

# Why Saving a Seat Is Not Enough: Aboriginal Rights and School Community Councils in Saskatchewan

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Saskatchewan's introduction of School Community Councils as a new level of local school governance was motivated, in part, by school division amalgamation. In light of a growing Aboriginal student population in Saskatchewan, School Community Council policy appears to be making accommodations for Aboriginal community participation. This article explores whether these accommodations are adequate and whether School Community Council policy is an appropriate vehicle for advancing Aboriginal participation and rights. I analyze the School Community Council policy through a lens influenced by Kymlicka (1999), Cardinal (1969) and Henderson's (2006) perspectives on Aboriginal rights. The social-political perspective of Kymlicka (1999) is shown to be congruent with Aboriginal community perspectives presented by Cardinal (1969), which is then validated by Henderson (2006). School Community Council policy is out of alignment with the evolving Aboriginal rights context. I make recommendations for corrective measures to ensure that School Community Councils do not become another contested space.

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## INTRODUCTION

The failure of the framers of the School Community Council policy (Saskatchewan Learning, 2005) to theorize Aboriginal representation limits the potential of Aboriginal engagement by potentially relegating representation to debate regarding the merits of Aboriginal special status. The preferred policy statement would be positioned along a continuum of Aboriginal rights dialogue and enhanced Aboriginal participation by addressing contemporary issues influencing Aboriginal rights. School Community Council policy is examined through a composite lens influenced by Kymlicka's (1999) perspective on Aboriginal rights in Canada, Cardinal's (1969) manifesto on Aboriginal rights in response to an assimilationist threat and Henderson's (2006) work on Aboriginal jurisprudence. Their contributions provide im-

portant public policy considerations that inform reflection on Aboriginal participation in local school governance.

School Community Councils emerged as a response to school division amalgamations (Saskatchewan Learning, 2005) in an era of a growing Aboriginal student population and a reshaping of public education with a major emphasis on Aboriginal participation (Saskatchewan Learning, 2007). Despite the intersection of two major influences, there is only cursory consideration for Aboriginal participation within School Community Council policy. This does not give good policy direction to those implementing School Community Councils. The policy introducing this new level of local school governance does not emphasize Aboriginal participation to the extent that is appropriate given the provincial context. School Community Council policy does allow for designated Aboriginal participation, however the policy does not elaborate on mechanisms to establish Aboriginal participation nor does it address the crucial issue of rationale for Aboriginal special status within School Community Councils beyond a representative population rationale (Saskatchewan Learning, 2005). Substantively, School Community Council policy fails to reflect the continuum of the development of Aboriginal rights in Canada.

## THEORETICAL BACKGROUND

There are constitutional and cultural reasons (Henderson, 2006) to emphasize roles and rationale for Aboriginal participation in local school governance. Cardinal (1969) provided the basis for an Aboriginal position on Aboriginal rights that Henderson clarified with his concept of Aboriginal jurisprudence. Kymlicka's (1999) work is explored because it extends the liberalist tradition by recognizing culture as a primary good. There is compelling support for Aboriginal rights based on culture, a notion that is recognized by the Constitution of Canada (Department of Justice Canada, 2007a). In this article, I exploit the association between the liberalist tradition and the popular Aboriginal position espoused by Kymlicka and Cardinal respectively; Henderson brings language to where the Canadian state and Aboriginal perspectives meet.

Kymlicka (1999) offers a liberal-pluralist informed perspective on Aboriginal rights grounded in Western social-political thought. Cardinal's (1969) snapshot of the heart of Aboriginal Canada was in response to the

Trudeau government's Statement of the Government of Canada on Indian Policy 1969 (hereafter referred to as the "White Paper") on Aboriginal rights. The White Paper (Government of Canada, 1969) promoted an assimilationist agenda that, along with Cardinal's *The Unjust Society* (1969) was foundational in rallying Aboriginal communities to talk about Aboriginal rights and counter a perspective absent of Aboriginal influence. The dialogue fostered a significant contribution to contemporary Aboriginal policy debate from the heart of Canada's Aboriginal community (Turner, 2006). Henderson (2006), offered a unique position influenced by knowledge of legal-technical and spiritual-culturally influenced perspective. These exemplars of the work of Aboriginal rights theorists and activists working in the domain of the head, the heart and the hands offer a lens through which to analyze public policy and Aboriginal rights.

#### DEMOGRAPHIC AND POLICY CONTEXT

The aging population and falling birth rate, as well as low population infill numbers, mean that each year schools in Saskatchewan are losing students (Saskatchewan Learning 2004b; Saskatchewan School Boards Association, 2007). The only consistent growth sector in the province's demographic is the Aboriginal population (Saskatchewan School Boards Association, 2000). A higher birth rate and urban migration from First Nations reserve communities means that the percentage of Aboriginal school-age children in the province is increasing (Saskatchewan Learning, 2004b).

Increased Aboriginal presence in, and inequitable benefit from, public education in Saskatchewan signals the need for a major paradigm shift. Aboriginal students are not as likely as their non-Aboriginal peers to complete school (Royal Commission on Aboriginal Peoples, 1996). This prediction is correlated with often deplorable social conditions with roots in a myriad of historical factors. There is evidence that mainstream education bears some responsibility for less than favorable Aboriginal student outcomes (The Fraser Institute, 2004). No matter what the cause, there is a compelling case for public education policy in Saskatchewan to contribute to improved conditions and outcomes for Aboriginal students. Aboriginal parental and community participation is one significant way to contribute to Aboriginal student success in schools (Government of Canada, 2002).

Accompanying the burgeoning Aboriginal population are two associated factors; an aging population and rural depopulation (Saskatchewan

School Boards Association, 2000). The resulting decimation of rural communities has precipitated rural school closures. The expense associated with maintaining school divisions reminiscent of a vastly different demographic landscape became fodder for lively political debate regarding school division amalgamation (Saskatchewan Learning, 2005). The provincial government acted and significantly reduced the number of school divisions. The loss for rural schools and communities was more pronounced than in urban centres as rural schools had enjoyed local school boards that afforded them much of the same authority as division school boards. School division amalgamation meant that once small rural school boards now competed for voice and authority within much larger boards. The provincial ministry responded with the development of mandated School Community Councils.

Accompanying the emergence of School Community Councils was the development of the Continuous Improvement Framework (CIF: Saskatchewan Learning, 2007). This initiative was motivated by emerging evidence that Saskatchewan students were not performing on large scale assessments to the degree that would be expected or predicted. The CIF promotes provincial priorities that must be integrated into planning in all schools and divisions in the province. School Community Councils contribute to the development of Continuous Improvement Framework plans and receive outcome information based on the provincial priorities and the school division and school plans (Saskatchewan Learning, 2005). The convergence of an increased Aboriginal presence in Saskatchewan schools and the reformation of school governance in Saskatchewan presented a promising opportunity to advance both agendas.

## SCHOOL COMMUNITY COUNCILS

A review of School Community Council policy through legislation (Saskatchewan Learning, 2005) and regulations (Government of Saskatchewan, 2006) illustrated cursory consideration for Aboriginal community and issues. School Community Council policy mandates that each school in the province develop a School Community Council (Saskatchewan Learning, 2005). Each provincial school board is obligated to develop local school board policy that facilitates the development and participation of School Community Councils. Within the description of the composition of School Community Councils, Saskatchewan Government policy documents give consideration for

the appointment of, "one or more representatives of First Nations that have students who live on reserve and are enrolled in the school" (Saskatchewan Learning, 2005, p. 10). The School Community Council regulations (Government of Saskatchewan, 2006) state that:

If a pupil at a school resides on reserve, the Board of Education shall, for the school community council for that school...request that the Indian band, for whose use and benefit the reserve where the student resides has been set aside, identify individuals willing to represent that Indian band on the school community council. (p. 942)

The other consideration for Aboriginal participation on School Community Councils is within policy that describes the, "five to nine elected parent and community members...that are representative of the student demographics in the school (i.e., Aboriginal, new Canadians)" (Saskatchewan Learning, 2005, p. 10). This consideration addresses the need to have the School Community Council representative of the community's primary demographic characteristics.

The Minister of Education called the implementation of School Community Councils, "... the most significant educational reform [government] has undertaken in 60 years" (Saskatchewan Learning, 2005). Despite the importance of this policy, the Saskatchewan Government policy document guiding School Community Councils makes no mention of Aboriginal issues within substantial aspects of the document. No mention is made within the Minister's message. The document does not identify any of the appointments to the Local Accountability and Partnerships Panel that contributed the recommendations that informed the policy as Aboriginal, nor are any Aboriginal issues mentioned within the mandate of the panel. No Aboriginal issues are mentioned within the key issues that motivated the change in the structure of local school governance in the province and there are no Aboriginal issues referenced in the principles and vision used to establish School Community Councils. The absence of consideration for Aboriginal issues within School Community Council policy is evident. Whether School Community Council policy is an appropriate venue for consideration of Aboriginal issues and rights is a primary consideration of this article. The lens of this analysis identifies a missed opportunity to link important and emerging agendas.

*A Theoretical Link*

The central question of this inquiry was whether Aboriginal participation on School Community Councils, as policy allows, provides enough of an accommodation to reflect the Aboriginal rights context in Canada and whether School Community Council policy is an appropriate instrument to define, evaluate and promote Aboriginal rights and representation. Stone (2002) recognizes the complexity in using the vehicle of a rights agenda in driving a particular agenda with her statement that:

Rights are yet another way of governing relationships and coordinating individual behavior to achieve collective purposes [and that] as a policy strategy; rights are a more diffuse method of articulating standards of behavior in an ongoing system of conflict resolution. (p. 325)

Stone's statement identifies at least three considerations in framing this issue. The first is that relationships can be governed through a rights agenda. The second perspective is that a rights agenda is not the most focused area through which to influence behaviour. A third possible position is that this rights agenda is not associated with this policy issue. Aboriginal issues of participation and access have long been played out in the field of a rights agenda. There is compelling rationale to examine the rights question within this public policy issue.

Stone (2002) constructs the arena in which the three commentators meet. Her framing of rights as stemming from, "two broad traditions ... positive and normative" (p. 325) describes the paradox that frames Aboriginal rights. The positive tradition warrants the state to exercise its support of a right through its legislative function, thus making the right dependent on legal-political support; positive rights exist because the state backs them. The normative manifestation of rights situates rights outside of state legislation and recognizes the validity of a right from the community's claim. Crucial to this argument is that "Where there is a goal of changing people's relationship and social conditions, the positive tradition seems to offer levers to pull and definitiveness that normative concepts lack" (p. 325). Where some may see Aboriginal rights in Canada as emerging through a normative route because Aboriginal people claim rights that may not be recognized by the state, there are many Aboriginal rights that are grounded in constitutional interpretations and legal decisions (Henderson, 2006). This demonstrates the presence

of a positive interpretation of Aboriginal rights. The positive and normative perspectives may be inseparable and even complimentary (Stone, 2002).

Passionate-normative and practical-positive; what might Saskatchewan Aboriginal peoples stand on to further enhance their participation in public education? Surely human rights are not being denied Aboriginal people with School Community Council policy. In fact, the policy goes beyond equality by making accommodations for participation. As Stone (2002) claims, "the disjunction between moral rights and legal rights drives the whole system of rights-claiming" (p. 337). Stone creates a space that allows for considerations of constitutional, Aboriginal, Treaty or other manifestations of rights. It is timely and appropriate that Saskatchewan people and policy makers recognize that the rights arena has been constructed and to play on the outside is to deny participation in the continuum.

#### KYMLICKA'S LIBERALISM

Kymlicka (2007) has written extensively on citizenship, multiculturalism, ethnicity, society and diversity. He situates himself within the Canadian social-political context with his admission that his "first clear political memories as a child date from the early 1970's, which happened to coincide with the resurgence of both Quebecois nationalism and native Indian political mobilization" (Kymlicka and Marin, 1999, p. 133). He further demonstrated his position by noting that, "The situation of Indians has been Canada's greatest source of domestic and international shame" (p. 134). He described his immersion into minority rights philosophy while at Oxford in the mid 1980's. Kymlicka identifies primarily with liberal political theory and liberal egalitarian theories of distributive justice.

Central to Kymlicka's perspective on Aboriginal rights is his characterization of the nature of Aboriginal society in Canada. He identifies national minorities as colonized peoples who view themselves as nations with a larger state and that typically possess their own societal culture (Kymlicka and Marin, 1999). The national minorities' identity is typically associated with stateless nations or Indigenous peoples. He argues that there are two reasons to give stronger consideration for self-determination to Indigenous peoples over other stateless nations such as the Quebecois. His first reason is that Indigenous peoples exercise historical sovereignty which was taken from them. The second argument is that Indigenous peoples need self-determination to

preserve their traditional way of life. His motivation for the accommodation of national minorities is his belief that “weakened and oppressed cultures can regain and enhance their richness, if they are given the appropriate conditions” (p. 140). With the broad distinction of Aboriginal peoples as Indigenous national minorities, Kymlicka (1999) then furthers his perspective on Aboriginal rights based on the Canadian Aboriginal experience.

Kymlicka’s liberalism takes exception with a simplistic liberal vernacular. He critiques the liberal view that purports to achieve equality for minorities within the majority culture as he believes that even with mainstream participation minorities may not optimize their rights (Kymlicka and Marin, 1999). Kymlicka is willing to dissect liberalism and examine why, in the Canadian context, it has not achieved equality for Aboriginal peoples. He shifts the argument from what has not worked in the pursuit of Aboriginal rights in Canada to the fundamental essence of Aboriginal peoples and cultures.

Kymlicka (1999) exposed the pivotal characteristic of Aboriginal peoples as, “...intrinsic cultural difference” (p. 292). For Kymlicka, this is crucial because it distinguishes Aboriginal rights from other, non-Indigenous, national minorities. Kymlicka identifies as an attribute of Aboriginal peoples, “the emerging norms of international law” (p. 289). Kymlicka recognizes Aboriginal peoples as forming, “entirely distinct forms of culture, distinct ‘civilizations,’ rooted in a premodern way of life that needs protecting from the forces of modernization, secularization, urbanization, ‘Westernization,’ and so on” (p. 289). Kymlicka conceptualizes Aboriginal peoples and the pursuit of rights within Canadian society in a way that is informed by socially negotiated and politically defined positions. He noted that, in the past, Canada’s goal was the expectation that Indigenous peoples would eventually disappear as distinct communities through intermarriage or assimilation and that policies were designed to speed up the process but that those policies have largely been abandoned in favor of more supportive policy orientations. Kymlicka situates contemporary Aboriginal rights in:

Key events...including the repudiation of the assimilationist 1969 White Paper on Indian Policy, the Supreme Court’s recognition of Aboriginal land title in the Calder decision, the revalidation of older treaties, the signing of new treaties, such as James Bay and Nunavut agreements with the Inuit and Cree, and constitutional entrenchment of Aboriginal rights in the 1982 Constitution. (p. 372)

He notes that these issues have been settled in Canada through normal democratic process of debate, negotiation and compromise and that these identity politics are part of democratic politics (Kymlicka, 2003).

With the foundation of Kymlicka's liberalism as it describes the Canadian Aboriginal rights context, he identifies the key to his liberalist interpretation of Aboriginal rights. The validity for Aboriginal pursuit of Aboriginal rights is couched in Aboriginal culture. Turner (2006) wrote that "cultural membership... is a primary good in Kymlicka's liberalism. Because culture is a primary good for all individuals, governments ought to preserve the integrity of the plurality of cultures from which individuals make their choices" (p. 62).

What does Kymlicka (1999) contribute to the lens used to theorize Aboriginal rights in the Saskatchewan School Community Council context? To return to Stone (2002), the interplay of positive and normative perspectives on rights are inseparable and complimentary. What Kymlicka (1999) contributes is his bridge from minority rights motivated by the desire to bring justice to the Aboriginal situation in Canada to his introduction of the issues in a legal context. He couches his position within liberal lineage but extends that lineage to include the evolution of an understanding of Aboriginal rights in Canada (Kymlicka and Marin, 1999). In his recognition of, "intrinsic cultural difference" (Kymlicka, 1999, p. 292), he creates space for the emergence of Aboriginal thought and perspective as well as a bridge to legal perspectives on Aboriginal rights. Where policy considerations affect Aboriginal peoples, it is necessary to participate within the broad and evolving continuum. Aboriginal peoples' rights advocacy is dynamic and while being pursued at the local school level, achievements have been made at the constitutional level. The implications of not knowing why rights are either sought or extended cannot detract from participating in the pursuit of Aboriginal rights.

#### CARDINAL'S RESPONSE

Harold Cardinal's voice emerged from a historical flashpoint in Canadian politics that was motivated, in part, by a liberalist influenced view on Aboriginal rights. His is a crucial perspective in this analysis because, as Kymlicka (1999) considered emerging thought and precedence to hone his liberalist interpretation of Aboriginal rights, Cardinal exposed the simmering frustration of Aboriginal Canadians and introduced a new dimension to Aboriginal rights from an Aboriginal perspective.

The catalyst for Aboriginal dissatisfaction was the 1969 White Paper on Aboriginal rights. This decidedly assimilationist interpretation of Aboriginal rights effectively constituted a blueprint for an end to Aboriginal status in Canada through assimilationist policy and practice. Turner, (2006) in his development of a contemporary Aboriginal philosophy, identifies the four key messages of the White Paper. Turner identifies the messages as, (a) the characterization of existing Indian policies as discriminatory, (b) Indians' Canadian citizenship entailed the adoption of the same package of rights as other Canadians, (c) Indian nationhood did not exist and that treaty lands must be transformed into private property, and (d) the fiduciary relationship between Canada and Indians was not indefinite so the government was compelled to move Indians from being wards of the state to being full participatory citizens. These sentiments, advanced to achieve a "just" society, prompted Cardinal's (1969) response through his publication, *The Unjust Society*. Turner (2006) posits that, "Harold Cardinal's Unjust Society injected an angry Indigenous voice into mainstream Canadian intellectual culture, which helped initiate a richer written discourse of Aboriginal rights in Canada" (p. 15). Turner identifies the danger in the White Paper thusly:

The kind of discrimination the White Paper was focusing on, and that it wanted to rectify, was discrimination between different races. The 'difference' at stake was racial difference, not political difference. There was no need to discuss Indian understandings of treaty obligations, and fiduciary relationships arising from treaty relationships, because such obligations did not matter as long as 'equality between individuals' drove basic understandings of justice. (p. 22)

This element of the White Paper message challenged the very foundation on which Aboriginal peoples had come to determine their place within Canadian society. Not only were the long legal and political histories of Indians in Canada denied, but the White Paper threatened the possibility, in the absence of wide Aboriginal protest, for the emergence of an Aboriginal perspective based on Aboriginal interpretations.

Cardinal's (1969) influential voice emerged with a very different commentary on the place of Aboriginal peoples in Canada than the Liberal government had crafted. *The Unjust Society* was not an academic or philosophical stance but a visceral reaction to coming so close to having Aboriginal rights disappear in Canada. What *The Unjust Society* lacked in Western-tradition

philosophical and political content it made up for with the introduction of an Aboriginal tradition of a conceptualization of Aboriginal rights in Canada. Cardinal's response signaled a change; one where Aboriginal perspective would command equal consideration in the process of defining, protecting and advancing Aboriginal rights.

Cardinal (1969) insisted that Aboriginal rights needed to be protected and enhanced to ensure Aboriginal healing, prosperity and equity and so that "The Indian can more than fulfill his responsibilities to our country" (p. 170). He describes those rights as residing in Aboriginal and treaty rights. Critical to Cardinal's argument is his marked shift of Aboriginal rights debate from protest to the fulfillment of obligations. On a national scale and scope, Cardinal alerted Canada to the Aboriginal perspective on Aboriginal rights and the demand that Aboriginal rights emerge from a negotiated position.

Cardinal's insistence that Aboriginal rights were unique within the Canadian context has since been affirmed by the Constitution of Canada (Department of Justice Canada, 2007a). Turner (2006) indicated that Aboriginal rights have been characterized as a *sui generis* form of group rights and not merely a class of minority rights (p. 31). Because of this recognition, Turner stated that:

Aboriginal voices must participate in the Canadian legal and political practices that determine the meaning of Aboriginal rights. White Paper liberalism does not facilitate this participation because it embraces a set of attitudes towards equality, sovereignty, and history that reinforces the view that the recognition of Aboriginal rights is an obstacle to, not a requirement for, a just political vision of Canada. (p. 31)

The position that "the liberalism reflected in the White Paper assumed that the individual is the fundamental moral unit in developing a theory of justice and that to deviate from the sanctity of moral individualism is to lead justice off its rightful path" (p. 28) was answered back by Aboriginal Canadians who staked a claim in their culture, languages, Treaties and Aboriginal rights (Smith, 1999).

Cardinal (1969) established the crucial bridge from Kymlicka to Henderson. The bridge moves consideration of Aboriginal rights from emerging from the imagination of the majority to being a shared reality between Aboriginal peoples and the non-Aboriginal majority. Grant (1974) identified the

prevalence of liberal English societal influence with the claim that, “Modern liberalism has been dominant because the dominant classes in our society have taken for granted that it expressed what is good” (p. 8). English liberalism may monopolize definition of morality but by recognizing Aboriginal pursuit of culture as a primary good, the English liberal grasp of the definition of the nature of Aboriginal culture quickly slips away. Cardinal (1969) mobilized Aboriginal peoples to actualize the transition from recognition of Aboriginal rights to definition away from the shadow of *English-Speaking Justice* (Grant, 1974).

### HENDERSON'S JURISPRUDENCE

James Henderson writes in the area of Indigenous knowledge paradigms and their emerging influence on contemporary Aboriginal rights. One of his most recent works, *First Nations Jurisprudence and Aboriginal Rights: Defining the Just Society* (2006), contributes substantially to this dialogue, such as is evident in the title. Almost forty years after Trudeau's conceptualization of the *Just Society* and Cardinal's response in *The Unjust Society* (1969), Henderson (2006) adds a dimension to the debate that couldn't have been imagined in mainstream society prior to constitutional recognition of Aboriginal rights and the almost forty years of legal and political activity that Cardinal's (1969) work helped to motivate in the Aboriginal community.

Henderson (2006) assesses the White Paper mentality with his observation that:

In attempting to justify the structure of power, Canada unreflectively rejected the historical interpretation of special delegation of imperial authority over Indians as creating discrimination, isolation, and separation. It argued that “equality” or “non-discrimination” was the key ingredient to the Indian problem. (p. 19)

Henderson furthers Cardinal's (1969) critique and diagnoses the White Paper (Government of Canada, 1969) problem by recognizing that:

The status Indians rejected the White Papers equality principle based on their experience of assimilation. They knew that the entire legitimacy of the colonial order in Canada, the glorified movement toward self-rule by the colonialists, was based on oppressing the Aboriginal confederacies and their treaty relations with the British sovereign. (p. 21)

The Aboriginal relationships with the Crown, recognition of Aboriginal rights within the 1982 Constitution of Canada and the definition of Aboriginal rights by Aboriginal peoples form the basis of Henderson's (2006) perspective on Aboriginal rights. He also recognizes constitutionalism as a balance to the prejudices that infiltrate colonial politics and law and that the constitutional position on Aboriginal rights now compels governments to be motivated by the Constitution. The most influential aspect is that:

The Court has recognized that Aboriginal rights are constitutional rights derived from pre-contact First Nations legal teachings - teachings that structure and inform First Nations jurisprudences and legal and political orders, while treaty rights are derived from the Aboriginal orders' consensual transnational agreements with the British sovereign. (p. 97)

This recognition affirms the Aboriginal claim to unique foundations of rights and invites definition of rights by Aboriginal peoples.

The legal framework of First Nations rights identified in section 35(1) of the 1982 Constitution of Canada was recognized by the courts (Henderson, 2006). Henderson noted that, "It is this fact, and this fact above all others, which separates Aboriginal peoples from all other minority groups in Canadian society and which mandates their special legal, and now constitutional, status" (p. 60). He further noted that "The Court has acknowledged that sui generis First Nations jurisprudences and orders are inherent to First Nations orders or societies" (p. 62). The Constitutional context will continue to be defined but harbours significant implications for the role of Aboriginal peoples in defining Aboriginal jurisprudences.

Henderson (2006) indicated that the diverse characteristics of culture, language and practice of an Aboriginal worldview constitute jurisprudence that has been, "...developed across countless generations by Elders, knowledge keepers, performers, and storytellers through their covenants, worldviews, experiences, and accumulated wisdom ..." (p. x). As First Nations jurisprudence is not derived from Eurocentric discourses, it challenges the important European legal heritage and practices" (p. 119). The concept of Aboriginal jurisprudence is a major departure for even those who work with the law and constitutional development. Considerations for Saskatchewan educational policy developers may seem remote but, as will later be demonstrated, is a vital consideration.

In addition to serving as a foundation for Aboriginal rights, Henderson (2006) demonstrated that dialogue concerning Aboriginal rights has opened up another avenue informed by Aboriginal interpretations. Public policy developers are only starting to consider the place of Aboriginal definition of rights. Henderson offers consideration for the place of Aboriginal rights in the future of Canada by cautioning that the, "Sui generis approach confirms that ordinary or normal Canadian legal analysis and reasoning are not appropriate judicial approaches for understanding the distinct constitutional framework of Aboriginal rights or its purposes" (p. 69). The implications for a concept of Aboriginal rights as framed by constitutional and legal decisions and defined by Aboriginal language and culture are significant. This interpretation calls for establishing relationships that honour expectations for Aboriginal involvement and deference to Aboriginal knowledge contributions. Henderson's evidence further moves the Aboriginal rights debate into a shared space among Aboriginal and non-Aboriginal interpretations of Aboriginal rights. His ability to authoritatively situate modern political responses by their cultural and jurisprudence lineage is a fundamental consideration for contemporary Aboriginal rights. Philosophical, cultural and legal-political interpretations of Aboriginal rights compliment each other and provide a viable foundation for understanding Aboriginal rights and defining Aboriginal participation.

#### ABORIGINAL COMMUNITY AND EDUCATIONAL POLICY DEVELOPMENT

Burns (1998), in a study of Aboriginal experiences within mandated school councils, recognized that:

There is a need for school governance to be theorized and discussed in a manner that invites the potential of open, honest critical dialogue on a range of issues including social political power relations between the wider provincial education process, district school boards and the governing bodies of local schools; and the sociopolitical power relations in the school governance (school council) process, itself. (p. 4)

He recognized that, "Native inclusiveness in the public education system needs to become a public policy goal" (p. 4). He references the Royal Commission on Aboriginal Peoples (1996) that noted:

Parental involvement in local control of schools are standard practice in Canada -- but not for the Aboriginal people; instead, they have long been the object of attempts by state and church authorities to use education to control and assimilate them, during the residential school era, certainly, but also, more subtly, today. (In Burns, 1998, p. 10)

Exploring new conceptualizations of Aboriginal participation in school governance can address Aboriginal exclusion that has become rooted in public education.

Aboriginal rights have entered a new arena that the Aboriginal exclusion debate has constructed. The new arena, facilitated by the Constitution and the courts, created space for Aboriginal participation and defined of Aboriginal rights on Aboriginal terms (Henderson, 2006). The importance of the relationship between Aboriginal people and schools in Saskatchewan compelled School Community Council policy to accomplish the creation of a space conducive to facilitating Aboriginal community participation. School Community Councils must become a context for Aboriginal people to define their roles and engagement. School Community Council policy cannot be expected to accomplish this ideal in isolation but the policy could have assumed a greater role in working toward realization of a new and productive role for Aboriginal community in school governance. The government's own policy document instructing government departments to consult with Aboriginal peoples on decisions that may impact Aboriginal rights could have prompted a more thorough response (Government of Saskatchewan, 2006a). The following three features develop a theory of Aboriginal community and school governance participation.

The first component of the theory is the pursuit of Aboriginal participation to accomplish the goal of defining Aboriginal community roles. Policy development is contested space with Aboriginal peoples who, by virtue of being a minority, often have their voices emerge in protest. The power to influence acceptance of Aboriginal rights advanced with a shared understanding, from multiple perspectives, of what motivates Aboriginal participation and expression of voice. Kymlicka (1999) advanced Aboriginal rights based on liberalist recognition of culture as a primary good essential in Aboriginal survival and development. Cardinal (1969) contributed to recognition of Aboriginal rights by gathering Aboriginal protest and demonstrating that in it were the components of culture that defined Aboriginal peoples. These ele-

ments included languages, traditions, lands and treaties. Henderson (2006) located the foundational assurance for Aboriginal rights and participation and matches the term jurisprudence to what Cardinal (1969) and Kymlicka (1999) recognized as being rich and prevalent in Aboriginal community. Educational policy developers need to facilitate Aboriginal input into policy development before the policy issue becomes a contested space. Turner (2006) suggested that, "If we want to understand better the meaning of what is commonly termed 'indigenous,' 'tribal,' or 'Aboriginal' sovereignty, we must listen to what Aboriginal peoples have to say about its meaning" (p. 69). These sentiments solidify the notion that Aboriginal identity and rights can be developed through Aboriginal participation.

The second consideration is to capitalize on the presence of Aboriginal voice and dialogue to learn about and dismantle colonization. International dialogue on the dominance of Western paradigms, globally furthered through imperialism and the vehicle of colonization, has demonstrated the impact that colonization has had on Indigenous cultures (Smith, 1999). The international advancement of Indigenous rights is motivating the actions of communities, institutions and governments to contribute to the dismantling of colonialism. Kymlicka (1999) promoted retention and definition of culture as essential components of Aboriginal survival. International efforts have adopted the broader term *heritage* which encompasses all aspects of culture and include more nebulous cultural characteristics that store and develop Aboriginal jurisprudences (United Nations, 2000). This recognition and pursuit of the protection and proliferation of Aboriginal heritage is what Aboriginal peoples have chosen to do with their culture as a primary good. Cardinal (1969) acted against the damage that was done by colonialism and the insidious damage it continued to inflict upon Aboriginal peoples. Henderson (2006) uncovers Aboriginal counter-colonial culture in Aboriginal jurisprudences. Willingness to contribute to the dismantling of colonialism is a realistic goal for policy makers. Dialogue about colonization must be brought to educational policy makers who need to understand their role within the broader context. Majority status cannot serve as a pass to avoid participating in decolonization.

The third element that must be employed to mediate educational policy development with Saskatchewan's Aboriginal population is the need to recognize and participate within the continuum of developments contribut-

ing to the definition of Aboriginal rights. Through the recognition of culture as a primary good, Kymlicka (1999) introduced opportunity for Aboriginal peoples to bring with their culture all of the jurisprudences that Henderson (2006) located in heritage. Kymlicka (1999) may have characterized culture as a survival tool but it manifests as a definitional tool that contributes to the rules of engagement. By recognition of the need for the presence of Aboriginal culture, a new relationship emerges that is not dependent on non-Aboriginal interpretation or permission to exist. Aboriginal activists like Cardinal (1969) demanded voice in this conversation and innovators like Henderson crafted the tools with which Aboriginal rights counter majority-driven hegemony. Cultural recognition cannot be put back in a box once it is used to mobilize Aboriginal peoples. This is a welcome part of the liberalist legacy.

Turner (2006) stated that, "In view of Aboriginal understandings of their political sovereignty, justice demands that contemporary and future policy makers include Aboriginal voices when drafting legislation and policies that affect the welfare of Aboriginal peoples" (p. 58). As was described earlier, the Government of Saskatchewan (2006b) has policy that compels its policy makers to consult with Aboriginal peoples on issues critical to their rights. Is school governance crucial to Aboriginal rights? It is hard to imagine otherwise when provincially, Aboriginal students are significantly underserved by the education system. Furthermore, it is well understood that parental and community participation enhances student outcomes (Government of Canada, 2002a).

It may be anti-climactic to conclude that the School Community Council policy developers ignored the context of Aboriginal rights, failed to make an association between School Community Council policy and Aboriginal rights and ignored their own government's requirements for consultation with Aboriginal peoples. Theory capable of avoiding other such pitfalls is a learning exercise. It involves (a) learning about colonization and decolonization, (b) learning of the activity associated with Aboriginal rights definition and situating the policy development within the continuum to capitalize on previous work, and (c) emphasizing Aboriginal participation to facilitate this learning. This formula is a labour and learning intensive package. It requires forward thinking policy makers to implement. Policy makers must employ the pieces that are realistic to implement and continue incremental progress that characterizes the Canadian experience.

## APPLICATION

The Saskatchewan Provincial Ministry practices a thorough approach to integrating Aboriginal influence in public education. It cannot go unnoticed, for example, that the Ministry promotes co-governance between provincial school divisions and Aboriginal authorities (Saskatchewan Learning, 2003). The foundation that has been established should now be applied to School Community Council policy and all other emergent and substantive public education policy. Following are recommendations that School Community Councils and the Provincial Ministry should heed to ensure that the policy making context has evolved to a place where each public policy can be held to the light of a legal-political mandate and allowed to be scrutinized and shaped by Aboriginal Jurisprudence (Henderson, 2006).

### *Definition*

Motivated by the desire to initiate dialogue with Aboriginal peoples, the Province of Saskatchewan, the Saskatchewan School Boards Association and Aboriginal leadership should develop School Community Council policy amendments and supportive documentation that illustrates the legal, political and moral requirements to expand on the role of Aboriginal participation in School Community Councils. School Community Councils, whether in rural Saskatchewan or in urban centers, need good advice to ensure that their governance benefits from Aboriginal inclusion on Aboriginal terms and that their governance practices withstand the test of time and legal opinion that decisions of today do not hinder Aboriginal community benefit from public education when viewed from a point in time in the future.

### *Evaluation*

Motivated by the desire to initiate and sustain dialogue with Aboriginal people, the Government of Saskatchewan and the Saskatchewan School Boards Association should invite Aboriginal community to participate in an evaluation of how the current policy serves Aboriginal parents and communities. The assessment must be made at the local level and in consultation with Aboriginal representatives of community leadership, governance and public policy.

### *Prioritize Aboriginal Representation*

Motivated by the desire to dismantle colonial structures that deter Aboriginal participation in shaping society as should be the outcome of Aboriginal peoples unfolding their sovereignty agenda, School Community Councils policy, above all others, needs to consider Aboriginal representation in a thorough manner. All public policy, though, should defer to a requirement to ensure authentic Aboriginal participation and define the structure to accommodate this. The result would be decisions from curriculum to facilities that build Aboriginal representation in at the outset. Experience would integrate this response as routine behaviour and provide positive implications for other public sectors such as justice, health or social services.

### *Implement Consultation Guidelines*

Motivated by the desire to participate in the evolution of the continuum of influence on Aboriginal rights, the Province of Saskatchewan's own guidelines for consultation with Aboriginal peoples needs to be mobilized. The guidelines, in response to the *Haida v. British Columbia* decision that obligates government to consider future policy implications on Aboriginal rights, (Government of Saskatchewan, 2006) need to be communicated to policy makers and put to routine use. The guidelines should be deferred to in all public policy development. In addition, Government should support the development of a parallel expression from Saskatchewan's Aboriginal community to ensure that the spirit and intent of the consultation mechanism is not jeopardized by a unilateral definition of meaningful consultation.

### *Conclusion*

The Cree principle of *Witaskewin*, which describes a peaceful coexistence on the land is an example of Aboriginal Jurisprudence (Henderson, 2006) that articulates the spirit and intent of the Sacred Treaties. There are a wealth of other such illuminating concepts that reside in the Aboriginal community just as Canadian legal-political tradition has offered much to the relative harmony evident in Aboriginal, non-Aboriginal relations in Canada. Saskatchewan is in an environment conducive to the development of not only a positive relationship with Aboriginal peoples, but the province also has the ability to shape public policy by including diversity of interpretation and experience within the process. In classrooms across the province there are

children that will learn from the contributions of Kymlicka, Cardinal, Henderson and many other important contributors to Aboriginal rights and go forward to make their own contributions to Aboriginal rights. Public policy must create space for their valued contribution.

The outstanding question is whether ignorance or design denies the type of Aboriginal participation described in this article. Reference to Tom King's Massey lecture entitled *The Truth About Stories* (2003) is appropriate as his was an autobiographical story about the encounters of a contemporary Indian and an unsuspecting public. King tells the story and without compelling the reader to accept the propositions of a contemporary Indian, he cautions, "Just don't say that in the years to come that you would have lived your life differently if only you had heard this story. You've heard it now" (King, 2003, p. 167).

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