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REVIEW OF DEVELOPMENTS PERTAINING TO THE
PROMOTION AND PROTECTION OF HUMAN RIGHTS
AND FUNDAMENTAL FREEDOMS
OF INDIGENOUS POPULATIONS

STATEMENT BY THE OBSERVER DELEGATION OF CANADA
DELIVERED BY
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Madam Chairman, I appreciate this opportunity to make a statement on behalf of the Government of Canada.

Recent events at Oka in Quebec have caused increased interest in the circumstances of indigenous people in Canada and I will be speaking to that situation later in my remarks.

To establish a context for the discussion, I would like to take a few minutes to outline some of the general rights and benefits available to indigenous people in Canada. I will also describe some of the approaches of the Canadian government to indigenous issues including our commitment to the protection of their human rights and those of all Canadians.

Indigenous people in Canada enjoy all the rights and benefits available to all Canadians as well as a number of extra benefits designed specifically for them. They enjoy full political freedoms including the right to vote in all elections; they have served and continue to serve in public office as ministers, senators, members of Parliament, as well as provincial and territorial legislators. In fact, five members of Canada's Parliament are indigenous people.

The Canadian Charter of Rights and Freedoms guarantees to all Canadians the full range of fundamental human rights and freedoms, including for instance, freedom of speech and movement, equality before and under the law without discrimination. In addition, the Canadian Constitution contains specific provisions for the recognition and protection of existing aboriginal and treaty rights. As well, indigenous people are protected by provincial human rights codes.

There is also a series of specific programs and policies for the benefit of indigenous people in Canada, which are not generally available to other Canadians. For Indians these include, for example, exemptions from income tax for income earned on reserve, some exemptions from provincial sales taxes, free medical benefits including dental care, subsidized housing on reserve, and subsidized university education. As citizens, indigenous people benefit from many federal, provincial and territorial programs, including those universally available such as family allowance, old age security, hospital and medical care and unemployment insurance.

Approximately two thirds of the almost 500,000 status Indians in Canada, members of 596 bands, live on reserves: lands set aside for the use and benefit of Indians. Indian people are entirely free to choose whether or not to live on reserve lands. Because of their strong

attachment to the land and as a means to preserve their culture and traditional way of life, most Indians choose to live on reserves.

Overall the Government of Canada spends approximately \$4.0 billion annually on indigenous programs, which includes over \$8,000 per capita in direct benefit to status Indians on-reserve and Inuit. This is the largest per capita expenditure on indigenous people of any government in the world. The expenditures on indigenous people in Canada have been increasing consistently over the past decade. For example, in the current fiscal year 1990/91, the Department of Indian Affairs budget increased by 8 per cent even though overall government program expenditures fell. Moreover, the Indian and Inuit Affairs program has increased by some 60 per cent since 1984-85.

Seventy percent of federal programs for Indian communities are administered by the communities themselves, reflecting the Government's commitment to assist indigenous communities to take more control over their affairs, and to achieve forms of self-government within the Canadian federal system.

In line with this commitment, negotiations on community self-government, underway with over 160 indigenous communities, seek a new relationship between the federal government and indigenous communities. Governance, social and cultural programs, land titles and management, federal financing, administration of justice, and health are some of the areas which have been identified for negotiations.

The Canadian Aboriginal Economic Development program, with a budget of \$1.4 billion over five years, further reflects the government's commitment to help indigenous people achieve a greater degree of self-reliance. Since the program's initiation in November, 1989, 231 projects have been supported. About 50 percent of the 6,000 existing aboriginal business enterprises have been started within the last six years.

Indigenous culture is also a key element of autonomy for indigenous people. Programs on aboriginal culture and history have been instituted in the schools on Indian reserves across the country. Over half of indigenous students now take classes in their aboriginal languages. Recently the government of the Northwest Territories formally recognized the six indigenous languages of the territory as official languages, in addition to English and French. As well, all secondary school students in the Northwest Territories are required to learn one indigenous language.

There have been constitutional developments over the past year in Canada that have a bearing on Canada's aboriginal peoples. The province of Quebec was not a signatory to the patriation of Canada's Constitution in 1982. Subsequently, Quebec did not actively participate in the constitutional process including in the negotiations among the Prime Minister and other First Ministers and representatives of Canada's aboriginal peoples that took place on aboriginal issues over the 1983 to 1987 period. However, in April 1987, the Prime Ministers and the ten provincial Premiers agreed on a set of amendments called the Meech Lake Accord. The Accord was designed to bring about Quebec's full participation in the constitutional development of Canada and effectively open the way to constitutional amendments sought by other Canadians. The Accord did not detract from aboriginal rights. Moreover, the Government of Canada made the commitment that indigenous constitutional matters would be a top priority in the next round of constitutional discussions provided for in the Accord.

In June 1990, a set of companion constitutional amendments were developed by the Prime Minister and other First Ministers to accommodate concerns respecting the Meech Lake Accord. These amendments would have guaranteed aboriginal peoples of Canada a First Ministers' Conference devoted exclusively to constitutional matters once every three years with the participation of territorial and aboriginal representatives. Additionally, the Prime Minister made significant, separate undertakings to ensure that aboriginal peoples' constitutional concerns would be addressed through related special processes.

Unfortunately, the Meech Lake Accord and companion amendments were not approved by all provincial legislatures as was required by Canada's constitutional amendment formula. In addition, many indigenous leaders rejected both the Meech Lake Accord and companion amendments.

The failure of the Meech Lake amendments means that Canada's constitutional agenda is effectively stalled. Meanwhile, however, the existing aboriginal and treaty rights of the indigenous people of Canada remain protected in Canada's constitution, and every effort is being made by the Government of Canada to address the concerns of indigenous people - including the realization of self-government for indigenous people - within the existing constitutional arrangements.

Canadian institutions continue to contribute to the advancement of indigenous rights. For example, several important decisions have been handed down recently by the Supreme Court of Canada. The highest court in the country has clarified the nature of aboriginal and treaty rights

which are currently protected under the Constitution of Canada. In the Sparrow case, the Court clarified the meaning and application of section 35 of the Constitution Act, 1982, which recognizes existing aboriginal and treaty rights. This case gives a liberal interpretation of "existing aboriginal rights" and appears to broaden the fiduciary duty of the Crown towards indigenous people. In the case of fisheries, it also means that once conservation and management concerns have been addressed, priority must be given to indigenous food fishing and fishing for ceremonial purposes. In the Sioui case, the Court directed that a broad and generous approach be taken in determining whether a document is a treaty.

The Government of Canada provides funding to indigenous people to enable them to appeal their cases, where the issues could establish a legal precedent.

A major issue for indigenous people in Canada is the resolution of claims to land. The federal government addresses claims based on aboriginal title - comprehensive claims - or breaches or non-fulfillment of specific obligations - specific claims. I would like to give you a few details on recent progress.

On April 30, 1990 an agreement-in-principle was signed to settle the Tungavik Federation of Nunavut comprehensive claim. It will provide approximately 17,500 Inuit with over 350,000 square kilometres of land (an area larger than Finland) and \$580 million in cash compensation.

In April, 1990 the umbrella final agreement for settlement of Yukon Indian land claim was initialled. It will, if ratified by all parties, provide some 7,000 Yukon Indians with over 41,000 square kilometres of land (an area equivalent to the land mass of Switzerland) and \$248 million. A final agreement to settle the Dene-Métis claim was also reached. Although a recent assembly of the Dene has requested changes to the agreement, it will, if ratified by all parties, provide approximately 13,000 Dene and Métis with more than 181,000 square kilometres of land (almost the combined size of Belgium, Ireland, Denmark and the Netherlands) and \$500 million.

In addition to land and cash compensation, comprehensive land claims settlements guarantee indigenous people a decision-making role in land management, resource development, fish and wildlife harvesting and the environment. Settlement of such claims is one of the pillars of the federal commitment to strengthen the political and economic institutions in the Yukon and the Northwest Territories.

In the western province of British Columbia, where the federal government has accepted 18 claims, the provincial Premier publicly declared on July 26, 1990 his government's commitment to become involved in solving land claims. In the east, negotiators have concluded a framework agreement with the Labrador Inuit Association, which represents 3800 Inuit and settlers.

In another case with which you will be familiar Madam Chairman, the Canadian Government has long acknowledged that it has an outstanding obligation to the Lubicon Indians. In a recent decision the United Nations Human Rights Committee, confirming the historical inequities which the government acknowledged and commenting on the government's offer to the Band, expressed the view that the government "proposes to rectify the situation by a remedy that the Committee deems appropriate".

I will now turn to the dispute at Oka, in the province of Quebec involving the Mohawks of Kanesatake. The issue concerns land on which urban development was planned by the Town of Oka -- land which the Mohawks consider belongs to them. (A chronology of events is attached as an annex.)

The Oka situation is unique among native claims for land in Canada. There is no formal Indian reserve land in Oka at present. Rather, there is a series of blocks of federally-owned land set aside for the use and benefit of the Kanesatake Mohawks. These blocks, which were acquired by the federal government in 1945, are the remnants of a once-vast seigneurie granted by the King of France to the Sulpician religious order in 1717 for the purpose of establishing a Mission there. The religious order came to establish a settlement on the lands and brought with them Nipissing, Algonquin and Iroquois (Mohawk) Indians from Montreal. The ownership of the land has been disputed by the Mohawks since the 1700's.

Nonetheless, the Government of Canada has attempted to find a way to address the concerns of the 1,539 member Mohawk community and the 750 residents of Oka. Community planning studies, financed by Canada, were undertaken by the Mohawks of Kanesatake in 1988/89. Since August 1989, a federally appointed mediator has worked with the parties on this issue under an agreed mandate. A framework agreement was reached in September 1989, establishing a ratification date for both sides of March 1, 1990.

In January, 1990, however, the Chief of Kanesatake was replaced by the community, in accordance with its traditional procedures. On March 6, the new Chief and Council requested an indefinite suspension of the

negotiations. The municipality of Oka then lifted its moratorium on development of the land. This was followed immediately on March 10, 1990, by the Mohawks erecting a barricade on a public road. In June, the federal Minister of Indian Affairs met separately with representatives of Oka, Kanesatake and the Quebec Native Affairs Minister, in an effort to bring the parties together and find common ground.

However, the municipality of Oka obtained an injunction from the Quebec Supreme Court ordering the Mohawks to remove the barricade. The Mohawks refused to comply with the Court order. On July 10, the Oka Council requested the Sûreté du Québec (the Quebec Police Force) to enforce the injunction. A police officer was shot and killed at the barricade, which was manned by heavily armed members of the Mohawk Warrior Society, using weapons that are illegal in Canada. In support of Kanesatake, the Mohawks of Kahnawake set up a barricade blocking a bridge on a major highway connecting two parts of metropolitan Montreal. Media reports indicate that there is some disagreement among various members of Mohawk community about the tactics being employed by the Warriors.

Under Canada's constitution, the administration of justice is largely the responsibility of provincial governments. Consequently, in an effort to resolve the confrontation, negotiations with Kanesatake were initiated by the Government of Quebec through its Minister for Native Affairs.

In the last few days, some significant developments have taken place. On July 27, the Quebec Government presented to the Mohawks of Kahnawake and Kanesatake a written seven point proposal designed to resolve the impasse. Among other things, it:

- offers to reduce the police presence in Oka-Kanesatake, simultaneously with relinquishment of weapons by the Mohawks;
- proposes the establishment of a supervisory commission made up of seven members to be chosen jointly by the government of Quebec and the Mohawk Nation, to control and supervise the return to normalcy;
- reaffirms measures to maintain free access to food and make clear that it is not the Quebec Government's policy to restrict access to food and that it never will be. (Needless to say, the Canadian Government does not condone the use of food as a weapon at home or abroad.);
- offers to make the Mohawk Nation a party to the coroner's inquest into the death of the police officer.

The Government of Canada expects to conclude the purchase of the disputed land for use of the Mohawks of Kanesatake this week. The purchase brings to fruition two years of work to rationalize land holdings at Kanesatake and the government is hopeful that these actions will allow for a relaxation of tensions there.

However, the federal government is firm in its resolve that it will not negotiate land questions behind barricades or in the face of armed intimidation. Peaceful discussion and open dialogue is the only route to genuine, lasting resolutions. Dialogue is the Canadian way. The Government of Canada has demonstrated its commitment to finding solutions for the problems at Kanesatake, and it supports fully Quebec's seven point plan for disengagement on both sides and the lowering of tensions.

The Government of Canada announced on July 27 its willingness to negotiate a means of resolving the special land claim of the Mohawks of Kanesatake, with representatives of the community and the Province of Quebec, once normalcy returns to Kanesatake and Kahnawake.

Across the country, the Canadian Government is determined to continue its efforts to cooperate with indigenous leaders to address their concerns, and to work together to improve the conditions of indigenous people in Canada. We will work on areas which indigenous people themselves identify as priorities: the achievement of self-government, the resolution of land claims, the clarification of treaties, the development of reserve economies, Indian control of Indian education and the revival and protection of indigenous languages and culture.

We are making progress but we have a lot of work to do and we are determined to do it.

Madam Chairman, finally, I would like to inform you that my delegation will be depositing several documents outlining Canada's record respecting indigenous people. We expect that these will be helpful to the Working Group in the course of your deliberations. Thank you.

July 27, 1990

BACKGROUND INFORMATION ON OKA

The situation at Oka is unique. There is no reserve at Oka at present, just a series of blocks of federally-owned land set aside for the use and benefit of the Kanesatake Mohawks. These blocks are the remnants of a once-vast seigneurie granted by the King of France to the Sulpician Order in 1717 for the purpose of establishing a Mission there. The religious order moved to establish a settlement on the lands and brought with them Indians from Montreal. This group included Nipissing, Algonquins and Iroquois (Mohawks) who are the ancestors of the present Indians living at Oka. The fact that these ancestors were brought to the region by the Missionaries after European arrival is important to subsequent events.

Disagreement between the religious authorities and the Indians developed over the ownership rights to the land after a time.

In response to petitions from the Indians of Oka during the 1800s for title to the land granted to the Seminary, the Parliament of Canada adopted a statute in 1841 which confirmed the full proprietary title of the Seminary of St-Sulpice.

In 1912, the Judicial Committee of the Privy Council, then the highest court in the country, ruled that the Sulpicians had full proprietary title to the land and that the Indians of Oka had no title or right to control the administration of the land.

In 1945, the Department of Indian Affairs purchased land not already sold by the Sulpiciens and assumed all the Order's obligations, except spiritual, towards the Indians.

The Indians of Oka did not consider this a final settlement. The Oka Indians have claimed that all Seigneurie land had been given to them in the first place as an Indian reserve and that the religious authorities had never, at any time, had the right to sell or otherwise dispose of any portions of the original lands.

In January 1975, the Mohawks of Kanesatake, in conjunction with the bands of Kahnawake and Akwesasne, presented a joint claim to the federal and Quebec governments asserting aboriginal title to lands along the St. Lawrence and Ottawa rivers in southern Quebec. This claim included the Seigneurie of the Lac-des-Deux-Montagnes that has been granted to the Seminary of St-Sulpice by the King of France in 1717.

After careful review of the supporting documentation and a historical and legal review of the situation, the claim was rejected by the Minister of Indian Affairs and Northern Development in May 1975.

Rejection of the claim was based on the following points:

- ♦ the Mohawks could not assert aboriginal title as they had not maintained possession of the land since time immemorial. The land had been alternately and concurrently occupied by the Nipissing, Algonquin and Iroquois;
- ♦ any aboriginal title that may have existed had been extinguished first by the Kings of France with respect to the land grants made by them, including the seigneurial grant to the Seminary of St-Sulpice, and by the British Crown through the granting of title to others when lands were opened to settlement;
- ♦ Mohawk presence in the region did not predate European presence, the Mohawks came to settle at Oka only after the Mission was established in 1721; and
- ♦ the judicial Committee of the Privy Council had dealt with their claim in 1912.

The Kanesatake claims do not fit the established criteria for comprehensive land claims, since the Mohawks first settled at Oka in the 18th century after Europeans had already settled there. They do not fit the criteria for specific claims either since the courts have decided there is no strict legal basis for them. Nevertheless the federal government has recognized that there is an historical basis for Mohawk claims related to land grants in the 18th century and has tried to find ways to resolve them.

Interspersed among the Kanesatake lands are lands now belonging to the non-natives of the municipality of Oka and the parish. The pattern of landholding above would have made sensible community development difficult, and there were, of course, other frictions that developed from time to time.