



Legislative Update

VOLUME 5, ISSUE 1

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LEGISLATIVE UPDATE

To provide a snapshot of current legislative initiatives, bills and legislation that will impact First Nations' rights and interests.

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This legislative update provides information on current bills. Each bill that is included in this update has implications that will impact First Nations and their citizens.

The AMC Chiefs-in-Assembly have confirmed that all government laws or measures that affect First Nations or First Nations rights, that are tabled without consultation, will be opposed. This position is supported by Article 19 of the *United Nations Declaration on the Rights of Indigenous Peoples*. In tabling these bills without consultation with First Nations, the provincial government is clearly failing to engage in a nation-to-nation relationship with First Nations, which is not in keeping with the honour of the Crown.

At the April 20, 2021 joint meeting of the Governance renewal Committee and the ECC, the Chiefs agreed that the AMC respond to the various provincial bills as follows:

1. The AMC continues with the ongoing application for judicial review of The Budget Implementation and Tax Statutes Amendment Act, 2020 (Bill 2);
2. The AMC oppose each bill in Committee;
3. The AMC member First Nations oppose each bill individually or the bills together as a group;
4. The AMC considers facilitating some political action against the current legislative agenda of the Pallister Conservative government (including a social media campaign, rallies, etc.);
5. The AMC Grand Chief's Office confer with other First Nations organizations and allies to consider legally challenging some of the bills once they become law (the potential for a legal challenge of these bills is premature, as they have not yet come into force); and
6. The AMC facilitates a regional leadership forum on the various legislative initiatives that affect and impact the rights of First Nations.

Attached are summaries of the following bills:

Bill 2	The Budget Implementation and Tax Statutes Amendment Act
Bill 12	The Crown Land Dispositions Act
Bill 35	The Public Utilities Ratepayer Protection Regulatory Reform Act
Bill 51	Limitations Act
Bill 56	The Smoking and Vapour Products Control Amendment Act
Bill 57	The Protection of Critical Infrastructure Act
Bill 63	The Petty Trespasses Amendment and Occupiers Liability Amendment Act
Bill 64	The Education Modernization Act

The AMC Secretariat remains available to assist Chiefs and First Nations who want to challenge the province on one or all the bills identified. For further analysis of each bill, to receive assistance in draft letters or positions for an appearance at Committee, or for draft template Band Council Resolutions, please contact:

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ASSEMBLY OF
MANITOBA CHIEFS



"AMC opposes the bill based on the inherent jurisdiction of First Nations over their families and children, their discriminatory treatment by the failed colonial system, and the rights of First Nations to challenge unlawful and discriminatory treatment in court."

Bill 2 - The Budget Implementation and Tax Statutes Amendment Act (BITSA)

Sponsored by the Honourable Mr. Fielding, Minister of Finance

First Reading: October 9, 2020

Second Reading: November 5, 2020

Committee of the Whole: November 5, 2020

Royal Assent: November 6, 2020

About the bill

- Originally introduced on March 19, 2020 as Bill 34 – The Budget Implementation and Tax Statutes Amendment Act (BITSA) in an emergency sitting to fast track its passing.
- This omnibus bill upholds the Government of Manitoba's practice of clawing back funding of the Children's Special Allowances (CSA) for First Nations children in care. Among other things, this bill also immunizes the province from related legal actions.
- BITSA was reintroduced as Bill 2 in October 2020 and received royal assent in November 2020.

How the bill affects First Nations

- The Children's Special Allowance (CSA) is federal funding that is provided to Child and Family Services (CFS) Agencies for the sole purpose of care, maintenance, education, training, recreation or any advancement of children in care. Each child is meant to receive approximately \$455- \$530 monthly. Since 2005, the Province of Manitoba has been capturing CSA funds as it relates to First Nations children off-reserve. As a result, the most vulnerable children in society have not received the necessary funding to ensure their social inclusion. The amount of theft by the Province of Manitoba from First Nations children amounts to \$338 million dollars through this practice.

AMC's position on the bill

- AMC resolution APR-17.05 Children's Special Allowance Recoveries directs that "the Chiefs-in-Assembly fully canvas all legal options, and subject to financial resources, legally challenge the Province of Manitoba on its position on Children's Special Allowances."
- AMC opposes the bill based on the inherent jurisdiction of First Nations over their families and children, their discriminatory treatment by the failed colonial system, and the rights of First Nations to challenge unlawful and discriminatory treatment in court.

AMC activities on the bill

- On April 14, 2020, Grand Chief Dumas and the Women's Council held a virtual press conference and sent out a press release opposing Bill 34.
- On April 15, 2020, the AMC Grand Chief's Office sent a letter to the Manitoba Premier stating the bill should be withdrawn and not expedited.
- On October 7, 2020, the AMC, Manitoba NDP Caucus and Manitoba Liberals held a joint press conference at the Manitoba Legislature and released a joint statement regarding Bill 34. Following the press conference, Grand Chief Dumas was the first volunteer to initiate the Traditional Team Fast. The Traditional Team Fast continued until November 6th with 59 additional volunteers who fasted to bring awareness of the long-standing issue and to call for change and better outcomes for children in care.
- On October 20, 2020, the Grand Chief wrote a letter to the Prime Minister calling on the federal cabinet to intervene in the introduction of Bill 2 by the Province of Manitoba which seeks to bypass the courts and justify the continued theft of federal funding, the CSA, from First Nations children.
- On October 26, 2020, the Grand Chief's Office invited all First Nations CFS Agencies to participate in a Team Fast at the Manitoba Legislative Building against Bill 2, which took place from the time the bill was reintroduced and passed.
- On November 6, 2020, the day after it was passed, the AMC filed a Notice of Application challenging the validity of section 231 of BITSA.
- The Notice of Application seeks an order, among other things, to challenge the clawback, remittance, denial and failure to provide adequate supports to First Nations children in care under the federal *Children's Special Allowance (CSA) Act*. The arguments of AMC are grounded in the inherent jurisdiction of First Nations over their families and children, their discriminatory treatment by the failed colonial system and the rights of First Nations to challenge unlawful and discriminatory treatment in court.
- The AMC also takes issue with the failure of the province to apply the *CSA* exclusively toward the care, maintenance, education, training or advancement of a child in care; and the denial of the right to access the Manitoba Court of Queen's Bench by those affected.
- May 17, 2021 the following affidavits were filed to the Manitoba Court of Queen's Bench to support AMC's legal challenge to Manitoba's legislation concerning the treatment of the CSA: Grand Chief Arlen Dumas (AMC), Cora Morgan (FNFAO), Chief Monias (Pimicikamak Cree Nation), Chief Sheldon Kent (Black River First Nation), Elder Florence Paynter (AMC Elder's Council), and Alvin Henderson.
- A court hearing is set for October 2021, where the AMC and two other parties will present their arguments and issues separately.



**ASSEMBLY OF
MANITOBA CHIEFS**



The AMC ECC opposed this bill as part of the current suite of legislation because of the lack of consultation and the effects on First Nations and their rights.

Bill 12 – The Crown Land Dispositions Act (Various Acts Amended)

Sponsored by the Honourable Mr. Helwer, Minister of Central Services

First Reading: October 14, 2020

Second Reading: March 25, 2021

Committee of Social and Economic Development: April 22, 2021

Royal Assent: May 20, 2021

About the bill

- Bill 12 makes significant changes to the oversight and process for the sale of Crown lands in Manitoba.
- This bill provides the designated minister the sole discretion to decide to whom Crown land will be sold, when, and for what price, with some restrictions.
- In addition to amendments to *The Crown Lands Act*, Bill 12 amends 5 other Acts relating to the disposal of Crown land and assets and creates uniform rules for the disposal of Crown land and assets.

How the bill affects First Nations

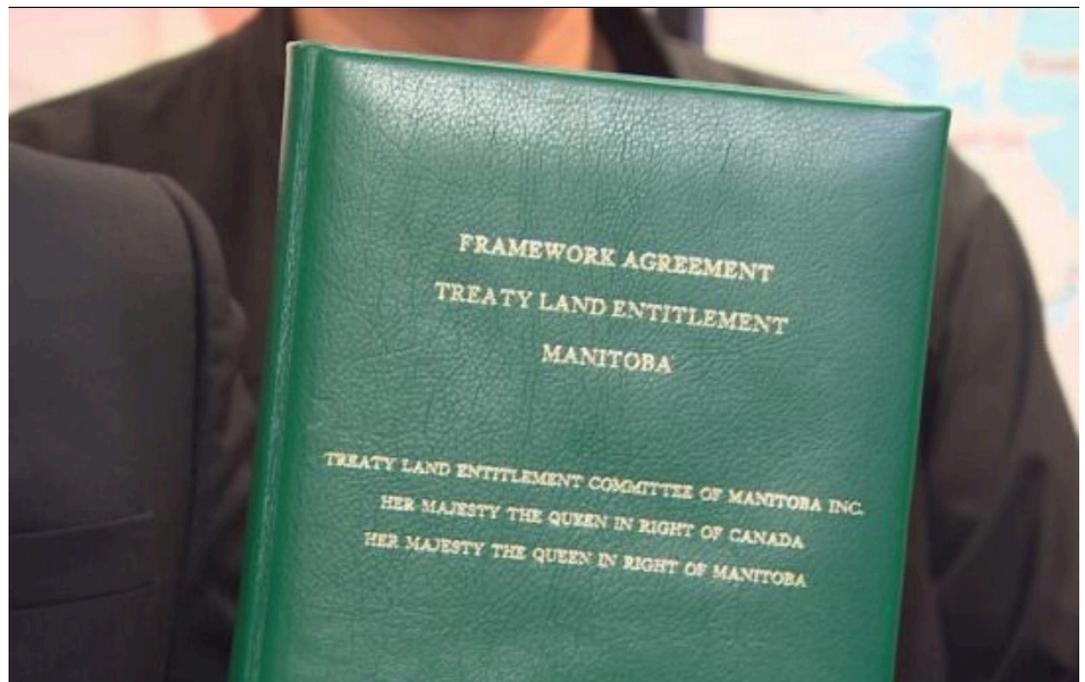
- Bill 12 is aimed at increasing the number and efficiency of Crown land sales in Manitoba. but it does not and cannot affect Manitoba's legal obligations under the TLE Framework Agreement or any other TLE Agreement between Manitoba and First Nations.
- There may still be practical effects on entitlement First Nations – a First Nation only has 30 days to respond to a notice of surplus Crown land, and there is also a risk that there will be less available Crown land for entitlement First Nations.

AMC's position on the bill

- The AMC ECC opposed this bill as part of the current suite of legislation because of the lack of consultation and the effects on First Nations and their rights.

AMC activities on the bill

- The AMC supported the Treaty Land Entitlement Committee Inc. in the recent Federal Court of Canada claim. The AMC takes the position that all First Nations in Manitoba must receive their full treaty land entitlement, which was promised over 100 years ago, and this should be a top priority for both the federal and provincial governments.
- On April 30, 2021, the AMC received a legal analysis of Bill 12.





*In a press release on
February 26, 2021, Grand
Chief Dumas stated that
Bill 35 is inequitable and
harmful to First Nations and
First Nations citizens.*

Bill 35 - The Public Utilities Ratepayer Protection Regulatory Reform Act

Sponsored by the Honourable Mr. Fielding, Minister of Finance

First Reading: October 14, 2020

No update

Royal Assent: N/A

About the bill

- Bill 35 weakens the Public Utilities Board (PUB), which is responsible for approving rate changes for Crown corporations such as Manitoba Hydro.
- Currently, electricity rates are approved yearly by the PUB. This bill removes that authority and allows electricity rates to be set by the government until March 31, 2024; then, the PUB would meet every five years to approve rates.
- It also limits the PUB's ability to factor in socioeconomic factors, as the government would have to establish policies the PUB has to follow when ruling on rate change proposals. Any rate adjustments would have to be approved through government regulation.

How the bill affects First Nations

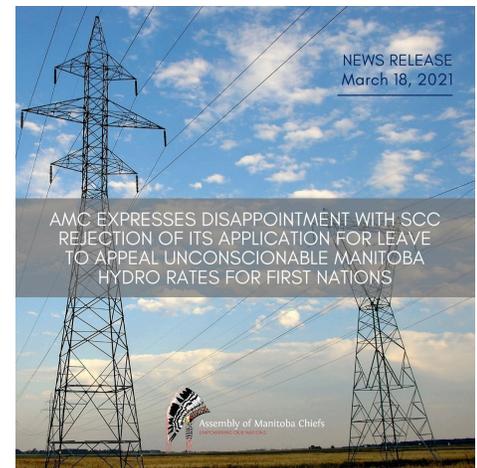
- Manitoba Hydro is a Crown corporation with a monopoly over electricity in the province. This bill takes away the PUB's oversight of Manitoba Hydro's electricity rates and instead allows the Government of Manitoba to make these decisions without having to justify any rate increases.
- As part of a General Rate Application, the PUB created a separate customer class for First Nations living on reserve. This class did not have an electricity rate increase due to energy poverty and other social issues. Manitoba Hydro appealed this matter to the Manitoba Court of Appeal and won. The AMC appealed this decision to the Supreme Court of Canada, but the Supreme Court of Canada did not allow for the case to be appealed. Bill 35 would not allow the PUB to decide electricity rates based on bill affordability and other social factors in the future.

AMC's position on the bill

- The AMC ECC opposed this bill as part of the current suite of legislation because of the lack of consultation and the effects on First Nations and their rights.
- The AMC supports the PUB's decision that on-reserve ratepayers should not have an increase in electricity rates. Therefore, removing or limiting the PUB is not in First Nations' interests.
- This bill also eliminates the consideration of bill affordability or other socioeconomic factors from the PUB's jurisdiction, providing Manitoba Hydro with less oversight to the detriment of First Nations and their citizens.

AMC activities on the bill

- In a press release on February 26, 2021, Grand Chief Dumas stated that bill 35 is inequitable and harmful to First Nations and First Nations citizens.
- In a press release on March 18, 2021 regarding the Supreme Court of Canada's decision not to hear AMC's appeal, Grand Chief Dumas expressed disappointment that the Court did not want to have a hearing on the systemic and unique barriers that First Nations people on-reserve face when heating and powering their homes and the attempts to reconcile the often detrimental historical and ongoing use of First Nations territory for public utility infrastructure and development and to be subject to unfair electricity rates.
- The AMC Secretariat has registered the AMC to appear at Committee, and will develop submissions for the presentation.



ASSEMBLY OF MANITOBA CHIEFS



In a press release on March 9, 2021, Grand Chief Dumas called upon the Government of Manitoba to remove limitation periods for First Nations claims and to ban the continued use of limitation periods in Manitoba on First Nations historical claims against the Crown.

Bill 51 - The Limitations Act

Sponsored by the Honourable Mr. Friesen, Minister of Justice and Attorney General

First Reading: November 2, 2020

No Update

Royal Assent: May 20, 2021

About the bill

- Bill 51 imposes an ultimate 30-year limitation period for a proceeding respecting existing Aboriginal and Treaty rights that are recognized and affirmed in the *Constitution Act, 1982*, or an equitable claim by an Aboriginal people against the Crown.
- This bill also bars any claim from proceeding, where the limitation period expired under former limitations period legislation.

How the bill affects First Nations

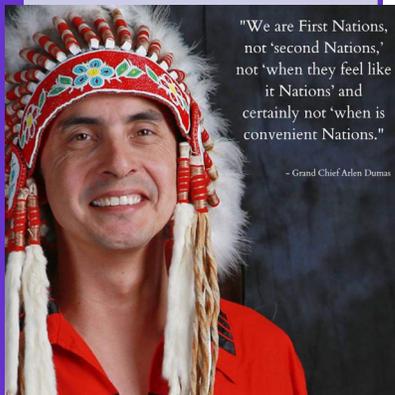
- This bill limits the ability of First Nations to bring an action against the Crown.
- This means that for most First Nations, historical claims arising before the coming into force of Bill 51 have expired due to the 6-year limitation period in former legislation.

AMC's position on the bill

- The AMC ECC opposed this bill as part of the current suite of legislation because of the lack of consultation and the effects on First Nations and their rights.
- Bill 51 does not consider that First Nations were not allowed to bring lawsuits against the Crown until the *Indian Act* was amended in 1951.
- The tabling of this bill is also contrary to the Truth and Reconciliation Commission's Call to Action 26, which calls upon "the federal, provincial, and territorial governments to review and amend their respective statutes of limitations to ensure that they conform to the principle that governments and other entities cannot rely on limitation defences to defend legal actions of historical abuse brought by Aboriginal people."

AMC activities on the bill

- In a press release on March 9, 2021, Grand Chief Dumas called upon the Government of Manitoba to remove limitation periods for First Nations claims and to ban the continued use of limitation periods in Manitoba on First Nations historical claims against the Crown.



"We are First Nations, not 'second Nations,' not 'when they feel like it Nations' and certainly not 'when is convenient Nations.'"

- Grand Chief Arden Dumas



ASSEMBLY OF MANITOBA CHIEFS



In a press release on April 13, 2021, Grand Chief Dumas stated that the province is still attempting to legislate while ignoring the constitutionally protected rights of First Nations.

Bill 56 - The Smoking and Vapour Products Control Amendment Act

Sponsored by the Honourable Ms. Gordon, Minister of Mental Health, Wellness and Recovery

First Reading: November 2, 2020

Second Reading: March 25, 2021

Social and Economic Development Committee: April 13, 2021.

Royal Assent: May 20, 2021

About the bill

- The tabling of Bill 56 is the province's latest attempt to ban smoking on First Nations reserves. In July 2020, Manitoba banned smoking in VLT areas on First Nations reserves under COVID-19 emergency orders.
- This bill goes further and removes the exemption of "lands reserved for Indians and federal lands" from the rules regarding smoking and vaping and the advertising and sale of tobacco and vapour products.

How the bill affects First Nations

- This bill attempts to bypass First Nations' inherent rights to self-government and by-laws made by Chief and Council under the *Indian Act*.
- It is also an attempt by the provincial government to make laws in areas where it has no jurisdiction by using "health of all Manitobans" as a justification.

AMC's position on the bill

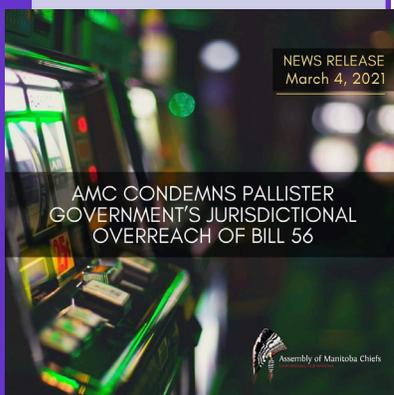
- The AMC ECC opposed this bill as part of the current suite of legislation because of the lack of consultation and the effects on First Nations and their rights.
- As this matter relates to the COVID-19 provincial health order banning smoking on-reserve in VLT areas, the ECC has already supported the opposition to this bill through legal measures.
- The AMC takes the position that this matter is not about smoking, but is about the Province of Manitoba overstepping into First Nations jurisdiction. This would be an unacceptable precedent.

AMC activities on the bill

- On April 12, 2021, Grand Chief Dumas and Chief Deborah Smith of the Brokenhead Ojibway Nation appeared before the Standing Committee and opposed Bill 56.
- In a press release on April 13, 2021, Grand Chief Dumas stated that the province is still attempting to legislate while ignoring the constitutionally protected rights of First Nations.
- If Bill 56 becomes law, the AMC will seek instructions for a legal challenge to the bill.



Press conference on the smoking bill with Chief Hudson, Chief Dennis Meeches and Chief Deborah Smith



**ASSEMBLY OF
MANITOBA CHIEFS**



“This bill is contrary to First Nations’ rights to protect and defend lands and waters in their traditional territories.”

Bill 57 – The Protection of Critical Infrastructure Act

Sponsored by the Honourable Mr. Friesen, Minister of Justice and Attorney General

First Reading: November 2, 2020

No update

Royal Assent: N/A

About the bill

- Bill 57 sets higher fines and possible imprisonment for people interfering with “critical infrastructure.”
- The owner or operator of the infrastructure would be able to apply for a court order to create a temporary protection zone.
- “Critical infrastructure” includes oil/natural gas pipelines and provincial highways.

How the bill affects First Nations

- This bill is in response to First Nations protest camps and blockades. It could result in imprisonment for people who participate in protests that block what the provincial government deems to be “critical infrastructure.”

AMC’s position on the bill

- The AMC ECC opposed this bill as part of the current suite of legislation because of the lack of consultation and the effects on First Nations and their rights.
- This bill is contrary to First Nations’ rights to protect and defend lands and waters in their traditional territories.
- This bill is similar to the Alberta government’s *Critical Infrastructure Defence Act* that is currently being challenged in the Alberta Court of Queen’s Bench based on a breach of a number of Charter rights.

AMC activities on the bill

- The AMC is currently monitoring the status of this bill and the constitutional challenge in Alberta.
- The AMC Secretariat has registered the AMC to appear at Committee, and will develop submissions for the presentation.



**ASSEMBLY OF
MANITOBA CHIEFS**



In a press release on March 15, 2021, Grand Chief Dumas stated that the AMC will not allow provincial laws, such as Bill 63, to violate treaty rights as treaty rights supersede provincial laws.

Bill 63 - The Petty Trespasses Amendment and Occupiers Liability Amendment Act

Sponsored by the Honourable Mr. Friesen, Minister of Justice and Attorney General

First Reading: November 2, 2020

Second Reading on March 25, 2021

Justice Committee: April 14, 2021

Royal Assent: May 20, 2021

About the bill

- Bill 63 removes the landowners' duty to warn trespassers before they can be charged with trespassing.
- It allows people to be charged with trespassing if the property is marked or properly enclosed to keep people off or animals on the property.

How the bill affects First Nations

- This bill may affect First Nations citizens as they exercise their constitutionally protected Aboriginal and Treaty rights to hunt, fish, and harvest on their traditional territories.

AMC's position on the bill

- The AMC ECC opposed this bill as part of the current suite of legislation because of the lack of consultation and the effects on First Nations and their rights.

AMC activities on the bill

- In a press release on March 15, 2021, Grand Chief Dumas stated that the AMC will not allow provincial laws, such as Bill 63, to violate treaty rights as treaty rights supersede provincial laws.
- The AMC Secretariat has registered the AMC to appear at Committee, and will develop submissions for the presentation.



ASSEMBLY OF MANITOBA CHIEFS



First Nations were not consulted on Bill 64. It even omits First Nations-specific recommendations from the report of the Manitoba Commission on Kindergarten to Grade 12 Education, which also First Nations were not invited. This includes the report's recommendations on the educational gaps between First Nation students and non-First Nation students, and their recommendations on the disparities of northern, remote, and rural schools.

Bill 64 - The Education Modernization Act

Sponsored by the Honourable Mr. Cullen, Minister of Education

First Reading: November 2, 2020

Second Reading: No Updates

Royal Assent: N/A

About the bill

- The Province of Manitoba has claimed that Bill 64 was inspired by the Manitoba Commission on Kindergarten to Grade 12 Report entitled *Our Children's Success: Manitoba's Future, Report of the Commission on K to 12 Education*. The Commission did not engage or consult with First Nations in Manitoba.
- Bill 64 will combine Manitoba's 37 school divisions into 15 school divisions, each governed by an elected board of trustees, with one Provincial Education Authority governed by an appointed Authority Board.
- Bill 64 also removes Principals from the teachers' bargaining units.
- On March 25, 2021, the NDP announced that they would delay bill 64 from being discussed until the legislature's fall session.

How the bill affects First Nations

- Bill 64 is vague as many details will not be known until regulations have been drafted.
- Bill 64 does not affect on-reserve First Nation Schools or Treaty rights. However, it is unknown how Bill 64 might affect education funding distribution.
- It is currently unclear what effect this bill will have on Manitoba's Regional Education Agreement and how the new funding distribution will affect Frontier School Division.
- Bill 64 has omitted First Nations-specific recommendations from the *Our Children's Success* report. This includes the report's recommendations on the educational gaps between First Nation students and non-First Nation students, and their recommendations on the disparities of northern, remote, and rural schools.

AMC's position on the bill

- The AMC ECC opposed this bill as part of the current suite of legislation because of the lack of consultation and the effects on First Nations and their rights.
- The AMC CCOE has shown great concern about Bill 64 and requested the AMC to review Bill 64. Their position on the bill will be made apparent after the analysis of the bill is completed.
- As of right now, the official position of the CCOE is pending, but in reviewing Bill 64, the recommended course of action is to oppose Bill 64.

AMC activities on the bill

- On April 27, 2021, Fox Fraser completed a legal analysis of Bill 64.
- On May 27, 2021, the CCOE met with the Manitoba Teachers Society and the Manitoba School Board Association to discuss Bill 64.
- The AMC proposed activities on this issue include:
 - The AMC and CCOE present to the Standing Committee on Bill 64; and
 - Ensure that Bill 64 does not affect the REA Funding Formulas.
- The AMC Secretariat has registered the AMC to appear at Committee, and will develop submissions for the presentation.



THIS IS WHO WE FIGHT FOR OUR ELDERS AND CHILDREN



Loretta Ross, Treaty Commissioner
and Elder Harry Bone



Ebb and Flow First Nation Elders



The late Elder Jack Wood



Elder Florence Paynter



Grand Chief and the Traditional Fast



Stand Up For Children



ASSEMBLY OF MANITOBA CHIEFS

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