opened. The question is whether this will be done with grace or disgrace.

Notes:

Pimicikamak Cree Nation is a sovereign nation with its own laws under inherent jurisdiction. That is, its authority for its laws does not derive from any outside authority, though it is limited to a degree by its treaty relationships and the sacred law of honour.

Pimicikamak does not seek status as an separate state. Pimicikamak continues to respect its treaties with the Crown (see: THE TREATIES BETWEEN US) by which Pimicikamak has sought to reconcile its sovereignty with that of the Crown. The Constitution and laws and Canada are now an integral part of our relationship with the Crown. For Pimicikamak the reconciliation between its sovereignty and that of the Crown is defined by our treaty relationship, which by its nature is continuously evolving.

Our relationship with the Crown parties is however also inextricably linked to the issue of respect for our fundamental human rights (see: FUNDAMENTAL HUMAN RIGHTS), including our rights of self-determination (see: SELF-DETERMINATION) and the right (that is derived from our right to self-determination) not to be deprived of our own means of subsistence (see: SPEAKING FOR YOURSELVES). [The Supreme Court recently held that that a right to secession may arise under the principle of self-determination where a people is denied any meaningful exercise of its right to self-determination within the state of which it forms a part.]

Notes:

Summary Report of the Lake Winnipeg, Churchill & Nelson Rivers Study Board, Apr. 1975, Recommendations.

"Who are the principal recipients of the benefits, and who bears the burden of the costs? Failure to identify the beneficiaries of resource allocation decisions can readily result in a transfer of benefits from one particular group in our society at a cost to another."

International Covenant on Civil and Political Rights, Mar. 23, 1976, Art 1.2.

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

Federal Task Force on Program Review, 1985

"Internal DIAND reports indicate that from 1977-83, NFA Bands received $10,700 per capita in benefits, while other Manitoba bands received $26,100 per capita. This pattern is commonplace in areas where bands negotiate supposedly enriched opportunity packages. The results turn out to be the reverse of what was intended. Even the special Northlands Agreement funds (while not designed to mitigate effects) did little to offset the imbalance in these communities, yet they comprise 15 per cent of the targeted Northlands population. . . . Even if the recent provincial approach is successful, federal implementation of the NFA could continue to be lengthy and expensive. Moreover, unless the land exchange and land use issues are resolved and the construction of federal capital works begun, these communities cannot adequately plan and marshall resources to meet their needs. . . . A settlement offer approach (similar to the provincial/Hydro scheme), managed by a senior negotiator, should be considered. . . . [C]ontinuing liability regarding certain federal obligations would be removed. . . . [T]he offer could be substantially less than the current $70 million estimate . . ."

Government of Canada News Release: "Gathering Strength" 7/1/98, p. 3.

[Minister Jane Stewart:] "As a country, we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures, and outlawing spiritual practices. We must recognize the impact of these actions on the once self-sustaining nations that were disaggregated, disrupted, limited or even destroyed by the dispossession of traditional territory, by the relocation of Aboriginal people, and by some provisions of the Indian Act. We must acknowledge that the result of these actions was the erosion of the political, economic and social systems of Aboriginal people and nations. . . . The government will work with Aboriginal people to help achieve the objective of Strengthening Aboriginal Governance, building on treaty relationships where appropriate. This means developing practical arrangements for self-government that are effective, legitimate and accountable; that have the strength to build

opportunity and self-reliance; and that can work in a coordinated manner with other governments."

W Sun 25/3/98: p. 1.

"Our project impacted them negatively and we want to make sure that we treat them properly and with respect and dignity." Brennan said. "Once they know what they want to do, we'll help them achieve it," he said. "We'd like to see the community satisfied ... It would allow us to get some forgiveness for our obligation."

WFP 25/3/98, p. A3.

[Minister David Newman said:] one of [Pimicikamak's] demands was that the NFA be acknowledged as a treaty. "It is a preposterous kind of position," Newman said, adding that the province doesn't have legal authority to do that anyway.

WFP 9/4/98, p. A3.

Bob Brennan, president and CEO of Manitoba Hydro, said a negative public relations campaign could potentially harm the company. "Manitoba Hydro does a lot to build up our image. We're a good company. We do well in all the performance indicators. It's not a good thing to have people talk negatively about you and we wouldn't like it."

CBC Radio 7/4/98.

[Petrovich:] "The chairman [sic] and CEO of Manitoba Hydro says the mega-project has had a profound effect on the people of Cross Lake. Bob Brennan says it wouldn't be built today." [Brennan:] "No, a $100-million does not erase that which we did. I mean, we did it, and I certainly don't think Manitoba Hydro would do that today. I'm positive of it, and yet that was acceptable for conditions of the day."

Crown Parties 8/5/98.

"We appreciate the concerns which have been expressed about the need for implementation of the Northern Flood Agreement (NFA); and also the manner in which those concerns have been expressed. We are prepared to set aside the concept of comprehensive settlement with Cross Lake First Nation, and welcome the opportunity to implement the NFA in accordance with its spirit and intent. . . . You have asked for our legal opinion or legal opinions on the status of the NFA as a treaty. We will gladly share those opinions with you, once ready, providing this will be a mutual obligation; any legal opinion you have will be shared with us at the same time."

G&M 11/5/98, p. A4.

[Minister David Newman:] "No one's going to deny that, you know, there were travesties, that there was the victimization of a people, which has had terrible effects on them. No one's going to deny that. But all we're trying to do is come up with a solution by agreement or by the implementation of the [Northern Flood] Agreement. I mean, we're committed to that."

WFP 16/5/98, p. A3.

Bob Brennan, president of Manitoba Hydro, agreed yesterday that Hydro owes money to Cross Lake to fulfill NFA commitments. He said that Cross Lake owes nothing in return, aside from acknowledgment the money is going towards fulfilling specific NFA obligations.

W Sun 23/6/98, p. 7.

"There's no doubt we had an impact on these people's lives by damaging the environment, but we've done a lot to try to correct that." Bob Brennan said. "We want to help them as much as they want to help themselves, but they're not doing it the right way at all." he said, calling today's plea to the Americans "disheartening, discouraging and disappointing."

Minneapolis Star Tribune, 23/6/98.

Manitoba Hydro spokesman, Glenn Schneider said the tribe's concerns are exaggerated: "We're clearly disappointed in how they've characterized some of the impacts, and the language they've used." Schneider said the utility sought and received the necessary licences to build the dams and signed the 1977 agreement with Cross Lake and four other Cree bands to provide compensation and to settle other disputes. Schneider said that Cross Lake Band has filed 3,200 claims in the past 20 years, and the government and utility have settled about 2,900 of them by providing $37 million in cash and other assistance. "It's not as if nothing's happened." he said. Schneider said that the utility has proposed to end the complicated claims system by negotiating final comprehensive agreements with each of the Cree bands and that four of the five tribes have accepted settlements ranging between $30 million and $80 million. Cross Lake, the largest of the bands with a population of about 5,250, has declined an offer of $100 million, he said.

WFP 24/6/98, p. B12.

Manitoba Hydro president Bob Brennan said that even if Cross Lake were successful in turning Minnesota against Manitoba Hydro, they would only be hurting themselves. "What have they done? They've increased the rates to people in Manitoba. They've increased their own rates and they've decreased the amount of money that's there to pay them." Brennan said.

WFP 29/8/98, p. B13.

Manitoba Hydro reported a record year for net income, electrical production and extra-provincial sales in its most recent annual report. "We had a very nice year," utility president and CEO Bob Brennan said yesterday.

Notes:

We entered into the NFA treaty with the Crown parties in 1975. This was not our choice. The project was imposed on us and our lands (see: THE PROJECT). We had a gun to our heads, so we sought protection for our aboriginal and Treaty rights in order to have a future of some kind after what many feared would be a disaster (see: THE TREATIES BETWEEN US).

We entered into the NFA with solemnity and with the understanding that this represented an important relationship with the Crown parties - a matter of honour (see also: THE HONOUR OF THE CROWN).

We understood that this treaty would last as long as the project lasted on our lands (see: SPEAKING FOR YOURSELVES). Along with the commitment by the Crown parties to treat us fairly and equitably (see: FAIRNESS AND EQUITY), this provision concerning the duration of the new treaty clearly establishes how important it was.

Like many other treaties, the NFA was entered into under duress (see: THE NFA TREATY OF 1977). Like most other treaties it bridged a cultural and linguistic gulf between the parties. The "spirit and intent" of the NFA treaty was the only understanding that there truly existed between the parties. The spirit and intent of the NFA can only be determined by seeking to grasp this understanding (see: SPIRIT AND INTENT).

There was certainly no understanding that the rights and benefits contained in the NFA treaty were just paper rights. There was no understanding that the Crown parties did not mean what they were signing, and never intended to do what they promised. There was no understanding that the NFA was going to be somehow "settled" for once and for all at some point as though it was just a continuing dispute rather than an honourably concluded treaty (see: SETTLEMENT). There was no understanding that the Crown parties would refuse to live up to the treaty, and systematically impoverish our people, and then seek to buy a "settlement" of this fabricated claim (see: THE HONOUR OF THE CROWN).

All parties understood that concrete steps would be taken, and would continue to be taken for the lifetime of the project.

All parties understood that the NFA intended to provide for our viability in the face of whatever might come to pass (see: VIABILITY); and all parties know that what did come to pass was an unending man-made disaster for us and our lands -- unmeasurably worse than the "Flood of the Century", which caused and still causes very serious problems for many people in southern Manitoba.

All parties understood that we were to be treated fairly and equitably in the face of this disaster (see: FAIRNESS AND EQUITY). *This is the essence of the spirit and intent of the NFA relationship between the Crown parties and Pimicikamak Cree Nation.*

All parties understood that the treaty declared general principles in the face of uncertainty about the impacts and effects of the Project. The NFA was thus necessarily general under the circumstances, and all parties understood that there would need to be good faith approaches to ongoing implementation over the decades, centuries, and maybe even millennia that the project might be in existence. They understood that they were entering into a long-term relationship.

Nevertheless, Crown officials have since stated many times that the NFA is too vague and imprecise to determine what the parties meant when they entered into it. We reject this as a retreat from honour into legalisms. The same might be said of Treaty #5, and indeed of every Treaty upon which the rights of non-aboriginal persons to live in much of Canada depend.

The uncertainties of the NFA (there are many significant uncertainties) result from the fact that in 1977 we disagreed about what would happen (see: THE PROJECT). There is much less uncertainty about this today. It turns out that all parties were wrong -- it proved to be worse than we feared, and far worse that you claimed. The true problem is not that the spirit and intent of the NFA is unclear, it is that having got what you wanted you now think that fairness and equity was too high a price (see: WILL).

(And we know that, with regard to this alleged "vagueness", many of the specific and plainly stated obligations in the NFA have never been carried out; for example with respect to exchange lands. The allegation is not honest.)

All parties understood that we were not to be cheated of the NFA promises by reduction of "normal programs and services", because of the special situation caused by the project. In fact, we have been systematically cheated in this way on a very large scale (see: SPEAKING FOR YOURSELVES), and this governmental abuse has compounded the impacts of the project.

In the end, there is not any major divergence between the spirit and intent of the NFA as understood by our people and what was written down in English, if it is read in light of your own law (see: LAWS; see also: FIDUCIARY DUTIES; see also: GOOD FAITH; see also: THE HONOUR OF THE CROWN; see also: NON-ADVERSARIAL; see also: UBERRIMA FIDES).

We now believe the Crown parties know and understand very well the spirit and intent of this NFA treaty relationship between us. It is now clear to us that the real problem is that officials of the Crown parties, for dishonourable reasons, did not seek to uphold the honour of the Crown and implement the NFA according to its discernible spirit and intent.

Their chosen method of achieving these goals was through continuing attempts to force us into "settlement"; or through attempts to degrade the long-lasting and far-reaching nature of the NFA, for example by characterizing it as a mere "contract" (see: CONTRACT LAW); or through delay and adversarial argument, or simply through blunt and obstinate refusal to do what was required in the circumstances, in breach of their fiduciary duties. These approaches were often characterized by sharp and dishonourable dealing.

On May 8, 1998, the Crown parties jointly declared that they would implement the NFA according to its spirit and intent (see: JOINT UNDERTAKING). This was a welcome declaration. It offers hope that we can return to a common understanding of the spirit and intent of the NFA, and of its mutual benefits.

Notes:

STRUCTURES [STRUCTURES]

Implementing the NFA will require structures. Nearly a quarter century later than was intended, implementing the NFA according to its spirit and intent will require new or adapted structures which were not specifically foreseen in the NFA. This is a fundamental attribute of the NFA as a treaty (see: THE NFA TREATY OF 1977). The passage of time has given rise to both additional need and opportunity. Aboriginal law has grown (and our people's consciousness of it has regrown) remarkably in the last 25 years.

The structural concepts specified in the NFA are outdated now for two main reasons: the passage of time as noted above; and the then-uncontemplated (or at least then-disagreed) scale of the catastrophe wrought by the project (see: THE PROJECT). This leads to a need for currently-viable implementation standards and structures, which is addressed by this document as a whole. It also leads to a concern about Pimicikamak structures, which is touched upon more particularly here.

Diversity of structures is a fundamental element of the viability and richness of Canadian (or any other) national life (see: VIABILITY). Pimicikamak needs a diversity of structures (with due regard to scale), to restore its national life. Pimicikamak calls upon the Crown parties (each in context of its particular role) to support this kind of diversity, having regard to Pimicikamak initiatives.

Pimicikamak structures are struggling to emerge after more than a century of oppression by Crown parties. It will be important that they are able to form and reform or disappear (they must have opportunity to fail) , especially while the Nation is learning what is possible and what it wants. Pimicikamak looks to Crown party officials for active cooperation in respecting the roles and facilitating the emergence of these structures (see also: PERSONS).

Building the NFA relationship in a context of self-determination (see: SELF-DETERMINATION) will provide many opportunities to build upon existing structures, to adapt them, or to establish new structures. The character of Pimicikamak structures must be consistent with Pimicikamak culture, traditions and Laws.

This working paper considers some Pimicikamak structures which exist, are emerging, or seem likely to be required:

- Pimicikamak constitution (see: CONSTITUTION OF THE NATION)
- Pimicikamak laws (see: PIMICIKAMAK LAWS)
- Pimicikamak government structures (see: PIMICIKAMAK CREE NATION)
- Pimicikamak Okimawin Trust (see: PIMICIKAMAK OKIMAWIN TRUST)
- Task forces (see: TASK FORCES).

The NFA provides for other structures which have been distanced by time or destroyed by the joint settlement initiatives of the Crown parties. Successors will be required.

Notes:

Pimicikamak sees a need for multiple task forces (for want of a better term) charged with responsibilities for carrying forward various aspects of the NFA/treaty relationship. It would be unrealistic to expect that everything can move forward immediately, because this would tax the resources of Pimicikamak (and likely the personnel resources of Crown parties). There will be a need for priorities. The priorities must be responsive to opportunities and problems as they affect Pimicikamak.

It will be necessary for Crown parties to appoint officials to task forces who are empowered to address the subject matter, who are knowledgeable about it, and who have appropriate training or guidance in their respective fiduciary duties having regard to the specific circumstances. It will be necessary for task force processes to be appropriately linked to Pimicikamak governance.

Initially, task forces initially should be established for priority areas and might include the following matters:

- Schedule E (and Article 16) public planning, building on what was developed jointly by the parties to 1985;
- Resource management in Pimicikamak traditional lands (the Resource Area) based on Provincial laws, policies and departmental programs, the previously-agreed cooperative-management document, and revitalized exercise of Pimicikamak jurisdiction;
- Rectification of forebay conditions, with a holistic approach to values including: safety, health, human rights, environment, treaty and aboriginal rights, aesthetic values and commercial values;
- The Nednak bridge and community roads;
- Exchange lands;
- Capacity-building for Pimicikamak governance;
- Housing;
- Energy sector development.

Notes:

Treaty 5 of 1875 and the Northern Flood Agreement treaty of 1977 are examples of actions by our people to influence and affect the ongoing efforts to dispossess us. It must be understood that these treaties were not initiated by our people. As stated elsewhere, these treaties were minimal responses entered into by our leaders and people in response to extremely negative external circumstances (see: RELATIONSHIPS WITH OTHER PEOPLES).

There is no one authoritative version of these treaty instruments. There are versions written in English, unwritten versions and understandings of the treaty spirit and intent in the minds of our people, and versions written in Cree syllabics.

We find that is very easy to understand the conditions that our people now find themselves in, economically, socially, and with respect to our access to lands and resources. These conditions, according to the governments of Canada and Manitoba, mean that we are restricted by law and fact to certain very small reserve lands; that we have few rights to revenue or resources; that we are to be governed according to the terms of the *Indian Act*; and that the purpose and effect of the treaties between us has been to dispossess us.

When we question these things, we are told by the other governments that these conditions are the way things are by operation of law and history, and also by virtue of the operation of the terms of the treaties between us.

We cannot and will not accept this version of "reality".

First, we can see plainly that this state of affairs means that our people are condemned to be poor, unemployed and to live in desperate conditions -- in a country that is among the richest in the world -- because we agreed to share it with you.

Second, we do not accept that the treaties between us intended these things. They did not. And if the governments did intend the treaties to result in our dispossession, then these treaties are not valid because this is not what we agreed to, there was no "common understanding", and the treaties do not exist. We remind you that your right to be here on our lands is a treaty right.

Third, our people will not tolerate the conditions that face us. We will no longer accept:

- mass poverty and unemployment,
- dispossession,
- lack of adequate access to resources and revenue to ensure the viability and development of our community and nation,
- the exile from our community of large numbers of our people to the south to conditions of loneliness, alienation and imprisonment, and

- lack of respect by other governments for our constitution, laws, identity, human rights, and fundamental needs.

Notes:

The refusal of the Crown parties to acknowledge that the NFA gives rise to treaty rights is regarded by Pimicikamak as evidence of bad faith, indeed in Cree terms it is worse -- it is treachery. This is an impossible burden for the new relationship. It is inconsistent with the declared intent to work together "in a spirit of partnership" to implement the NFA in accordance with its spirit and intent, which declaration, coming from Crown parties, is itself treaty-like -- or else is empty rhetoric.

The moral and legal bankruptcy of the claim that the NFA is not a treaty is evident in that (among other things):

- This claim ignores precedent and legal opinion which are entitled to respect.
- Crown parties made this claim without obtaining legal opinions. In other words, the claim was advanced without serious regard to its truth or falsity.
- On May 8, 1998, the Crown parties undertook to obtain and provide legal opinions on the treaty status of the NFA. They have not.
- Actions taken by the Crown parties to extinguish NFA rights reveal a belief that the NFA does give rise to treaty rights (see: SETTLEMENT).

Pimicikamak believes that the Crown parties' positions on NFA treaty rights are untenable. To wait for Crown parties to spontaneously recognize this may involve unacceptable delay. Pimicikamak is implementing measures which may motivate the Crown parties to reconsider their positions (see: WILL). Again the real question is whether this will occur with grace or disgrace. There remains a window of opportunity for "grace" -- which could make a positive contribution to the new relationship. This window may close soon.

Because the NFA gives rise to treaty rights, specific legal standards apply. These standards have been the subject of consideration by the courts and by legal writers. The parties should compile a guide and, if there are differences of view, consider how these may best be accommodated or resolved.

Notes:

In 1875, Pimicikamak entered into a treaty relationship with the Crown. This relationship was referred to by the Hon. Alexander Morris as the Winnipeg Treaty and came to be known today as known as Treaty 5.

We entered into Treaty 5 in peace, friendship and in order to permit the orderly and fair sharing of the land with the settlers and the Crown while protecting our use of our traditional lands. In return for that assurance, we permitted the settlers to use the land for agriculture to the depth of one foot of soil.

Treaty 5 stands also for the continuing relationship between our Nation and the Crown in Right of Canada. Like other treaties, it is an expression of desire for fair and good relations, taking into account the power, needs and aspirations of the respective parties.

The content, spirit, intent and meaning of Treaty 5 are held and passed down to the people of Pimicikamak Cree Nation by our elders from generation to generation. These understandings are based on the full content and context of our historic relationship with the Crown and the treaty discussions leading to Treaty 5 in 1875. Other versions of Treaty 5 are recorded in written form, but taken on their own these versions are neither an accurate nor a full reflection of our Treaty 5 relationship with the Crown. However in our view the main source of difficulty is not the differences between versions, but the failure of Canada to honour the Treaty and thereby to participate in its evolution over time consistent with the treaty relationship (see: CANADA).

It is sometimes stated that the result of Treaty 5 was that our Aboriginal rights and title in our lands were given up to the Crown. This is not so.

In the 1970's, our Aboriginal and our treaty rights pursuant to Treaty 5 were grievously infringed by the Crown parties through the flooding of our lands. However, by these acts, our Aboriginal and treaty rights were not destroyed. They continue to exist and we will continue to assert them along with our rights arising our of the NFA.

Our Aboriginal rights and our treaty rights arising from Treaty 5 are constitutionally recognized and affirmed in the Constitution of Canada.

We intend that the full meaning, content, spirit and intent (see: SPIRIT AND INTENT) of our Treaty 5 rights be respected, according to law and a broad and liberal interpretation (see Laws). We understand that according to law, it is always assumed that the Crown intends to fulfill its treaty obligations.

Notes:

Pimicikamak believes that the NFA calls for strict adherence by Crown parties to the legal standard of *uberrima fides* (transl.: utmost good faith). This standard is the foundation of a fiduciary relationship. Pimicikamak further believes that the legal standard of *uberrima fides* is applicable to the personal conduct of Crown officials who exercise discretion in respect of NFA provisions for the benefit of Pimicikamak (see: FIDUCIARY DUTIES; see also: ACCOUNTABILITY).

In the past, Crown parties and officials have wrongfully exploited the NFA relationship with Pimicikamak for their own benefit. They have pursued an adversarial approach to the NFA (see: NON-ADVERSARIAL). In so doing, Crown parties and officials have engaged in, supported or condoned human rights abuses, sharp dealing, duress, misrepresentation, intimidation, electoral manipulation, electoral bribery and electoral fraud. Pimicikamak believes that the misconduct is incompatible with the legal standard of *uberrima fides* and must end now.

Notes:

From the perspective of the Pimicikamak Cree Nation, there are four parties to the NFA treaty: the Northern Flood Committee, the governments of Canada and Manitoba, and Manitoba Hydro.

With respect to our immediate goals for respect of our rights, Pimicikamak is the beneficiary and "custodian" of our NFA rights. It may well come to pass that other Cree peoples who continue to aspire to respect of their rights will once again rise to join us as beneficiaries of these rights.

As can be seen from the above discussion, the history and nature of our relationship with the other Crown parties is unique in all of Canada. The rights we have arising out of this relationship are unique.

The standards governing our unique relationship with the other Crown parties must be fashioned according to this unique relationship (see also: OBJECTIVE STANDARDS).

No other people in Canada lives precisely where we do. No other people in Canada has experienced precisely the history we have. Most importantly, no other people have the legal, constitutional, political and treaty relationship we have with the federal Crown, the Crown in right of Manitoba, and Manitoba Hydro, governed by among other things an explicit standard of fairness and equity.

Notes:

For thousands of years, our people lived, travelled and provided for ourselves in an boreal environment in which the land, rivers and lakes were a balanced habitat and environment. This habitat and environment provided all of the resources we needed to feed, clothe, educate and sustain our people. More recently, we shared our skills on the land, our resources and our economies with other peoples, and in this way our lands became a source of sustenance and wealth for others as well as for ourselves (see: THE TREATIES BETWEEN US).

The project changed many things. Now, with more than twenty years of experience after the project was imposed upon us and our lands, we have taken stock of how things are for our Nation, our environment, our economies and our people. It can only be said that things are now extremely bad for our people in almost every way.

In the face of catastrophic alteration of our traditional lands and environment caused by the project (see: SPEAKING FOR YOURSELVES), the NFA calls upon the government of Canada to take lead responsibility for ensuring the viability of our Nation and our community.

Viability means that our people, most particularly our young people, can reasonably choose to stay rather than drifting away to distant cities or into despair, alcoholism or suicide.

Viability needs an objectively acceptable level of productive employment for our people, so that they can contribute meaningfully to the well-being of their families, their society and themselves.

Viability needs a sustainable economy based upon an adequate and equitable land and resource base.

Viability needs good health — mental, physical and spiritual health. It means that people feel good to be alive, with hope for themselves, their children, and their children's children.

A viable Nation requires physical and social structures which provide for peace, order, good governance, education, social needs and cultural and spiritual well-being of its citizens (see: STRUCTURES).

A viable community has shelter, sanitation, community infrastructure and services which allow its members to live in conditions that are healthy and secure, to form families, and enjoy social continuity and cohesion.

A viable Nation is one that can provide for a growing population.

A viable community is situated in an environment that does not artificially threaten its safety or existence, from which access and egress is safe, and from which the basic necessities of life such as clean water, food, sanitation and fuel are accessible.

A viable community is one that can cope with moderate setbacks and difficulties, and is not "living on the edge"; it can respond effectively to some adversity. In this sense, a viable community is like a healthy person, able to cope with infections and illnesses, as opposed to a sickly person with a compromised immune system for whom a minor illness or infection can be fatal.

A viable community — particularly one which is to be viable in the context of a highly developed society such as Canada — is one where basic indices of health and social development such employment, wages per capita, education are not conspicuously lower, and illness, infant and child morbidity and mortality are not markedly higher, than those which are acceptable within the wider society (see: OBJECTIVE STANDARDS).

We do not understand or accept that the environmental disaster and social, economic, cultural and spiritual crisis now facing our people, community, society and Nation in any way, shape or form constitutes "viability". This is absolutely unacceptable to us; and this should also be unacceptable to the governments of Canada and Manitoba.

Notes:

We are the Pimicikamak Cree Nation.

We have always been here in Nitaskinak, which consists of our traditional lands and our relationship with them. We know that your scientists say, this year, that we came from Asia 10,000 or 12,000 years ago. We believe that they are wrong.

This is our place in the Universe. This is where the Creator put us, to live, to benefit from the plentiful resources, and to look after each other and look after this place. Since time immemorial, this is what we have done.

We are part of the Cree people in North America, who live near and far to our north, east, south and west. We are connected to these and other Aboriginal peoples by a common bond of blood, profound relationships with our lands, and determination to survive and thrive as peoples on our lands.

Notes:

Pimicikamak accepts that the fundamental issue which has obstructed action within the spirit and intent of the NFA in the past is the "will" of the Crown parties, or the lack of it (see also: CANADA), to participate wholeheartedly in the NFA treaty relationship, and that the NFA Working Group and subsequent structures are unlikely to contribute significantly to removing this obstruction.

Correspondingly, there is a growing realization within Pimicikamak that Eurocanadian culture does not embrace the traditional Cree concept of honour. Pimicikamak is unwilling to wait for the full story of the treaty relationship, fiduciary duties, and the honour of the Crown to unfold (and be enforced) in the Supreme Court of Canada. As the Nation declared in May, 1998: "*We will no longer beg on hands and knees. We will no longer be beaten up in silence*."

With this in mind, Pimicikamak has adopted a strategy of visibility. For Pimicikamak's purposes, the court of public opinion tends to work faster, cheaper and better. Expressed in Cree terms, Pimicikamak's strategy is to rely upon the Law of Consequences (see also: ACCOUNTABILITY).

Crown parties should know that Pimicikamak does not see working-group structures as vehicles for motivating Crown-party actions. Rather, motivation (see: WILL) is seen as arising from measures (external to these structures) which may sharpen understanding by Crown parties (and the officials by whom they act) of their self-interest, such as the desire to increase (or reduce loss of) revenues, the desire to improve public (including international) moral standing, or the desire to avoid collective or personal public shame.

This strategy is external to and not dependent upon the NFA Working Group and implementation structures. This should free up working-group structures to build the new relationship with beneficial results for all parties.

Notes: