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PUBLIC ADMINISTRATION QUESTIONS RELATING TO ABORIGINAL SELF-GOVERNMENT

C.E.S. Franks

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PREFACE

Section 37 of the *Constitution Act, 1982* (as amended) requires the holding of a series of conferences by 1987 to deal with "constitutional matters that directly affect the aboriginal peoples of Canada." Discussion leading up to and during the First Ministers' Conferences on Aboriginal Constitutional Matters quickly focused on the task of making constitutional provisions for aboriginal self government. Many involved in the process openly questioned the meaning of "aboriginal self-government".

In view of the importance of this subject, in May of 1984 the Institute of Intergovernmental Relations launched a research project on "Aboriginal Peoples and Constitutional Reform". Phase One of the project responded to concerns that emerged at the outset of the constitutional negotiating process. As indicated by its title, "Aboriginal Self Government: What Does It Mean?", Phase One examined various models, forms and proposals for aboriginal self government. This included an exploration of the citizenship rights of aboriginal peoples, the experience of aboriginal self government in other nations, and a review of Canadian developments over the past few years. The results of these investigations were compared to the positions taken by parties to the constitutional negotiations, in an effort to identify areas of emerging conflict and consensus. These findings were elaborated in five Background Papers, a Discussion Paper and a Workshop, which was held two months prior to the 1985 First Ministers' Conference (FMC).

Developments in 1985, subsequent to the first Ministers' Conference, may have a dramatic impact on the constitutional negotiation process. At a meeting of government ministers and aboriginal leaders held in June, 1985, several governments indicated their intention to pursue the negotiation of individual self government agreements, and then to consider their entrenchment in the constitution (the "bottom up" approach). This contrasts with the proposal, which has thus far dominated discussions, to entrench the right to aboriginal self-government in the constitution, and then to negotiate individual

agreements (The "principles first" approach). The result is that, in addition to multilateral negotiations at the national level, negotiations will now proceed on a bilateral or trilateral basis, at the local, regional and provincial/territorial levels.

Phase Two of the project is entitled "Aboriginal Self Government: Can It Be Implemented?", and responds to concerns now emerging in the negotiations. This phase of the Institute's project therefore focused initially on arrangements for the design and administration of public services by and to aboriginal peoples. The research examined the practical problems in designing mechanisms and making arrangements for implementing self government agreements. It concluded, in its initial year, with a Workshop on "Implementing Aboriginal Self Government: Problems and Prospects", held in May of 1986.

As the 1987 FMC approaches, attention will become more concentrated on the multilateral constitutional forum (the FMC). The research agenda in the second year of Phase Two anticipates this shift in preoccupation, with the focus turning to the search for a constitutional accommodation in 1987. If this search is to be successful, it will be necessary first to inquire into, and then to resolve or assuage a number of genuine concerns about aboriginal self government and its implications for federal, provincial and territorial governments. Research in this part of the project will explore these concerns. A third Workshop, on "Issues in Entrenching Aboriginal Self Government", will be held in February 1987.

The Institute wishes to acknowledge the financial support it received for Phase Two of the project from the Dornier Canadian Foundation, the Canadian Studies program (Secretary of State) of the Government of Canada, the Government of Ontario, the Government of Quebec, the Government of Alberta, the Government of Manitoba, the Government of Saskatchewan, the Government of New Brunswick, the Government of the Northwest Territories, the Government of the Yukon, the Assembly of First Nations, the Inuit Committee on National Issues, the Metis National Council and the Native Council of Canada.

Little has been written to date on the public administration issues which will confront aboriginal governments in Canada. C.E.S. Frank's paper on *Public Administration Questions Relating to Aboriginal Self-Government* provides an initial examination of some of these. He begins by reviewing the traditional political and social organization of aboriginal peoples in Canada, and how this has changed over time. Professor Franks then examines the "public questions" - including those of aboriginal government functions, powers, size, membership, and accountability; as well as the "administrative questions" - those of

financing, policy making, personnel administration, and inter governmental relations.

C.E. S. Franks is a Professor of Political Studies at Queen's University, and a noted scholar on public administration in northern Canada.

David C. Hawkes
Associate Director
Institute of Intergovernmental Relations
January, 1987

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This study could not have been done without the help of many persons, both in the aboriginal communities of Canada, and the other sectors of Canadian government and society. I would especially like to express my appreciation to David Hawkes for his great encouragement, and to Evelyn Peters for her perceptive criticism. Beverley Maclean ably assisted in the research and typing. Queen's University School of Graduate Studies and Research supported the special census run which led to the data in chapter 10, and Table I. The Donner Canadian Foundation has generously supported my research into the public service in the north from which much of the material in this study is drawn.

C.E.S. Franks

ABSTRACT

Many issues have to be resolved to make aboriginal self government a concrete reality. This study examines three aspects of these issues. The first section identifies the special features of an "aboriginal" as opposed to another kind of government, describing traditional aboriginal governments and how they have been changed by contact with non aboriginal society. The second section focusses on the question of the "public" aspects of aboriginal self government, its functions, who belongs to it, and how political power will be wielded and controlled. The third section moves to an emphasis on administrative questions such as financing, policy-making and personnel administration. Implementing aboriginal self government will not be easy. This study identifies some of the problems and indicates what issues must be addressed in the process of establishing aboriginal self government and self administration.

SOMMAIRE

Bien des questions devront être résolues afin de faire de l'autonomie politique des autochtones une réalité concrète. Cette étude fait l'examen de trois aspects de ces questions. La première section identifie les aspects spéciaux d'un gouvernement autochtone par rapport à un autre type de gouvernement. Ceci, par la description de gouvernements autochtones traditionnels et des changements qui ont eu lieu au contact de la société non-autochtones. Dans la deuxième section, il est question des aspects "publics" de l'autonomie des autochtones, de ses fonctions, de ses membres, et de la façon dont le pouvoir politique sera exercé et contrôlé. Dans la troisième section, l'accent sera mis sur les questions d'administration telles que le financement, l'adoption des lignes de conduite et la direction du personnel. La mise en oeuvre de l'autonomie politique chez les autochtones ne sera pas facile. Dans cette étude sont identifiés quelques-uns des problèmes et sont indiquées les questions qui doivent être abordées dans le processus de l'établissement d'une autonomie politique et administrative autochtone.

INTRODUCTION

Both in theory and practice public administration requires a "public" and an "administration". The public is the clientele and community served by the administration. It is also the electorate which indirectly, through its elected representatives, directs and controls the administration, and holds it accountable and responsible for its activities. The administration is a separate system. It is based on bureaucratic principles of a merit, career service, technical and professional expertise, specialization, hierarchical organization, and the impersonal administration of written rules and laws. The important questions in public administration focus on three different areas of these bodies and relationships:

1. *first*, the relationship of the public service, the administrative sphere, to the political, of bureaucratic power to political power, of the elected representatives to the career public servant;
2. *second*, the internal organization and management of the public service, including career patterns, pay and conditions of work, training, finances and accountability, directions, control, budgeting; and
3. *third*, the relationships of the administrative sphere to the clientele and community it serves, including questions of how well it *understands and reflects* the values, attitudes, and needs of that community.

All of these areas are legitimate concerns of public administration, and all will be examined in this study.

This study is not an attempt to design a structure for aboriginal self-government. That is more properly the responsibility of the aboriginal Canadians whom self-government is intended to serve. Rather it is an attempt to highlight and look at some of the important issues in the public administration aspects of self government. This study does *not*

examine how self government might be achieved, nor does it consider issues of constitutional rights or land claims. Rather, it begins from the starting point: supposing that self government is a reality, then what important public administration questions need to be considered to make it work.

These are difficult questions to examine. Much of the difficulty arises because at this point in time aboriginal self government is more hypothetical than real. It is largely in the stage of ideals and possibilities rather than practice. A study for the recent Royal Commission on the Economic Union and Development Prospects for Canada concluded that "regrettably, the literature on aboriginal self government in the Canadian context is sparse. It is rich in eloquent rhetoric and philosophy but largely lacking in rigorous analysis and specific, concrete proposals."¹ Although much work has been done in the past few years to fill this lack, there is still much more to be done.

This study first examines some aspects of the development of the idea of self government, and what is meant by it. The second part looks at some of the "public" questions. The third considers "administrative" questions.

No final answers to these questions will be found in this study. Rather it surveys some of the basic questions involved in self government, to identify the important issues and consider some of the varied approaches to resolving them. Nor is the study comprehensive in terms of considering all particular aboriginal populations and their individual legal, economic and cultural conditions. Instead it is suggestive and illustrative, showing various problems and possibilities involved in this very complex and difficult issue.

Part 1

Aboriginal Peoples and Government

I TRADITIONAL ABORIGINAL SELF-GOVERNMENT

It would be a serious mistake to assume that aboriginal self government is something new. The aboriginal people of Canada were self governing for thousands of years before their society and culture were influenced by the European invasion. Diamond Jenness discusses two types of traditional aboriginal political and social organization: that of primitive, migratory tribes; and that of the Iroquois and Pacific coast tribes.¹ The varieties of these organizations were, of course much more complex than this, but these two types identified important groupings and differences which had evolved because of different economic situations of aboriginal Canadians. The migratory tribes followed game and had no important fixed settlements; the Iroquois and the Pacific coast tribes were more sedentary.

The political organization and government of the varied groups was appropriate to their needs. In the migratory tribes:

Each family group, and each band, had a nominal leader, some man who through courage, force of character, or skill at hunting had won for himself temporary pre-eminence. The compositions of family groups, and consequently their leaders, varied from one season to another, but the band was a relatively stable unit with definite territorial boundaries. Theoretically, every individual in a band was equal to every other, so that its leader enjoyed few or no privileges, and held his position only in so long as he could win popular support...The same loose organization characterized the larger communities created when some of the bands amalgamated, as the Montagnais usually did during the season for catching eels, the Dogrib at the spring migration of the Caribou, and the Eskimo during the season for sealing; for the leaders of the various bands were all of equal standing except in so far as one might possess for the moment greater prestige.

An amalgamation of all the bands of a tribe, even for a few days only, was exceedingly rare, owing to the distances between

their hunting grounds and the difficulty of securing enough fish and game in one locality to support a large, if transient, population...There was no chief for the entire tribe, no central organization, no sacred shrine or holy city recognized by all that could serve as a common rallying point.

Jenness points out that for much of Canada these really were not tribes that were clearly distinguished from their neighbours. Rather, there was imperceptible change from (and also substantial intermarriage between) one band to its neighbours:

Hence the usual divisions into tribes, Naskapi, Montagnais, etc for the eastern woodlands, Chipewyan, Yellowknife and the rest for the Mackenzie bands, are to a considerable extent arbitrary; less so now than formerly, perhaps, because the bands are less numerous and more restricted in their wanderings, and the establishment of Indian reserves and trading posts subjects them to local influences and conditions that were formerly lacking.³

These were not tribes in the usual acceptance of the word:

they were not coherent bodies of people united under a common rule, like the tribes of Africa or Polynesia; they were merely groups of scattered bands, very similar in speech and customs, that had no central governing authority, but through close neighbourhood and intermarriage possessed many interests in common. Among the Eskimo even loosely defined tribes such as these were lacking, because the bands were dispersed over so wide an area that they lived in complete ignorance of all but their nearest neighbours; and yet they so closely resembled each other that one could travel hundreds of miles in certain regions without noticing any clearly marked differences.⁴

Within these bands, political organization and the regulation of deviant behaviour were not as random and unstructured as might be presumed from this absence of a tribal political identity. Kinship was an important aspect of all political and social relations. The bands:

were composed of families of near kindred, and kinship was reckoned in slightly varying ways, all different from our own Indo-European system. Few of the more primitive tribes in eastern or northern Canada, however, stressed the male line of descent to the exclusion of the female, or the female to the exclusion of the

male; they followed, that is to say, neither the patrilineal nor the matrilineal system of organization, although there was a tendency, natural perhaps among migratory hunting peoples where wives nearly always went to live with their husbands, to pay rather more attention to the male line.⁵

The plains Indian traced descent through the male line only, and the males also were the political authorities:

The band was a stable body governed by an informal council of its leading men, one of whom acted as chief. All the bands of a tribe amalgamated for several weeks or months during the summer, and either selected a head chief, or tacitly acknowledged the authority of some band chief who possessed outstanding influence...The tribe was thus a definite unit sharply separated off from neighbouring peoples...Clearly the plains tribes had reached a higher level politically than the tribes of eastern and northern Canada. Nevertheless, they suffered from the same inherent weakness - the indefinite and uncertain authority of their chiefs.⁶

This organization into larger tribes, Jenness thought, had come about in recent times as a result of the improved ability to hunt buffalo after the introduction of the horse after the Spanish conquests. The larger tribe was a more efficient hunting unit than the small bands. These changes had caused a notable development of the political life of the plains Indians. The political structure was, in addition, more complicated than the simple division into tribes, bands, and families. Cutting across the division of the plains tribes into bands was another division into societies or fraternities, whose members might belong to any band. The number, organization, and functions of these societies varied. Some "acted as police, under the general supervision of the head chief and the tribal council; they regulated the life in the camp and on the march, kept guard when enemies were near, and punished all infringement of the rules that governed the communal buffalo hunt."⁷

Deviant behaviour, and behaviour harmful to the group, was regulated in the smaller migratory bands as well:

In the absence of chiefs and of any legislative or executive body within the tribes and bands, law and order depended solely on the strength of public opinion. There were no written laws, of course; merely rules and injunctions handed down by word of mouth from an immemorial antiquity, and more temporary taboos operative during the lifetime of an individual. Persuasion and physical force

were the only methods of arbitrating disputes, social outlawry or physical violence the only means of punishing infractions of the moral code or offences against the welfare of the band or tribe.⁸

Conflict resolution and control over harmful behaviour could be subtle and sophisticated. Among the Inuit, for example, arguments and conflicts were resolved through a song contest, in which the opponents tried to best each other with songs of derision. Rasmussen related the song of Piuvkaq whose nephew was enraged because Piuvkaq had eaten up one of the nephew's largest caches of musk ox meat during a spell of unsuccessful winter hunting. The nephew was furious enough to threaten the uncle's life. The uncle's song says:

In my innocence
I didn't understand
what you were shouting.
Murder never crossed my mind!
Foolishly I quite forgot
that -aj- a miser's mind
could be obscured like that!
But here I am
to douse you with mockery,
to deluge you with laughter:
a cheap correction,
easy punishment!⁹

The nephew responds with his song; the community laughs at the discomfiture of both as telling verbal blows are struck, and a contest could end with the two opponents having enjoyed it so much they would be eager for another.

Another Inuit, in expressing his challenge for a song contest, claims:

and yet I don't forget how thoroughly one pities the victim of the fight, made lonely by the song of mockery immediately the contest finishes.¹⁰

Bad temper would be exorcised through the contest, the community would enjoy the spectacle of the loser's embarrassment. Ridicule and teasing would sanction the deviant and affirm the standards of proper behaviour, and communal life would continue without the need to resort to force or violence.

Society was more complex and political organization more intricate among the less migratory tribes in southeastern Ontario and along the

Pacific coast, where the original inhabitants dwelt in semi permanent villages and possessed food resources that were stable and constant.

The league of the Iroquois contained five, later six tribes (after the Tuscarora moved north from Carolina). These tribes:

were completely independent in domestic matters, but delegated their authority in external affairs to a council that represented them all. Every tribe was divided into four or more clans bearing animal names such as bear or turtle; and each clan was an exogamous unit, so that its members, men and women alike, had to marry outside it.¹¹

The Iroquois recognized descent through the female line alone. Boys belonged to the mother's clan, and inherited name and family traditions from her.

Every man had divided interests: for if parental affection attached him to his own children, who were members of his wife's clan, the clan to which he himself belonged attached him to his sister's children who alone could be his heirs. The women were, therefore, the real guardians of all the names and traditions of a clan. Moreover it was the women who controlled the long, bark cabins that sheltered up to twenty individual families. Every cabin recognized some elderly female as its ruler, or two females if it contained families derived from two lines of descent.¹²

The clans were divided into maternal families of 50 to 200 people. "The authority possessed by the matrons of the maternal families would seem", Jenness concluded "to constitute then the ultimate 'powers behind the throne' in the political life of the Iroquois."¹³

Over and above this level of organization was that of the league of the six nations:

The council that administered the affairs of the league was composed of nearly fifty chiefs or sachems, all of equal rank, and all selected from maternal families. They assembled at irregular intervals, whenever necessity arose, to arbitrate on intertribal problems, to receive embassies, and to decide on peace or war with outside tribes. Being federal officials, they possessed no legal authority in matters that concerned only a single tribe or clan, but in practice they wielded considerable power. The method of selecting the sachem was peculiar. His title was hereditary in some maternal family, so that the choice of a representative was limited.

The matron of that family selected a candidate after consultation with other women of her family and clan: her selection was ratified, first by the sachems of the same phratry, then by the sachems of the opposite phratry, and finally by the entire council of the league, which called a great intertribal festival to install him in office. The same matron had power to depose him again if he failed to uphold the dignity of his position...¹⁴

There were also warrior chiefs who could rival the sachems in influence. Law and order lay wholly within the jurisdiction of each tribe. It was an egalitarian, democratic society. The league had succeeded in breaking down the exclusiveness of each tribe by substituting the blood price for the blood feud, by amalgamating clans with similar names of the different tribes, and by establishing a federal council and a federal treasury. The political organization combined local autonomy with a certain measure of federal control. The argument has been made that [the idea of a federal constitution for the United States (which Canada later adopted)] found its origins in this federal polity of the league of six nations.

The Pacific coast Indians also had a complex social and political organization, though there was no federal council comparable to that of the Iroquois. There were clans and phratries, and there were also three degrees in society: nobles, commoners, and slaves. The ultimate political unit was the village. Every village of any size contained several genealogical families or "houses" and these houses would have representatives in several villages. The union of two or more houses produced a clan. Property could descend either to a man's children or to his sister's children; Jenness says that the exact rules that were followed were not well understood.¹⁵ Although the phratries were important, the dominant political unit was the village. There were grades of nobles, and grading depended to a large extent on the lavishness of potlaches. A higher title could be reacquired by a particularly lavish potlach. But despite these variations in social rank, west coast Indian life had a "socialistic" character. Food and goods were shared, and nobles lived little better than their slaves.

Deviant and criminal behaviour could be handled in a variety of ways. Punishment could be levied as fines of goods. Although among the Tlingit food and many other goods were held in common, many other articles:

such as canoes, tools, traps, weapons, and such lesser ceremonial gear as masks and dancing shirts, were owned by individuals. Other individuals, either within the clan or outside, could borrow these, provided they brought them back or replaced them at some later date. If the borrower failed to return the article within a

reasonable time, the lender could disseminate stories of ridicule about him. These stories were somewhat in the nature of the paddle songs of the Tsimshian, but not so highly stylized, and like the paddle songs they heaped ridicule upon the debtor until he came to terms. These stories were used only when it was well known that the debtor was able to pay but refused to do so for selfish reasons. If these stories did not have the desired effect, the creditor could discuss the matter with members of his own clan. If the debtor belonged to the same clan and was in a position to pay, the social pressure of the clan was sufficient to bring him to terms. If, however, he was unable to pay and there was little likelihood of his ever being able to pay, the clan would permit the creditor to take the debtor as a debt slave.¹⁶

There were shameful acts as well as crimes. And although the fact of shame itself was usually a sufficient deterrent, among the Tlingit as among other peoples, some persons were prepared to dare shame in order to gain their ends. These persons were brought to terms by ridicule:

Ridicule had many forms. The most effective consisted in making the offender of the properties the laughing stock of the village by disseminating songs and stories about him. Such songs and stories were often composed by paid song makers. Another form was the making of ludicrous wooden likenesses of the offender and placing them in prominent locations. Sometimes elaborate totem poles were carved with this motive in mind. Mimicry was also resorted to in bringing an offender to terms, or he might be called a White Man, which every Tlingit considered the height of public censure.¹⁷

Among the most important political features of West Coast Indian societies was the potlach. This system was:

used by many First Nations on the West Coast. From time to time, community or national leaders call assemblies which are widely attended. Through ceremony, song, dance and speeches, new leaders are installed in office. Wealth is redistributed through an economy based on giving rather than accumulating. Names are given and recorded. Political councils are held and decisions are made. History is recalled and instructed. Spiritual guidance is given. While the system of the Potlach is very different from that to which Europeans are accustomed, it contains all the necessary elements to maintain continuity, good government and a sense of

identity, and it permits people to conduct their own affairs and to determine the course of their destiny.¹⁵

This very brief overview of traditional native government can do no more than highlight some of its important features. The diversity of aboriginal cultures and the variety of economic conditions meant that there was a huge range of forms of politics and governmental processes, far more so than in Europe, with its common Roman and feudal inheritance. The examples referred above are only suggestions of this diversity. Nevertheless, even this brief summary points towards some important conclusions.

First, traditional aboriginal societies did have self government. The processes of self government enabled essential political functions to be performed: they allowed collective decisions to be made on crucial issues of hunting, migration, settlement, and relationships with other peoples; they ensured equitable distribution of goods and resources, and allocated tasks and functions amongst members of the community; they regulated behaviour, prevented harm to individuals, and punished wrong doers; they established and regulated the institutions of social life, family inheritance, and other relationships.

Second, politics and government were embedded within the social, economic, and cultural structure. In fact, they were so closely inter related with other features, such as religion, family, and means of subsistence, that it is an artificial and distorting process to examine politics as a separate, distinct, process. With few exceptions, such as the Iroquois, aboriginal cultures did not have separate bodies or individuals performing representative roles in speaking for a group or band in an assembly. And even where chiefs or leaders of some sort existed, they were not, in wealth, power, or life style, much different from the rest of their society. Leadership was more a result of personal characteristics than of occupying a special position and doing different things. This unity of social, religious, political, and economic life is one of the features of aboriginal culture which is most strongly contrasted with European culture, with its marked specialization of functions, separation of activities – church from state, work from family, economic pursuits from leisure, politics from family and religion, law from custom. Diamond Jenness expresses this forcefully:

Many people have imagined that because the Eskimo's amorphous societies lacked organized governments, and considered each individual the equal of every other, they necessarily also lacked leaders. That was not so. In pre-European days each band or settlement possessed its unofficial leader or leaders, men whose

force of character or superior skill and prowess in hunting gained them acknowledged influence over their fellows. Ikpakhuak, who adopted me as his son, was such a leader, although his little band in Dolphin anti Union Strait, at the western entrance to Coronation Gulf, counted only six to eight families. A far greater leader, venerated by all the Eskimos in Bathurst Inlet, was the shaman philosopher Iltsiak. These two Eskimos were tribe leaders, dignified in bearing and grave of speech, as befitted men who carried in their hands the lives and destinies of their kinsmen and neighbours.¹⁶

Third, there was no identifiable separate activity of administration in traditional aboriginal societies. The functions which administration performs in European society were performed within, and as part of, the totality of aboriginal society. Thus education was part of family and tribe, and did not involve specialized schools or school boards. Social welfare was part of hunting, gathering agriculture, and the sharing of resources within family and band; it required no special administrative apparatus. And law and order were part of the general structure of inter personal and inter group relations.

Fourth, politics and government in traditional aboriginal societies were not crude or unsophisticated. The word 'primitive' is not appropriate. In contrast with techniques like the song contest, or the use of ridicule to resolve disputes and punish anti social behaviour it is the western law courts and systems of justice and incarceration that are crude, violent, and insensitive. Many western social scientists and philosophers, in observing the transition from a community based to mass society have mourned the loss of valuable human qualities, including the integration of work and society, or of spiritual meaning in most activities. This Max Weber called 'the loss of enchantment' "the integration of functions in traditional culture meant greater complexity, sensitivity, and meaning in varied activities; the division of them into separate compartments contributes to the loss of meaning in modern mass society. The benefits of a more complicated political structure, with clearly separated political, administrative, and judicial activities, may come at a price of crudeness and impersonality, and insensitivity in operation.

The cultural values expressed in traditional aboriginal governments were very different from those of European political culture:

A chief cannot get angry with his people. He cannot call anyone down. He must speak with kind words at all times. If you go to where the chiefs live in the tradition of the Mowhawks, you will

notice something peculiar. Their houses are usually the most humble and the smallest, because they are always giving to the people of their nation. How much you have given since you were a baby is one of the criteria that the women take into consideration when they select a leader. What counts is how much you gave to others, not how outstanding you were at this or that...

Our chiefs cannot go to war; they would forfeit their claims to be peace chiefs...

So when you say 'Indian government' to the Iroquois, Mohawks, Oneidas, Onandogas, Cayugas, or Senecas, we think about the Creator's law, not parliamentary procedure. We don't associate it with the prime minister or the president. There is no room in Indian government for people who seek power, fame, and notoriety. Indian government seeks humble men, as humble as you can find in the world, because they must give and give and cry for their people. When the gardens are not good and there is a scarcity of food, the leaders will be the last ones to eat. First come the children, then the old ones, then the rest of the people, and if there is anything left over, then the chief will eat. Traditional Indian government is foolproof because it is based on integrity, justice, and real democracy.¹⁰

'This is, of course, a somewhat idealized account, and represents tilt' political ideals of only one Indian nation. Others were more power oriented and aggressive. In most, however, strong emphasis was placed on the values of consensus and cooperation rather than arbitrariness and coercion.

Fifth, by the time that western scholars began to study aboriginal cultures they had already been influenced by the European invasion. The society of the plains Indians, based on the horse and the large-scale buffalo hunt, had evolved after the introduction of the horse by the Spaniards some centuries earlier. The fur trade had encouraged Indians of the boreal forest to identify specific areas as trapping property, and had encouraged them to concentrate in larger communities than before. Aboriginal societies were no more static and unchanging than European society. They responded to new technologies, economic possibilities and external pressures. Part of this response was evident in changing political processes. A large number of these changes were in response to innovations, such as the horse, and the fur trade which were of benefit to aboriginal peoples.

Sixth, traditional aboriginal societies were isolated from most outside pressures. Contacts with other bands were not frequent, occurring perhaps as part of a yearly communal hunt or fish-gathering, and contacts

with other tribes, and peoples of other language and culture, were even less frequent. This, in part, was what created the tremendous diversity of native cultures and economies. European society, by contrast was large, relatively homogeneous and constantly interacting with other groups and peoples, frequently at a great distance.

Seventh, pre-European native communities had an autonomy and integrity that no western nations, except perhaps the superpowers, now enjoy. The decisions they made were their own, and were not in response to pressures from foreign governments, or from forces in international trade and commerce over which they had no control. Loss of autonomy, whether of groups, provinces, or nations, is a price that has been paid for the advance of technology and industrialization.

2 THE EVOLUTION OF THE NOTION OF SELF-GOVERNMENT

The cultures of aboriginal Canadians had begun to adapt and change in response to the pressures from non native intrusion long before lands were actually taken over and settled by non natives. For some time, the relationship between native society and non native was reasonably balanced. Native skills in trapping and hunting and wilderness travel and their knowledge of the land were essential to exploration and settlement. But European civilization, and particularly its North American variant, is perhaps the most aggressive, powerful, and imperialistic of any civilization the world has known. Almost everywhere that the European met the aboriginal, the relationship soon became unbalanced, with the dominant European culture forcing native population into political dependency and economic marginalization.

In this process, the variety and autonomy of aboriginal cultures were subjected to several powerful forces. One of these was the western propensity for classifying issues and persons according to legal and bureaucratic norms. As a result there are many different legal and administrative classifications and varieties of aboriginal populations in Canada, including Status Indian, Non Status Indian, Metis, on reserve, off reserve, band members, non band member, treaty, non treaty, etc. These classifications often bear little relationship to cultural and economic distinctions. Nevertheless, they are the basis for many of the differences in the way government treats aboriginal populations. Another powerful force was the tendency of governments to want to change aboriginal societies and individuals. Political autonomy was systematically destroyed. The traditional economy was similarly damaged, populations were resettled, and they were subjected to an alien educational system.

These processes have been amply documented by historians and social scientists. The Hawthorn study¹ commissioned by the federal government in the early 1960s was an important step towards not only recognizing that these changes had occurred, but that they had also created unhealthy conditions of dependency and substandard existence. The Hawthorn study, Jenness' work on the Inuit, and other studies

revealed that despite the improvement in services, the social and economic conditions of native Canadians remained unsatisfactory.

One of the responses of the federal government was to devote more resources to improving education and health, extending welfare, and encouraging economic development. These had the consequence of increasing the influence of the federal administrative apparatus on aboriginal communities and individuals. The end result was a system of neither self-government nor self-administration. Both political power and administrative responsibility remained with the federal government and the administrative apparatus remained largely in the hands of, and controlled by, non-natives.² Aboriginal communities were serviced as the clientele of the administrative state. This was not colonialism in the normal sense of the term. Colonialism implies that the colonial power receives some economic gain from the exploitation of the colonized peoples, who serve as the workers in the mines, and the labourers in the fields. In this sense, there was little exploitation. Quite the contrary, it was difficult to find employment and meaningful economic activity for aboriginal populations so that they could earn their fair share of the wealth of the growing economy.

The conclusion is inescapable that a loss was suffered by the aboriginal populations. It was a loss of self-government, a loss of the capacity to make or even influence the decisions that affected individual and collective destiny. It was also a loss of culture and identity as alien institutions and forms were imposed on aboriginal cultures. Some of these losses are still to be adequately examined. For example, the imposition of patrilineal descent and inheritance through the *Indian Act* must have come into conflict with the matrilineal patterns of some aboriginal cultures. However, what the outcome of this conflict has been is far from clear. Undoubtedly it placed severe stress upon the culture, the community, and the individual.

Aboriginal cultures have had to adapt to the realities of the federal administrative state and other pressures. Unlike the adaptations of earlier times, when the skills and knowledge of aboriginals were important to explorers, traders and settlers, and relationships were in reasonable balance, relationships and powers were now severely out of balance. Adaptations in this century have been in response to irresistible outside forces in which aboriginal populations had no control, which could be very harmful, and which were often difficult if not impossible to assimilate and to reconcile with traditional culture. The process of cultural change is something which all civilizations undergo. Sometimes the process is rapid, sometimes slow. It can be beneficial or harmful. To Canadian aboriginal populations in this century it has more often than not been harmful.

A recent World Health Organization study, in examining the health of peoples in the arctic regions, explained the issues in terms of the phenomenon of acculturation which takes place when the two societies or their active agents come into contact with one another.

Acculturation has been defined as the change, both cultural and psychological, which occurs as a result of continuous first-hand contact between two initially distinct peoples. Early studies of the impact of acculturation on individuals and families tended to emphasize the negative consequences, those leading to a reduction in health status, as evidenced by mental health problems (e.g. depression, identity confusion), family disintegration (e.g. divorce, spouse and child abuse), and increased societal breakdown (e.g. crime, interpersonal violence). More recent studies have noted that such negative consequences are not inevitable; acculturation may bring new opportunities, and individuals and communities may improve their lives in substantial ways (e.g., improved housing and nutrition, better control of endemic disease). The process of acculturation is not inherently problematic, but does need to be managed, so as to increase the likelihood of positive outcomes occurring and to decrease the likelihood of negative consequences.³

This study concluded that since the process of acculturation could not be stopped or reversed, the central challenge was to manage acculturation so that changes became opportunities rather than problems to the non-dominant group.

The key notion in their proposals was that of *control*:

In the broadest sense control involves being once again in charge of one's life; at the group level, [this means having the collective right to decide how to live under the new conditions in circumpolar regions; at the individual level, this means having a sense of control over one's own life, and that of one's immediate family.⁴

From this, the WHO study drew two important conclusions.

The first was that self-government was an essential part of re-establishing authentic control over their lives by aboriginal populations. The second was that the desirable path was not a retreat to the past and towards isolation of native societies, nor was it assimilation into the dominant culture. Rather it was adaptation and continuing relationships between them.

This WHO critique is very much in line with many other studies from economic, political, legal, sociological and other perspectives, all of which suggest [that the structure of administrative dependency has become part of the problem. Self-government, and some measure of self-determination and control over individual and community destiny are essential for the purposes of both the aboriginal populations and the larger, non native society.

Self government gradually emerged as an issue in the second half of the twentieth century. In the late 1950s the provinces of Saskatchewan, Manitoba, and British Columbia commissioned studies of their native populations. A joint Senate-House of Commons Committee examined native issues in 1959. In the 1960s several studies of the federal government dealt more or less directly with natives. The "Glassco Commission on government organization and management looked at administration of the Northwest Territories. Diamond Jenness wrote his study of Eskimo administration. The Carrothers Commission made a further examination of the political development of the Northwest Territories. The Hawthorn group produced their massive report.

In the seventies this momentum continued with the examination of the impact of a pipeline on the Mackenzie valley by the Berger Commission. The James Bay negotiations and settlement provided an initial example of self government. In the eighties the report of the Penner Committee on Indian Self Government, the Drury Report on constitutional development in the Northwest Territories, and the involvement of aboriginal groups in the constitutional process have added further momentum.

There is now a large body of material on various aspects of self government, including not only these government inspired studies but also studies commissioned by native groups. To a large extent, however, work on self-government is directed towards specific concerns of the moment, and not to broad questions of how self-government could be administered and actually made to work. A comparison of three important early studies – Hawthorn, Glassco,⁵ and Carrothers,⁶ will illustrate this point.

These studies represent a curious mixture. The Hawthorn Report was the most sensitive to the cultural and social conditions of natives. At the same time the proposals for a much greater role for the provincial governments paved the way for the 1969 White Paper, with its plans to transfer almost the entire responsibility for Indians to the provinces. This, perhaps unfairly, appears to have discredited many of the other very useful suggestions of the study.

The Glassco Commission appears to have had a mild case of split personality. On the one hand it was aware of the unique problems of

natives, on the other hand it ignored self government and simply proposed more sensitive administration.

The Carrothers study was, of the three, the one most firmly in the traditional line for the development of the political institutions of responsible government in Canada. Its proposals echoed the way in which parliamentary cabinet government had emerged in the southern parts of the Northwest Territories in the nineteenth century, in the areas which later became the prairie provinces. There were no apparent efforts by the Carrothers Commission to adapt these institutions and their development to the peculiar characteristics of native culture and society. Rather, the unarticulated assumption appeared to be that there was adequate room within the traditional model for native development, and that it should occur in the direction of closer similarity to the institutions, values and processes of non native politics and administration.

All three studies recognized the urgent need to train natives for positions in the administration, particularly at the professional level. The proposals for this by the Carrothers Commission would have required an investment by the federal government in university facilities, and this proved to be a proposal the federal government was unwilling or unable to make.

The proposals of the Hawthorn study were largely for local government institutions concerned with the delivery of services. The study recognized that questions of policy making and creation of new sorts of programmes existed, but did little to suggest how they might be handled. The exception here were proposals to strengthen national native organizations, and the general attempt to improve the visibility and political influence of natives.

Particularly vague were proposals for economic development. Everyone recognized the need, but nobody seemed to have a clear idea of how to achieve it. The same could be said about acculturation. The studies recognized that there was a problem, but did not clearly analyze it, either in terms of individuals or groups.

The three studies between them contained reasonably full and detailed proposals for aboriginal self-government in both north and south. The Hawthorn study in particular examined social and economic conditions and attempted to combine proposals for economic and political development into a coherent strategy for improvement and change. The study wanted Indians to be regarded as 'citizens plus'.

From the perspective of twenty years later, all three studies underestimated the difficulties. These difficulties were of several orders. First, the packages of proposals (especially Hawthorn's) were so complex that they contained conflicting messages, including a greater role for the provinces, more autonomy for native communities, improved services,

and a continuing federal role. The Glassco study, though it deliberately eschewed talking about political power, implied that representative government on the parliamentary model was required, but that it had to be adapted to the special circumstances of the north. The Carrothers study elaborated these ideas in more detail, and was specific about the central institutions of territorial government. In the end, the messages received by the government and translated into policies and policy proposals were considerably simplified. From the Hawthorn study the message became delegation to the provinces; for the territories it became representative parliamentary institutions.

Second, the proposals for economic development were vague, and remained pious wishes. Economic development was recognized as an urgent priority, but how to do it was not clear. Improved service delivery is more straightforward and easier to do than economic development. It is a natural tendency of government to put its money and attention on things where results are visible and easy rather than on those where they are obscure and uncertain.

Third, none of the studies came to terms with the problems created by conflicts between the dominant non-native culture and the native cultures. To the extent that the issues were those of acculturation – of enabling entire communities and cultures to control forces which affected them, to adapt and change, to develop the internal cultural and community resources to handle these processes – the issues were perceived only dimly. These fundamental underlying questions tended to be neglected in favour of more easily understood problems, anti cultural adaptation to a large extent became identified as training of individuals for jobs and positions of leadership.

The Continuing Movement Towards Aboriginal Self-Government

In the twenty years that elapsed between these early studies of the sixties and the re-emergence of self-government as a central issue with aboriginal Canadians, there were many twists and turns. The Department of Indian Affairs and Northern Development, created in 1966, greatly improved and extended services and service delivery, and from the mid-sixties on DIAND in recent years has also encouraged the devolution of responsibility for service delivery to bands and band councils. The transfer from DIAND to band began with services such as social assistance, child care, education of children, and providing and operating community infrastructure. There was a steady increase in the funds administered by bands, as seen below:

1971	\$ 34.9 million	16% of total budget
1976	147.6 million	31% of total budget
1982-83	526.6 million	W) % of total budget

Now over 60%, or \$800 million, is administered by bands. Bands also receive core funding to cover general administrative expenses. The process of devolution of service delivery has not been without difficulties. Nevertheless, it has given bands some measure of control over important programmes which affect them, has created a nucleus of competent Indian band level political leaders and administrators, and in general has improved the returns from expenditures. Band control of education has proven to be more successful than either departmental or provincial control.

The federal government ran into problems with its proposals to devolve responsibilities to the provinces. In 1968 it began consultation across Canada on changes that should be made to the *Indian Act*. Hardly had these consultations been completed than the government tabled its *White Paper on Indian Policy*⁸ which proposed far reaching revisions, including the repeal of the *Indian Act*. Adverse reactions from Indians and the public were so strong that the government backed down on its proposals to terminate the special status of Indians. It withdrew the *White Paper* in 1971.⁹ The legal framework of the *Indian Act* has remained in force. It was not intended to be a vehicle for self-government or native administration of programmes, nor was it suitable for these purposes.

The Berger Commission inquiry into the impact of a Mackenzie valley pipeline helped raise awareness of northern and native problems. It:

mobilized the native political organizations, raised the consciousness of the people in the communities, and even sensitized many non-native northerners to the plight of their fellow northerners. Moreover, the Berger inquiry elevated northern issues to the national level, awakening the awareness and consciences of many southern Canadians to the legitimacy of northern demands. . . its impacts were felt across the north¹⁰

The provincial government of Quebec in the early seventies proposed massive hydroelectric development of the rivers running into the eastern share of James Bay. This led to confrontations between the aboriginal populations of Northern Quebec, who had largely been a clientele of the federal government, and the provincial government. The end result was a settlement of land claims which gave the James Bay Cree and the Inuit of northern Quebec a land base, financial resources, improved services, and a substantial measure of self government.

The NDP Governments of Saskatchewan and Manitoba created special departments to deal with their northern areas. These Departments were principally concerned with improving the lot of northern Non-Status Indians and Métis who were outside the responsibility of DIAND, though their social, cultural, and economic conditions were comparable. Economic improvement, institutions for local self government, and community development were central parts of the programmes of these provincial departments.

Particularly with the growing thrust for exploitation of northern resources, the questions of land claims, native rights, and definition of the fundamental legal and economic entitlements of native Canadians became important political questions.

A core funding programme was established in 1971 to assist groups representing Indians, Métis, and Non-Status Indians and Inuit to express their needs and views to all levels of government, to enable these groups to participate in the political, social and economic institutions of Canadian society, and to contribute to the development of aboriginal leadership. The funding and number of groups supported by the Secretary of State for this programme have been:

1971-73	\$ 6 million to 24 associations
1974-76	8.3 million to 34 associations
1977-81	9.2 million to 42 Associations
1982-83	12.9 million to 52 associations
1983-84	13.4 million to 57 associations ¹¹

Other support for these representative aboriginal associations now brings their level of funding above \$100 million annually. Thirteen per cent of their total revenues come from the Secretary of State,⁹⁰ per cent from the federal government overall, and the remaining 10 per cent from provincial and other sources. This makes them among the best-supported associations in Canada. They have also become among the most effective pressure groups.

Economically, the conditions of aboriginal Canadians improved, though not as quickly as might perhaps have been hoped. A study published by DIAND in 1980 showed that though there had been considerable change, Indians on average still lagged far behind the Non-Indian population.¹² At the same time there was a pronounced movement of aboriginal Canadians to the larger cities, so that Toronto now has a larger aboriginal population than northern Ontario, or the Northwest Territories.

The constitution of Canada now recognizes and affirms the unique rights and special status of aboriginal Canadians, including Indians, Inuit,

and Métis. "These rights include both rights to land and to decide what happens on that land. It will, however, be many years before these abstract constitutional statements are clearly defined and translated into specific pieces of land and specific rights over them. The Constitution also provides for the convening of First Ministers' Conferences to discuss the meaning of aboriginal rights with representatives of aboriginal populations. These meetings will also discuss self government. At a conference in April 1985 the federal government proposed a constitutional amendment which would entrench a process for the negotiation of a constitutionally protected agreements on aboriginal self government. This will again be discussed at a First Ministers' Conference in 1985.

The two decades since the 1960s were periods of great activity. The most visible actions concerned legal questions of land claims and rights, but at the lower levels there were immense changes and improvements in services. To a large extent these developments occurred on two separate tracks, with little contact between them. The well reported and published constitutional process, royal commission studies and parliamentary committee examinations dealt with major questions in a comprehensive way. At the band level, administrative economic and political changes were taking place that were rarely discussed by the media except when something went wrong. For the most part the national native organization dealt with the visible national issues, not the local ones.

Perhaps as a natural consequence of these difficulties, there now appear to be two distinct approaches to native issues, and ways of resolving them. One is the constitutional and legal approach on which the national native organizations are concentrating their efforts. The other is within DIAND itself, where there are strong pressures to devolve responsibilities to bands or treaty councils. An important product of this process was an Act of Parliament in 1986 granting self government to the Sechelt Indian Band of British Columbia.¹³

At this point in time there are many different sorts of aboriginal self government in Canada. The government of the Northwest Territories, which is much like a provincial government in organization structure and responsibilities, administers a population that has an aboriginal majority. The James Bay Cree and the Inuit of northern Quebec have a measure of self government. The Sechelt Indians have been granted self government by an act of parliament. Control of services and service delivery by Indians under DIAND is a step towards self government. Experiments of the provinces, such as those of Saskatchewan and Manitoba in their northern region, and of the three prairie provinces with their Métis populations, also have some interesting features and elements of self government.

Part II
“Public” Questions

3 THE FUNCTIONS OF SELF-GOVERNMENT

The question of what function government should perform is even more important for aboriginal self governments in Canada than it is for a nation state. Self governments will almost certainly operate within the context of the existing system of Canadian government and the complexities of federal-provincial relations. Some functions will be handled by the federal government, some by the provincial, and some by the aboriginal governments. Out of the multitude of possible activities, responsibilities, and functions of a modern government, the self-governing units will have to choose those which are essential to their purposes, and which it is feasible for them to perform. This will vary. Remarkable variation exists already within the model tried or proposed in Canada.

The Hawthorn study viewed self government as a form of local government. These local governments were to be largely instruments for the effective delivery of services such as education, health, and welfare. Reserves would be treated as municipalities for the purpose of all provincial and federal acts which provide grants, conditional and unconditional, to non Indian municipalities. Although the self governing units were also to have responsibility for community and economic development, the functions envisaged for them were quite limited.

The Penner Report of 1983 emphasized "the importance of Indian control in areas central to the cultures of First Nations...in some cases only Indian control of legislation and policy would ensure the survival and development of Indian communities. Three areas of critical concern were education, child welfare and health."¹ These points were further elaborated:

- In order to pursue their goals, Indian people want real power to make their own decisions and carry out their own plans for Indian education.

- The imposition of non Indian views of child care, through the enforcement of provincial child welfare policies on reserves, has had tragic effects on Indian family life.
- Unlike the testimony on education and child welfare, where possible systems for delivery services were described, witnesses did not specify how health care services would be provided. The emphasis was on control of the system rather than designing new systems.²

These conclusions on functions were reached within the context of the primary principle that "there are matters that must be controlled by Indian communities to ensure their cultural survival... By exercising control over these matters, Indian people could ensure that future generations were able to preserve and enjoy their culture and heritage."³

In its recommendations, the committee was more general. It was agreed that:

full legislation and policymaking powers on matters affecting Indian people, and full control over the territory and resources within the boundaries of Indian lands, should be among the powers of Indian First Nation governments.

The committee therefore recommended that:

Indian First Nation governments exercise powers over a wide range of subject matters. The exact scope of jurisdiction should be decided, by negotiations with designated representatives of Indian First Nations. A First Nation government should have authority to legislate in such areas as social and cultural development, including education and family relations, land and resource use, revenue-raising, economic and commercial development, and justice and law enforcement, among others. First Nation governments may also wish to make arrangements with the federal and/or provincial governments to continue existing programs or services.⁴

The recent task force on a comprehensive claims policy suggested that the reason for self-government was "to encourage the development of aboriginal communities as strong, confident, and distinctive societies within confederation."⁵ The task force also noted that European colonization and settlement had severely undermined the integrity and stability of native societies. Self government had to avoid the notion that European values were superior, and should recognize the special rights

and the unique cultural values and traditions of aboriginal societies. For this to succeed:

Aboriginal peoples should exercise the greatest possible control over matters that directly affect the preservation and enhancement of their culture. They also should be able to negotiate provisions to ensure the social well-being of their communities.

The claims process should provide an opportunity for aboriginal peoples to create their own political institutions in negotiating with representatives of the appropriate governments. In principle, aboriginal people should be free to determine the form of government best suited to them; however, discussions between governments and the aboriginal peoples will be necessary to determine how the structure of aboriginal self government would relate to the larger Canadian political system.⁶

This implicitly includes a much larger range of functions than that proposed by the Penner Committee, and is much more all embracing than the limited sort of local self government foreseen by the Hawthorn study. Ownership and control of land, hunting, fishing, trapping, participating in wildlife management, and rights to participate in and benefit from general economic development were all parts of self-government.

Gibbins and Ponting suggest the following summary of aboriginal aspirations for self government:

1. Greater self determination and social justice. Protection of and control over own destiny, rather than subordination to political and bureaucratic authorities based outside the ethnic group.
2. Economic development to end dependency, poverty, and unemployment. Economic justice in the sense of a fair distribution of wealth between the aboriginal and non-aboriginal populations.
3. Protection and retention of aboriginal culture.
4. Social vitality and development that will overcome such existing social problems as ill health, the housing crisis, irrelevant and demeaning education, and alienation (including its manifest symptoms such as interpersonal violence, suicide, and the abuse of drugs and other substances).⁷

In order to achieve these aspirations, aboriginal self-governments would need: *first*, political institutions that would be accountable to the

aboriginal electorate; *second*, a (territorial base; *third*, control over group membership; and *fourth*, continuing fiscal support.

The National Indian Brotherhood, according to Gibbins and Ponting, listed 24 areas that would be within the jurisdiction of self government:

(1)band constitutions; (2)citizenship; (3)land; (4)water; (5)air; (6) forestry; (7)minerals; (8)oil and gas; (9)migratory birds; (10)wildlife; (11)fisheries; (12)conservation; (13)environment; (14)economic development; (15)education; (16)social development; (17)health and welfare; (18)marriage;(19)cultural development; (20)communications;(21)revenues;(22)justice; (23)Indian law enforcement; and (24)local and private matters.⁸

This also appears to be a more comprehensive list of powers than is enjoyed at present by either the federal or provincial level taken singly. Some, such as conservation, involve international treaties.

Bill C-46, establishing self-government for the Cree/Naskapi of James Bay included as objects and power of bands: (a) to act as local government authorities; (b) to use, manage and administer land and natural resources; (c) to control the disposition of rights and interests in land; (d) to regulate the use of buildings; (e) to use, manage, and administer band funds; (f) to promote the general welfare of members of the band; (g) to promote and carry out community development and charitable works in the community; and (h) to establish and administer services, programmes and projects; (i) to promote and preserve the culture values and traditions of the Crees and Naskapi.⁹

Bill C-52, legislation on Indian self-government introduced by the Liberal Government in 1984 but not passed by parliament, proposed that the objects of the government of an Indian Nation should be:

- (a) to act as the government authority within the lands of the Indian Nation in accordance with this Act;
- (b) to protect and enhance individual and collective rights of the members of the Indian Nations;
- (c) to promote the general welfare of the members of the Indian Nations;
- (d) to protect and enhance the cultural heritage of the members of the Indian Nation: and

(e) to use, manage, develop, administer and regulate the lands and resources of the Indian Nation.¹⁰

Bill C52, like the BNA act, contained a list of enumerated headings on which self governing Indian nations had the powers to make laws. These included:

- 19. (a) construction within the boundaries of the lands of the Indian Nation;
- (b) zoning and land use planning in respect of the lands of the Indian nation;
- (c) public order within the boundaries of the lands of the Indian Nation;
- (d) the environment, within the boundaries of the lands of the Indian nation;
- (e) public health, hygiene and safety within the boundaries of the lands of the Indian Nation;
- (f) licensing of trades within the boundaries of the lands of the Indian Nation;
- (g) renewable and non renewable resources, including wildlife, within the boundaries of the lands of the Indian Nation;
- (h) agriculture within the boundaries of the lands of the Indian Nation;
- (i) charges for the use of public services provided, pursuant to laws made under this section or pursuant to section 20, within the boundaries of the lands of the Indian Nation;
- (j) the administration of justice within the boundaries of the lands of the Indian Nation, including
 - (i) the constitution, maintenance and organization of judicial and quasi judicial bodies with jurisdiction in relation to laws of the Indian Nations, and
 - (ii) the establishment and maintenance of jails, the provision of police services and prosecutions:

(k) family law in relation to members of the Indian Nation permanently resident within the boundaries of the lands of the Indian Nation, including marriage, separation, divorce, legitimacy, adoption, child welfare and guardianship of minors and incompetents;

(l) property within the boundaries of the lands of the Indian Nation, including rights in property, descent of property, expropriation, and access to and residence on lands of the Indian Nation;

(m) matters of purely local or private nature for the good government of the Indian Nation; and

(n) the imposition of fines, penalties or, subject to the regulations, imprisonment for enforcing any law made by the government of the Indian Nation in relation to any matter coming within any class of subjects enumerated in this section.

These quite extensive powers were qualified by section 28, which stated that:

28. No law may be made by the government of an Indian Nation that is recognized that conflicts with the *Canadian Charter of Rights and Freedoms* or any international covenant relating to human rights signed by the government of Canada.

Section 31 gave the Governor-in-Council the power to disallow any law or provision of a law of an Indian Nation. Section 32 stated that the *Statutory Instruments Act* did not apply to laws enacted by the government of an Indian Nation.

The legislation to establish self-government for the Sechelt Indian Band contained no such statement of general objectives.¹¹ The minister stated that the legislation was based on proposals by band members. Its purpose was to establish the band as a legal entity to provide for the transfer to it of fee-simple title to its lands. The objectives were:

- to increase local control and decision making;
- to recognize the diverse needs, traditions, and culture of those it serves; and
- to provide accountability to local electors, rather than to a federal bureaucracy.¹²

Two points are apparent. First, self government is to a large extent an abstract vision rather than a specific, clearly defined reality. There is a great deal of rhetoric surrounding the discussion associated with past grievances, land claims, native rights, and ideals of self determination. One of the biggest challenges facing advocates of self government is to translate these abstract ideals into concrete, practical proposals.

Second, there are going to be many different sorts of self government. Gibbins and Ponting discuss two cases: "those individuals – be they status Indians, Métis or others – who live in communities in which the majority of the population is of aboriginal descent and there is some realistic potential of territorially-based, self-governing aboriginal institutions; and those living outside such communities, for whom the scope and potential for self governing institutions is extremely limited."¹³ But there are many variations even within these two groups. "The situation of the Inuit in Nunavut will be quite different from a small reserve in the south, though each will have some sort of land base. The situation of Status Indians living in Toronto is vastly different from that of Métis families living in the Prairies, though neither would have a land base.

There is so much variety that it must be recognized that there are now, and will always be, many different forms of self-government, each performing some of, but not all of, a wide range of functions. The most important functions are:

1. *cultural preservation* – the maintenance of traditional lifestyle, language and culture;
2. *cultural adaptation* – assisting a culture and community to change so that it and the individuals within it can interact effectively with the economy and lifestyle of non-native society;
3. *service delivery* – the economic and effective provision to the community, in a form adapted to and suitable to its needs and circumstances, of services such as health, welfare, education, justice;
4. *economic development* – the active involvement of the self-governing unit in projects and activities which improve the well-being of individuals and the community;
5. *resources and environmental management* – aboriginal populations who maintain a traditional lifestyle will need some control over the resources of their land base; and

6. *law and enforcement* – the relationship of the aboriginal peoples to the law and the judicial system is a major issue at present and will continue to be for most self governing units.

Some aboriginal self governments will emphasize some of these functions, others will emphasize different ones. The Sechelt arrangements, for example, leave law enforcement with the RCMP. Other groups would not be happy with this arrangement.

For some purposes, linkages between self governing units, and cooperation in areas of culture, research and development will have to be developed. Intergovernmental relations for this purpose will be important. Intergovernmental relations will also be important with other levels of government for questions of funding and coordination.

Local government, as it has developed in Canada, fulfills primarily a service delivery function, although it can also perform law enforcement, and get involved in economic development and other activities. Preservation of Canadian, provincial, regional, and ethnic cultures has become a concern of the federal and provincial governments, and even with their immense resources they find it a difficult and challenging task. The conclusion should not be read into this comment that some of these functions are "pie in the sky" and in no way can be performed by aboriginal self governments, but rather that questions of size, scale, and emphasis are important to the effective working of self-government, and must be dealt with to ensure satisfactory policies and administration.

One thing that is reasonably certain is that most aboriginal self-governing units, for many fundamental purposes, will not be comparable to ordinary local and municipal governments. They will have special, different, and important functions. They will also have unique and special populations to serve.

Perhaps the most important of these unique functions for many aboriginal self governments are the questions of cultural preservation and adaptation. These go far beyond the normal meanings of multiculturalism and linguistic diversity in Canada. Aboriginal cultures, communities, and individuals are under severe stress in Canada from the pressures of the greater non-aboriginal society. Programmes have largely focussed on developing the individual aboriginal persons rather than the community. Education, for example, has been similar to that of a person in the south, to prepare him or her for employment. It has not been a means of preserving or adopting the culture and the community. The focus on aboriginal self government is to a large extent an effort to refocus administration and policies away from the individualistic orientation of past programmes conceived in a "non-aboriginal environment, and toward programmes which preserve the unique culture of aboriginal populations.

and enable the community and culture as a whole to adapt and respond to pressures. Individual development and adaptation would then be part of this broadly based social evolution.

These culture related functions of 'cultural preservation' and 'cultural adaptation' are similar to what was termed 'acculturation' in the WHO/Nordic Council Report on family health problems in circumpolar regions. This process has also been termed 'integration' as opposed to 'assimilation', with assimilation involving the merging of aboriginal culture with the dominant one, with the loss of separate identity, while integration links the two cultures, without the absorption and ultimate disappearance of the weaker one.¹¹ The important points in this cluster of concepts and terms is that continuity and change are both included. The essential central values and institutions of aboriginal culture are retained; the community and culture at the same time adapt and respond to the pressures and stresses of their relationship to non-aboriginal society.

Economic development is closely associated with cultural adaptation. It is a means of enabling aboriginal people to participate in the wealth and benefits of the modern economic system, but on their own terms, and as part of the evolution of the community. Training, and the search for both potential developments and capital to a degree unknown in non-aboriginal communities must be part of this process.

Resources and environmental management include both preserving traditional life style and hunting and gathering activities, and development of renewable and non-renewable resources for commercial exploitation. It is therefore tied in with both cultural and economic questions. It will also involve aboriginal influence over policies and developments in large areas of Canada, especially in the north.

Law and enforcement will be crucial functions for many aboriginal self governments because the experience of aboriginal people with the Canadian judicial system has not for the most part been a happy one. Aboriginal peoples are greatly over-represented in jails and correctional institutions at all levels. Restoration of social sanctions and controls at the community level is an important need in most aboriginal groups.

4 THE "PUBLIC" OF SELF-GOVERNMENT

For two reasons defining the "public" which participates in and is served by aboriginal self governments is an important issue. First, many aboriginal Canadians are in a special legal situation, and have rights, privileges, financial entitlements, and relationships to government that are quite different from those of normal Canadians. Second, the functions of cultural preservation, adaptation, acculturation, which are so important to aboriginal communities, have only a limited counterpart outside. For both of these reasons, the public which comprises the aboriginal self governing unit has to be defined more rigorously than for non-aboriginal governments, and their relationships to the different aspects of self government must be clearly specified.

Indian communities are based on a quite different form of membership than Non Indian communities. With few exceptions, membership is ascribed at birth.⁴ Membership in the band is retained even if an individual moves off the reserve. The band thus has a continuing existence which is independent of the place of residence of a member. Indian land is essentially communal, title usually being retained in the Crown. Non- Indians may only lease, not own, land on a reserve. Even Indians on reserves do not own land in the normal sense.

The Hawthorn study concluded that this double aspect of band membership and community membership pervaded and confused band council activities. According to Hawthorn the contradictions and confusions of Indian status would grow more important and would complicate the development of self government.

Among the problems that were created by this situation were:

- (i) when a significant proportion of band members lived off reserve, there could be conflicts of interest between the on and off-reserve groups.
- (ii) the rights of off-reserve members to participate in elections of band councils became a problem.

(iii) if off-reserve members could not vote, they had no share in the handling of funds and other assets in which they had an interest

(iv) non-Indians living on reserves did not have the political rights of voting in election for local councils. Band funds, technically, could also not be spent for their benefit.²

To resolve some of these problems the study recommended that local government functions should, on an experimental basis, be separated from the functions of managing band assets. This would help overcome the serious contradiction which the blending of the two functions entailed. An Indian also has one status as a citizen of a local community and a separate status as a shareholder in the corporate assets of the band.

Membership in bands, and Indian status, have been contentious issues for many years. The *Indian Act* was based on patrilineal principles. Indian women who married Non-Status Indian men automatically lost their status, and their children did not have status. This was clearly discrimination on the basis of sex. It also must have offended many Indian tribes for whom the line of matrilineal descent was the significant one. Others who lost their status (or became "enfranchised") included Indians who enlisted in the armed services, or who received a university degree, entered the clergy before 1920, or joined a profession.

In 1985 Parliament amended the *Indian Act* to deal with these long-standing grievances over loss of Indian status. The original intention of Bill C-31 was to enable Indian women who married Non-Status Indian men to retain their status, and for their children to retain it as well. The bill made this retroactive, so that it applied not only in the future, but also to women who had already been forced to lose their status. Similarly, status was to be restored to those who had lost it through joining the armed forces, or through other provisions of the *Indian Act* deemed unfair.

However, it became apparent as the bill was studied in committee that other sorts of enfranchisement could be considered unfair. The bill was consequently amended so that Indian status was granted to all those who had been enfranchised, whether voluntarily or involuntarily, and their children. These people can now apply to the registrar for restoration of Indian status.

Bands may now establish membership lists subject to a vote by a majority of the electors of the band. The electors include all persons over the age of eighteen who are on the existing band list. This apparently means a majority of all band members whether on or off-reserve.

While these amendments have eliminated some of the more obnoxious and discriminatory provisions of the *Indian Act*, they have also had other profound effects. There is a distinction between Indian status (which is defined by being on the "Indian Register" maintained by the registrar in DIAND), and band membership (which, under band control, could be based on quite different criteria from the Indian Register and could include either more, or fewer people)

[It is conceivable under these new rules that many, perhaps even a majority of, on-reserve band members could be Non-Status. A majority of the band, because they are not ordinarily resident, might not be able to vote for chief or council under clause 77 of the *Indian Act*. This might create serious problems of the sort that the Hawthorn study foresaw if, for example, there were a large amount of band funds in question, and these were under the control of the council. The interests of band members and band electors could diverge. So could those of Status and Non-Status members. Expanded membership might also stretch the resources of bands.

These questions of membership, and who participates and benefits, constantly reappear in discussions of aboriginal self-government. It is not peculiar to Status Indians, but is important for Inuit, Métis and Non-Status Indian self-government as well.

The question of whether the government of the proposed Nunavut should be "public" or "native" is another version of it. At present, and for the foreseeable future, the eastern Arctic will have an Inuit majority of the population. A "public" government in which all residents have equal political rights does not, therefore, seem to be an obstacle to having a government primarily concerned with the particular needs and culture of the Inuit. This sort of reasoning led the Inuit of northern Quebec to establish a public government in Kativik, and the Métis to press for provincehood for Manitoba, whereas the James Bay Cree established an ethnic government. The Inuit of Nunavut could lose their majority. A major oil discovery in the eastern Arctic could bring such a huge influx of Non-Inuit that the aboriginal population would be swamped. The creation of the new territory could itself cause the immigration of so many Non-Inuit public servants and associated workers that the clarity of the focus on Inuit could be confused. This happened to some extent in the Northwest Territories with the development of territorial government. At one point the territories proposed to restrict voting-political participation - to persons with a residence qualification of two or more years. This would have reduced the influence of non-aboriginal peoples and transients. It would also have made a substantial proportion of the non-aboriginal territorial population into

second class citizens in terms of self government. The courts did not accept this proposal.

The question is even more confused in considering off Reserve Indians and landless aboriginals. About 30 per cent of Status Indians now live in large cities. They are free to participate in municipal and provincial elections as long as they meet the normal standards for eligibility. This does not, of course, ensure that their special needs for programmes and cultural facilities are met. Nor does it mean that the three levels of government - local, provincial, and federal - always agree on the responsibility for funding aboriginal institutions and paying for welfare, education, and other services. There are questions of the extent to which their particular needs ought to be met through special political systems, including some aspects of aboriginal self government, or through administrative agencies, or through voluntary cultural and educational associations. Perhaps the most likely self government for off Reserve Indians and landless aboriginal peoples living within larger communities will consist of some form of special administrative recognition. These peoples might also for some purposes form their own "public" and political system within, but separate from, that of the larger society. Separate schools in Ontario and Quebec offer examples of how this can be done for some services. There are enormous administrative and political obstacles to this sort of separate "publics" within an already complex system of government.

The definition of the public becomes even less clear in considering landless aboriginal peoples. In New Zealand, there are four separate seats for Maoris. However, voter registration is complicated, and the members for these seats tend to be less influential than other elected representatives.³ Self identification and choice might be an acceptable way to establish a voting registry, as for instance, is done for separate and public school taxation at the local level in Ontario. If there were separate seats in legislatures to be voted for only by Métis or other aboriginal peoples, this sort of self selection might work.⁴ It might also lead to bitter arguments over who is a 'real' Métis as opposed to a 'phony' one.

Underlying these problems of defining the "public" is a fundamental tension between the needs of aboriginal communities on the one hand, and the principles of liberal democracy as found in Canadian law and political values. Liberal democracy considers all citizens as equal for the purpose of voting and participation in political activities. Discrimination in voting on the basis of ethnicity, religion, colour, sex, or other external and ascribed characteristics is anathema. Discrimination can be made in administration - the poor, the blind, the aged, the mentally handicapped, small businesses, farmers, and innumerable other groups (including aboriginal) - are recognized as special groups and given special services.

But this discrimination does not extend to voting and the definition of the public.

As long as the problems of Canadian aboriginals were treated as administrative questions the problem of defining the public was not important. But once they became questions of self government, and the assignment of political power to separate groups within and often part of the greater society, they became crucial issues. How an aboriginal self government is structured and works, and the questions that are important in its administration, are to a large extent dependent on how its "public" is defined. Here, as in most other aspects, there will be enormous variety.

Problems of defining who participates do not end with elections for local government. They are also important for corporations. Thomas Berger was very critical of the situation in Alaska, where natives with at least one quarter native blood received shares in regional and village corporation which held title to land and other assets. No natives born after December 18, 1971, the date on which Congress passed the legislation, are entitled to receive shares. After 1992 shares can be sold, and non natives could theoretically become dominant shareholders. Membership in the corporation, which in important ways is synonymous with political participation in self government, comes from the ownership of shares. Berger concludes:

All that I have written in preceding chapters reveals the chaos that will result if shares in the village corporations are to be sold. To accept that as if it were simply a case of exercising personal choice in an ordinary matter of private law is to use the vocabulary of corporate law to obscure the cultural consequences that would ensue in the villages. Native people may accept private law instruments for disposing of units of wealth, but this willingness does not eradicate their continuing attachment to the land. It may be something that White culture expects of them; it doesn't nullify the deeper impulses of Native culture. If there is to be a right to sell shares, it must be only to sell shares in a village corporation that has divested itself of ancestral lands by conveying them to a tribal government.⁵

The problem emerges here because an inappropriate form, the private corporation with shareholders, was used to perform a central cultural and political function of maintaining the economic base and lifestyle of a community. Participation in corporate and political decisions should have been on the basis of belonging to the appropriate "public" rather than on the basis of ownership of shares.

There is no easy answer in Canada for this question of defining the public of aboriginal self-government. Historical position, legal rights, cultural identity, provincial, territorial, and federal laws, band membership rules, and economic considerations will be among the numerous factors that affect outcome. To the extent that cultural adaptation is an important function of aboriginal self-government, then the definition of the public ought to include those belonging to a culture. This is not, however, the basis of legal definitions.

5 THE QUESTION OF SIZE

Regardless of the aspirations held for aboriginal self-government, the small size of aboriginal communities poses constraints on what they can accomplish. These constraints must be identified to avoid unrealistic expectations, and to assure appropriate approaches to organization and administration.

The Hawthorn study noted that "While it is possible to debate what constitutes the minimum population size which is a prerequisite for local autonomy, there would be little disagreement that the scope of local government, and probably the very possibility of it, is a function of numbers."¹ Small populations limit what can be done because they limit financial resources and the attractiveness of public office. In Canada, local government institutions have evolved more as a mechanism for effective service delivery than as autonomous decision making bodies. Hawthorne also argued, on the basis of a Government of Saskatchewan study, that efficient service delivery required large size.

Paucity of population and resources prevent autonomy at the local level. The specialization and professional skills required for a satisfactory level of service cannot be provided by local units. The smaller a local unit, the more vulnerable it is to adverse economic conditions. Senior levels of government inevitably exercise more control over smaller units than larger ones.

The Hawthorn study pointed out the implications of these considerations:

if the factors of scale do have the decisive importance in the quality of service provisions attributed to them by the Saskatchewan analysis, and if the viability of many Indian communities in terms of population and resources is at best marginal, then the prospects are not especially bright. Superficially, it would seem that either many Indian communities have to be satisfied with inferior and probably more expensive services, or their autonomy has to be partially submerged in larger

regional units of government in which their influence will not be decisive in determining policy. In many cases, of course, the latter option does not exist as the communities concerned are so isolated from other communities that integration for the purpose of providing particular services is not possible.²

This question of size has received only scant attention in recent discussions. The Penner Committee noted:

It can be expected that several Indian First Nation governments may wish to combine for various purposes - administrative, economic, or cultural. Examples would be educational associations, economic development corporations, tribal councils, treaty organizations and assemblies. Legislative authority would, however, be with Indian governments, and the primary relationship of the Indian people involved with the federal government would be through those governments.³

Sally Weaver also thought that the goal of Indian self government would be achieved through band governments asserting their right to govern at the reserve level, although there was also a need for larger organizations to exert political pressure at the national and provincial levels.⁴

The functions which will require larger resources than those available at the band level include much more than intergovernmental relations however. For example, curricula for schools including native languages and teaching resources will have to be developed. Economic and industrial development will need to be guided and assisted. Capital funds for development projects will have to be provided. Health services will have to be organized and monitored. Research into wildlife and other resources will have to be conducted. All of these with rare exceptions will be beyond the ability and resources of even the largest bands to perform. Two possibilities are that either the other levels of government - federal or provincial - will perform these functions on behalf of aboriginal self-government, or that well financed aboriginal organizations supported by many bands will perform them. An unfortunate, but perhaps also likely possibility, is that many functions will be neglected and lost in the other complexities of self government. Local governments are too small anywhere in Canada to be effective for any but local policy-making and programme development. This is much of the reason for their control and supervision by provincial governments.

Two points are evident in this consideration of size. *First*, the band or community level is extremely small even for effective and efficient

service delivery. *Second*, policy-making and development can only be carried out by organizations with much greater resources than those available at the band level. Even the Northwest Territories as a self governing unit is of a small size. These problems of scale can be overcome, but it is important to recognize that they exist, and that their resolution will require some reliance on other, and larger, organizations, and a corresponding loss of autonomy at the local self governing level.

6 POLITICAL POWER

The structure of political and representative institutions of aboriginal self-government is the focus of this chapter, not their legal and constitutional powers. Political power is the 'who' and 'how' of the way that a self-governing community will make the decisions within its competence. It is not an examination of how great the scope of its powers is or ought to be, but rather a consideration of how decisions are made on how its powers ought to be used.

Political power in a modern democracy is normally exercised through representatives chosen by secret ballot in elections in which each adult member of the community has an equal voice. This is not the traditional way of most aboriginal communities. Though, as we have seen, elections formed part of the governance of the Iroquois, more common processes of selection of leaders were through the tribe, clan, family, heredity, prowess, or the potlatch. At times these processes were very complex and sophisticated. Within some societies, such as the Inuit, the notion of representation of the community through the selection of a single leader was strange. Decisions were made on the basis of discussions and consensus rather than through delegations and representation.

Under the aegis of the Indian Affairs Branch these traditional forms of government were suppressed, and political power resided with the Branch and its representatives in the field. In many aboriginal groups the traditional structure and processes of choosing leaders and making collective decisions were, during this period, if not destroyed, then damaged and distorted.

The questions to be considered now in the movement towards aboriginal self-government are: *first*, how political leaders are to be selected; *second*, how they are to be held accountable; and *third*, how political power will be used to direct, control, and hold accountable the administrators and administrative activities.

For Indians, the band council is the focus of political power. At the time of the Hawthorn study band councils were selected either by "custom" or in accord with electoral provisions laid down in the Indian

Act.¹ The council was the body officially recognized by the Indian Affairs Branch, and the formal instrument of local government in the Indian community. By the mid-sixties, most bands selected their chiefs and councillors by election, and the policy of the Branch was to encourage more bands to select through election rather than according to the custom of the band. The franchise was extended to all band members over 21 who were ordinarily resident on the reserve. Unless otherwise ordered by the ministry, the council consisted of a chief and one councillor for every 100 band members within a range of a minimum of two and a maximum of twelve councillors. The chief could be elected either by a majority of the band, or by the councillors. The powers of the band council were severely circumscribed.

Twenty years later DIAND told the Special Parliamentary Committee on Indian Self Government that "band governments are more like administrative arms of the Department of Indian Affairs than they are governments accountable to band members."² The Department proposed several changes to improve the powers and autonomy of bands. One proposal was that each band should develop its own charter. "This charter, or constitution, would outline, in its own terms, the nature of the relationship which would exist between the Indian band government and band membership." Witnesses from Indian organizations rejected these proposals.

The discussion by the Penner Committee of political power within Indian self-governments was not very detailed. The committee did, however, recommend that criteria should be established which had to be met by any First Nation government wishing to be legally recognized as self-governing. These were:

- (a) demonstrated support for the new governmental structure by a significant majority of all the people involved in a way that left no doubt as to their desires;
- (b) some system of accountability by the government to the people concerned; and
- (c) a membership code, and procedures for decision-making and appeals, in accordance with international covenants.⁴

The response of the government was Bill C-52, introduced into parliament in 1984 but not passed. Under the provisions of this bill, an Indian Nation could seek recognition as a self governing unit if it met certain criteria established in the bill, and if its members, in a referendum, had agreed to seek such recognition. The structure of

political power necessary for recognition was spelled out in the bill. A constitution, which had to be approved in a referendum, would outline a membership code, describe processes of government, provide for political and financial accountability and outline a mechanism for removing governments when powers had been abused. A panel with many of the powers of a court was proposed to approve constitutions.

In short, Bill C-52 proposed that political power in Indian self government be exercised by elected representatives as it is in municipal, provincial, and federal governments. There was room for flexibility, but this flexibility was limited by the provisions of the Canadian charter of rights and freedoms. [This bill met with a great deal of opposition. It was felt that it did not incorporate the spirit of the Penner Committee's recommendations.⁵ To the extent that it restricted and defined institutions, and insofar as the form of government envisaged in it was subordinate and local in character, the criticism was valid.

Discussions of aboriginal constitutions and self government during this period were often conducted at a highly abstract level. The federal government's proposals, for example, were criticized because:

It is apparent that the concept of a constitution or a charter as it is contained in the proposed Indian government scheme is neither the functional nor the symbolic equivalent of a constitution as it has evolved in Western political and legal theory, nor is it what Indian leaders perceive a constitution to be. Instead, as the government is using the term, it is a delegated instrument that rests on the legal authority of Parliament.⁶

Bill C 46, establishing self government for the James Bay Cree and Naskapi, incorporated one Naskapi and eight Cree bands. A band council, and the position of band chief and band councillors were created. All adult members over the age of eighteen were entitled to vote. Matters could be decided by the council, or, if the corporation bylaws required, by referendum. These provisions, though more detailed, are in intent much like those of the later bill on self government.

The legislation establishing self government for the Sechelt band is less restrictive than Bill C-52. It established the band council as the governing body of the band, and required that the written constitution should establish the composition, tenure, and election of band councils, and select for the council legislative powers from among those allowed by the Act. The constitution should also provide for financial accountability and establish rules for the disposition of Sechelt bands.⁷ The constitution has to be accepted by the governor in Council to come into force. For this acceptance, three conditions must be met: first it

must include or provide for the matters described above; second it must have the support of a majority of the electors in the Sechelt band; and third the Governor-in-Council must approve of it. Presumably this last requirement means that the constitution will have to meet the standards of representation, democracy, human rights, and accountability generally expected of Canadian governments.

All of these thrusts towards aboriginal self-government indicate that a condition that will have to be met before self government is achieved is the formation of a constitution which guarantees universal adult suffrage, the selection of representatives through elections, and some means of accountability. Whatever the traditions and culture of the aboriginal group, and however they are adapted to these requirements, the basic liberal-democratic political values as expressed in the Canadian charter of human rights will have to be recognized.

The Northwest Territories have steadily progressed towards self-government since the Carrothers Report of the mid sixties. The capital was moved to Yellowknife, and by 1979, when the Drury investigation was completed, there was a fully elected 22 member Territorial Council, which was elected by universal adult suffrage. Nevertheless, the Drury report concluded that the complex amalgam of political and administrative institutions tended to diffuse accountability and hide real authority, which was vested in appointed officials in Yellowknife.

There was a "complaint of many native peoples and groups [that alien institutions based on a southern provincial model are being imposed on them too rapidly, and that no time has been allowed for them to be understood, approved, or adapted to the values and needs of the people." The developments were "hardly major steps towards the granting of self government to the NWT. While the structures necessary for responsible government were already largely in place . . . the authority to make the function rests with the federal government." There were "complaints that local governments are, in effect, administrative extensions of the GNWT, and used for the sole purpose of delivering its programs. Local councils and committees are perceived by the communities as possessing no real authority over these issues that are of vital importance to the lives of residents of the communities."⁹

In short, it was still a system that lacked effective political institutions. There was "a widespread sentiment in the NWT that, while there is no shortage of government in the territories, the existing authorities of the political structures at both the territorial and community levels are inadequate to meet the needs and concerns of the people."¹⁰

Since then, there have been substantial shifts towards responsible parliamentary government. Responsibility for programnes is gradually

being shifted to the territorial government, and the presence and responsibilities of DIAND correspondingly reduced. The role of the Commissioner as head of the executive has been curtailed, and there are now departments of government headed by members of the elected assembly. A structure of government like that of the provinces, if not a government with comparable powers, is gradually emerging.

Nevertheless, there are still obstacles to the development of effective political power within the territories. A frequent, hilt to my mind misguided, criticism is the lack of political parties:

One of the most significant obstacles to the achievement of full responsible government in the N.W.T. is the absence of a party system in the Legislative Assembly. The system in place, which is referred to (sometimes, perhaps, ironically) as consensus government, features the selection of the member of the Executive Council through a wide open election at large within the caucus of the assembly. This caucus, in the absence of political parties, includes all of the sitting members assembled in camera and casting their votes as independents. The problem with this system is that there is no collective responsibility in the executive, as there is in mature systems of cabinet government. As a result, there is no clear procedure. In fact it is common, even for members of the Executive Council, to break with their "cabinet" colleagues and vote against motions introduced by a minister on behalf of the government. Without cabinet solidarity it is difficult to see the kind of collective responsibility that prevails in party based cabinet government and without such collective responsibility to the legislature, it is impossible to have responsible government in any conditional sense.¹¹

On the other hand it could be argued that the parliamentary cabinet system is a very loose framework indeed, and is capable of enormous variation, including weak or non existent party lines. In the development of parliamentary government in Britain individual ministerial responsibility became a constitutional principle long before collective responsibility. Rigid party lines are a relatively recent phenomenon, and parliamentary government achieved much of its present form without them. Party lines and identity are carried to an extreme in Canada. Discipline has substantially weakened in Britain in recent years, and governments have frequently been defeated on important legislation because their own supporters voted against them. The old North West Territories Assembly did not have rigid party divisions before they were granted responsible government in 1897. Nor did it when the provinces

of Saskatchewan and Alberta were created from them in 1905. Many of the problems and weaknesses of Canadian legislatures come from exaggerated party discipline. The Westminster model is open and free enough to accommodate even the possible variations and special characteristics of the Northwest Territories. Why a territorial government ruling 50,000 people should mimic the party structure of a government of a nation of 25 million is not made clear. Territorial government and politics are in effect on the scale of a municipality; the institutions should adapt to this small scale and the increased personal contact and intimacy of this level. Municipal governments in Canada rarely divide on party lines. Representative parliamentary government can function perfectly well without strong party divisions.¹²

A more serious criticism is the feeling that the territorial institutions lack legitimacy. This was the force behind the referendum vote in favour of the division of the territories and the creation of Nunavut. The argument is sometimes made that the elected members of the territorial assembly are not the true political leaders of aboriginal groups. The real leaders instead participate in the national organizations dealing directly with the federal government on land claims and other negotiations. Because of this, the political power of the territorial assembly is not great, nor is it likely to be until there is a substantial change in the electorate's evaluation of the importance of the territorial assembly versus other native organizations and forums for discussion.

Arguments like this have a strong subjective, impressionistic element. They are difficult to evaluate. They do, however, highlight an important point: merely creating representative institutions does not guarantee that they will work. Competent concerned persons to fill elected positions are also essential. And, especially in small communities where educational and cultural gaps exist, qualified people are in short supply.

The main focus of the Drury study was community and local government rather than the territorial assembly. The study argued that any proposal to increase the authority and broaden the jurisdiction of the territorial government should be balanced by conferring authority to the community level of government. To this end the study proposed to increase the responsibilities of the local level for land and game management, education, welfare, housing and other functions. They also proposed a restructuring of local government to recognize aboriginal values of consensus and community participation. A great deal of flexibility and ability to adapt to local conditions was also required with local communities deciding on council composition and selection procedures, local franchises and the responsibilities of local leaders.¹³ Representative government was envisaged, but it was to be modified and adapted to suit particular northern aboriginal needs. Elections were

implied, as was universal adult suffrage within limits of the residence requirement, but the exact method of election was to be established by the community.

The study was particularly concerned with the tendency of both the territorial and federal governments to view local government as administrative extensions and agents for the delivery of the programmed and services of the senior level. This was counter-productive to the development of political leadership at the local level. To this end:

Both the federal and territorial governments should acknowledge the community council as the prime body in the community. All governmental relations with the community should be established first with the community council. Both senior levels should avoid linkages that bypass the council or encourage the formation of special-interest groups or committees. Furthermore, the federal government should insist, possibly through requirements attached to land use permits, that industry consult with the community council and thereby avoid the creation of industry sponsored advisory groups outside the political process. In addition, all hearings, inquiries or task force arrangements should be carried out in such a way that the community council is recognized as the prime body in the community.¹⁴

These recommendations, and the other recommendations of the Drury study on the creation of regional units of government, have not received the attention they deserve. Rather, division of the territories and progress towards responsible cabinet government at the territorial level have been central concerns. Nevertheless, strong local government with effective leadership at the community level remain of prime importance in the north as in the south.

Several conclusions can be made about political power in aboriginal self-government. *First*, it is almost certainly going to involve representative institutions based on universal adult suffrage. Larger self-governing units especially are going to require councils or other representative bodies. *Second*, there are ways that representative procedures can be adapted to be in harmony with traditional forms of aboriginal government and politics. Party divisions are not necessarily the route to follow, and the representative institutions can be sensitive and responsive to the traditional family and other power structures. *Third*, leadership, and the assurance of an adequate reservoir of competent personnel, has been identified by many studies as an important problem. *Fourth*, there is a high risk of spreading power and leadership too thinly through a proliferation of local bodies. to the extent

that impedes their effectiveness as policy creators. *Finally*, it should be emphasized that representative government does not mean the tyranny of the majority. The emphasis on partisan strife in parliamentary government masks the very real and important elements of consensus and compromise in them. Bills are often changed during passage, as happened with Bill C-31, amending the membership provisions of the *Indian Act*. Legislation often does not pass at all because it fails to meet the test of public and interest group acceptance, as happened with Bill C-52, on Indian self government. Democracy is as much a means of listening to and accommodating minorities as of letting majorities have their way. Consensus and representation are not black and white opposites, but can complement each other.¹⁵

7 THE RELATIONSHIP BETWEEN ADMINISTRATIVE AND POLITICAL POWER

Aboriginal self governing entities will be of a quite different scale, and face quite different problems to the federal government. The federal government, which is the most highly developed political system in Canada, faces a constant challenge in developing the appropriate means by which political will can be exerted over administrative bodies. In the federal government, in some instances the civil servants rather than politicians hold the power and responsibility, and the civil servants are made accountable. Even in the federal government the struggle for responsible government is never ending, regardless of institutional reforms and improvement. These problems will be equally real and severe in aboriginal self governments.

The relationship between politicians and administrators is likely to be difficult to sort out. In the smallest self governing units, where there are few positions on the administrative side, power is likely to be "fused", with elected leaders making many of the decisions which in larger units are made by civil servants.

The Hawthorn study viewed the development of a band civil service as essential for many purposes of self government:

for the move to more autonomy at the local level. The addition of one or more civil servants should have the consequence of rendering policies more stable and less subject to change as a result of election results; it should increase the amount of knowledge available for effective policy-making, and by thus increasing the executive capacity of Council it will enlarge the range of issues over which it can effectively make policies. An incidental but valuable by product of the creation of a civil service is that it will enhance the accountability of Council to the electorate by reducing Council's capacity to deflect blame for its performance onto the local Indian Affairs Branch administration. Of special importance is the probability that ultimately the

development of a local "bureaucracy" will give the Indian community some countervailing power vis a vis the Indian Affairs Branch.¹

Several aspects of the relationship between the political and the administrative are intermingled here. The civil service is to act as a moderating influence restraining the more extreme impulses of the council. The civil service also increases the competence and accountability of the band council. At the same time, the reality of the existence of two spheres, and of the related but distinct concerns and competence, is recognized. Much of the real relationship between the political and administrative would of necessity depend upon factors of personality, individual abilities, and personal relations because of the small size of the civil services in aboriginal self government.

Bill C 52 did not include provisions on the relationship between political and administrative power. Powers were assigned to the government of the band. The sort of government envisaged was much like that of a parliamentary cabinet system, with responsibility assigned to the politicians, not the civil servant. There was no provision for the creation of positions like Clerk Treasurer of a municipality which have legal responsibilities for some important functions.

Bill C 46, for the James Bay Cree and Naskapi, created the salaried positions of band secretary and band treasurer. The band secretary was responsible for the safekeeping of books, records and documents of the band, and for the preparation of minutes of band and council meetings. The band treasurer was the chief financial officer of the band and was responsible for the receipt and deposit of band moneys and for all aspects of the financial administration of the band (Sections 41-44). One person could fill both positions. The bands were given the powers to employ other staff as well.

Bill C 93, establishing self government for the Sechelt band, required in section 10 (c) that the constitution provide for a system of accountability including audit arrangements and the publication of financial statements. Section 14 (1) authorized the band council to make laws for "the creation of administrative bodies and agencies to assist in the administration of the band." Apart from these provisions, administration was not covered.

The problems of relating political to administrative power are compounded when corporations, boards and commissions, are used. The corporations established to handle native lands and monies in Alaska were not owned by or responsible to governments, but existed as separate bodies with broadly based ownership of shares within the native community. A fact of corporate life in North American capitalism is that

corporations with shareholding dispersed amongst many small shareholders are notoriously difficult for shareholders to control or even wield influence over

The corporation is less democratic than a government and less open to public discussion. The balance of power is tilted in favour of the administration, the officers and employees, and away from the political and public (shareholders). The election of officers is more of a sham democracy, and more controlled by the officers themselves, than in local or larger governments. This is not a severe problem when the functions of the corporation are limited to a narrow range of economic activities, but when the corporation is expected to perform broad social, political and developmental functions, it can be very serious indeed. This is the substance of Thomas Berger's criticism of the Alaskan arrangement.

Modern public administration recognizes that the responsibilities and accountability of civil servants do not begin and end with their relationships with politicians. Civil servants are members of a profession, and have responsibilities to the standards and ethics of the profession. Civil servants are also members of a community, and have a responsibility to represent and speak for their community. They are also spokespersons within government for the clientele they serve. Sometimes civil servants are given legal responsibilities for important tasks, with accountability to the courts, or to legislatures.

Three important conclusions can be drawn. *First*, there is in any system of government a need to recognize the separate interests and independence of the political and administrative spheres and to reach an acceptable balance of power between them. *Second*, it is by no means obvious that, in all instances, the political power should dominate the administrative. *Third*, to fulfill its responsibilities, a civil service must not only be technically qualified, but must also be sensitive and responsive to the particular characteristics and needs of the community it serves. This last point is particularly important for aboriginal self governments, where there is almost invariably and by definition a cultural gap between the western administrative culture and the non-bureaucratic traditional culture of the community, and this gap can extend to the ethnic and cultural identity of civil servants, as it is at present, with most of the administrators being from the non-aboriginal society.

Part 111

“ Administrative” Questions

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8 THE FINANCING OF ABORIGINAL SELF-GOVERNMENT

Most aboriginal self governing units will require substantial financial support from other levels of government. The same can be said for municipal and local governments in general, but the needs will be even greater for aboriginal self governments. There is a lower level of employment, and less cash income, in most aboriginal communities than in the country generally. This increases the need for welfare and other services, as do problems of family breakdown. The high proportion of school age children in aboriginal communities makes the costs of education greater. Most aboriginal communities have a very small tax base, so that they cannot raise a proportion of their revenues comparable to that raised by Canadian municipalities in general. Many aboriginal communities are in remote and northern regions, where the costs of providing equivalent services is greater than in the settled south. If aboriginal self-governments engage in the difficult and challenging tasks of cultural preservation and adaptation, and economic development, they will incur expenses above and beyond those of municipalities, and more like those of the provinces, or even the federal government. Education programmed suitable to aboriginal cultures and languages, for example, will be expensive to develop. The costs of comparable programme development in the provinces are absorbed by the provincial departments of education rather than paid for at the municipal level.

So far, the devolution of service delivery to bands, and the financing of aboriginal self-government, have proven to be full of difficulties in determining appropriate levels of financial support. Wide disagreement, has arisen between government and aboriginal peoples over the appropriate data base, the costs of units of service, the method of calculating capital and other unusual items, and how and when monies ought to be transferred. There is obviously an urgent need for a reasonable, objective formula which can assure self governing units of appropriate financial support, so that the level of service is adequate to meet both the needs of the community, and the standards expected in an advanced, wealthy country like Canada. It is beyond the scope of this

paper to create such a formula. Nevertheless some of the important questions of financing aboriginal self government and their relationship to administration can be examined.¹

Bearing in mind the need for substantial transfers, and the unique needs of aboriginal communities, it will be important to establish principles on which a funding formula can be based. Among the most important of these principles are:

- (i) there should be equity in levels of service between aboriginal and non aboriginal communities, and among aboriginal communities;
- (ii) the special needs of aboriginal self governments, including costs of administration, policy-making and programme development, should be recognized and included;
- (iii) the funding formula should include all the costs of a programme;
- (iv) the process of negotiation and reaching agreement on funding should not place unreasonable demands on the political and administrative resources of the self government; and
- (v) the method of funding should respect local autonomy

The Department of Indian Affairs and Northern Development has, not surprisingly, found it extremely difficult to develop this sort of formula. This has been an impediment to the process of devolving control over service delivery to bands.²

The provisions of Bill C 52, the unpassed legislation for Indian self-government, made no mention of the basis on which self government would be funded. Section 55 said that the minister might, with the approval of the Governor-in-Council, enter into agreement with a recognized Indian Nation under which "funding would be provided by the government of Canada to the Indian Nation over such a period of time, and subject to such terms and conditions, as are specified in the agreement." Section 56 required the government of every recognized Indian Nation to submit an annual report to the Minister of the source and application of funds received from the government. Section 33 of the Sechelt band self-government acts similarly states that "The Minister may, with the approval of the Governor-in-Council, enter into an agreement with the Band under which funding would be provided by the government of Canada to the Band in the form of grants over such period of time,

and subject to such terms and conditions, as are specified in the agreement." Both bills gave parliament the authority to appropriate funds for these purposes.

The Cree of the James Bay region found that the signing of their agreements with Quebec and the federal government in 1975 did not resolve their problems in financing self-government. A review of progress in implementing the Agreement and the Act of 1977 disclosed many areas where commitments had not been fulfilled. As a result, the federal government spent \$61. -1 million to upgrade to a standard comparable to other aboriginal communities in northern Canada. Agreement to devolve responsibilities to aboriginal self governments was reached in 1984, and was confirmed in the *Cree/Naskapi Act* of 1984. An ancillary agreement established 1984-\$ as the base year for funding, with adjustments to be made on an annual basis to reflect changes in population, inflation, and real cost increases. The Cree and Naskapi bands also remained eligible for new programmes, economic development projects, and capital funding for housing, water and sewer facilities and roads.

But despite these provisions, funding under the *Cree/Naskapi Act* has remained contentious. The Grand Council of the Crees complained to the parliamentary committee on Indian Affairs in 1985 that their self government was in serious jeopardy because of underfunding.³ The level of funding was to be determined for 5 year periods by an agreed to Base Year with annual adjustments through a negotiated formula. Agreement was reached on the 1984-5 base year, and payments for that year were received. But by December of the next financial year they had received only base year funding, and no amounts for the annual adjustment. Although agreement had been reached on the formula at the technical level, the process broke down because, the Cree accused, the Department of Indian Affairs had blocked efforts to reach a negotiated agreement.¹

The Cree felt that the government was backing down on their commitments and reverting to the old arrangements of total control by DIAND:

This is not the new relationship. This is the old relationship of government agency to client population whereby the hands have no control over their funding arrangements; no certainty as to their future revenues beyond the current fiscal year and therefore no opportunity to plan or budget in accordance with the band's priorities and needs.

The intent behind having a Base Year and a negotiated formula for adjusting it was to establish a high degree of financial certainty that would enable proper financial planning and administration

and the efficient delivery of services and management of operations. That goal is being frustrated and the bands are being forced back into a system of budgetary guesswork.⁵

There was an 'attitudinal problem' in the department. Problems of getting financial support for economic development were also severe.

The Indians of Manitoba have found similar problems in the funding of programmes whose delivery had been devolved to them. After numerous and vocal complaints the minister, David Crombie, requested an investigation by chartered accountants in 1985. Their report was highly critical of DIAND and supported the complaints. Reports by DIAND to parliament were found to be incorrect and misleading. Some programmes were underfunded and administrative costs had not been appropriately transferred. The directive of the minister concerning no cuts to existing programmes had not been totally complied with.

The programmes which were examined included child care, education, band administration, and housing. All the problems uncovered were in the direction of underfunding. Among the causes of problems were:

- (i) an inappropriate formula for establishing child care costs, based on population rather than caseload;
- (ii) insufficient recognition of the need for training Indian staff;
- (iii) cutbacks that contradicted federal government commitment;
- (iv) failure to count properly and accurately the number of students in school systems;
- (v) failure to provide needed capital funds;
- (vi) rules and guidelines which have changed several times during the process of devolution, so that it is impossible to make a rational plan;
- (vii) accounting and other errors in DIAND offices;
- (viii) failure to take into account volume and price increases, so that bands had to go into debt during one fiscal year, and to pay for mandatory services out of next year's budget; and
- (ix) the non-transfer of administrative costs.⁶

The study found that over half the Indian bands in Manitoba were in a deficit position. For at least some of those bands indebtedness was attributable to the faults of underfunding and delay described in the report. The problems were serious enough that the collapse of many Indian organizations was possible. At the same time, the department's staff in the region had grown. In education, the positions transferred were "primarily teachers, janitors, and student resident workers. This non transfer of administrative positions and their related costs to the Indian organizations. It's ails that program delivery funds are being reduced to pay for administration."

Some of these criticisms echo earlier findings. A study done for the Special Committee on Indian Self-Government by Coopers and Lybrand found that funding decisions were often arbitrary, and came late in the fiscal year. This made planning impossible. The demands imposed on bands by DIAND also caused excessive administrative costs.⁸

Funding arrangements with the Northwest Territories as well have not been entirely satisfactory. The federal government, in paying a large share of the costs, "has influenced and would want to continue influencing the conditions under which federal funds are spent." "The process ended up treating the government of the Territories "not as another level of government, but rather as an extension of a federal department, and in some respects as a private organization seeking financial assistance."¹⁰ The same problem existed in the relationship of the territorial government to local governments, whose fiscal dependency combined with financial arrangements to place serious limitations on the communities' ability to exercise local decision-making and accountability.

Even noting that costs are high in the north and in remote areas is not enough. If a proper transfer of responsibilities and funds is to be made, the true costs of the services must be identified. Establishing an accurate data base for the transfer and funding of activities could be a time consuming and contentious business.

Compounding all these issues, negotiations, and studies is the high probability that some persons in the federal government will see devolution to self government as a way of saving money. The Hawthorn study cautioned against this:

In some cases there has been a temptation to see self government as a means for encouraging the withering away of the Indian Affairs Branch. A number of internal memoranda mention a reduction in Branch staff and "arresting or even curtailing the increasingly heavy outlay now being made from public funds on behalf of Indians." This approach is almost certainly invalid . . . the saving of funds is only one of many possible policy criteria. What

is required is an assessment of Indian needs to determine the financial requirements of alternative solutions, and then careful scrutiny of actual expenditure in terms of policy objectives [I]t seems likely that at least in the transitional period there will be an increased demand and need for technical and supervisory help.¹¹

The caution is as valid now as it was then. The problems uncovered in Manitoba show that there still might be an inclination to try and reduce expenditures in transferring responsibilities and creating aboriginal self governments.

The task force of the new Conservative government which in 1984-5 performed the review of programmes for aboriginal Canadians expressed some surprise that "The federal dollars allocated to maintain or improve native people's circumstances are substantially greater than the amount of the federal budget devoted to the Department of External Affairs and all forms of foreign aid (\$2.2 billion, 1984-5 estimates)." They argued that it was now an "axiom" that "the problems cannot be solved by the application of money above"¹² They expressed the desire to cap expenditures, and stated that:

The proposals for change embodied in the report outline "savings" of approximately \$169 million if all major alternatives are acted upon. In addition, there may be potential management reductions to be realized in the order of up to 3,500 person-years over time. A fully-implemented policy of Indian local government could result in a shift of employment status for about 1,700 teachers and school maintenance staff and another 300 social assistance administrators. Some of these people would likely be required to help deliver the services of local Indian governments. In any case, the maximum number of job changes would only occur over a number of years if all major alternatives were acted upon.¹³

This appears to imply that aboriginal self government can lead to savings.

Such an implication is dangerous and misleading. The value of aboriginal self-government is its potential for performing essential and unusual functions for unique and disadvantaged parts of the Canadian mosaic. It is not a means for saving money. To regard as such could perpetuate and entrench the harms of the present system. Aboriginal self-government might well cost more, rather than less. Small governments are in their nature costly. The special functions of aboriginal self-governments in relation to cultural preservation and adaptation, and to economic development, will make them especially costly. So also will the factors of remoteness, the health and social breakdown problems of

aboriginal communities, and the many other factors that have caused, and are part of, the present problems.

Some aboriginal self governments will be able to finance a major part of their activities through their own funds. These are at present only the lucky few, however. It is possible that, with the settlement of land claims, more aboriginal communities will be able to share the economic rents and the revenues from resource exploitation. That was the hope of the Penner Committee

The assets now controlled by Indian governments are not sufficient to support those governments. It is the Committee's hope anti expectation that claims settlements, Indian control and development of their land base, new arrangements for resource revenue sharing and other long term entrenched financial arrangements would in due course provide Indian First Nation governments with assured funding.¹⁴

The task force on comprehensive claims policy was equally forceful, and suggested that not only could aboriginal groups own resources outright, but that they could also be allotted a share in the royalties derived through the crown, and share in the revenues from licensing, bidding, and annual fees. This task force also rejected the federal government's arguments against including resource revenue sharing in negotiations because the costs of an agreement must be known in advance.¹⁵

But even under the most optimistic scenario, where all comprehensive claims are settled and include revenue sharing from resource development, most aboriginal communities will not have adequate financial resources to meet their needs. Substantial support from the senior levels of government will still be needed. It must be recognized that the tax and economic base of aboriginal communities is so inadequate that expecting them to be self-supporting to any extent is wishful thinking. The Nielson task force proposed:

introducing the concept and practice of "user-pay", of having communities make a contribution to their own capital and operating costs for services as a way to begin to deal with attitudes...¹⁶

This runs the danger of becoming a disguised rationale for giving to the rich, and withholding from the poor.

This does not mean that varying financial resources of different communities should not be taken into account in a funding formula. At present DIAND provides equal funding for all Indian bands, regardless

of their resources, with some provision made for the additional costs of remote communities. In practice this means that the better off bands, those with a high level of employment, or with substantial band funds, enjoy better services in, for example, education, than do the poorer, bands. The logic of this uniform funding standard is, to say the least, questionable.

A further problem with present arrangements is that most funding is on the basis of detailed budgets which are negotiated between DIAND and bands. DIAND also keeps close track of bands' handling of funds, and has increased its field staff to perform these monitoring and supervising activities. This not only takes initiative and responsibility away from bands, but also means that a lot of time and energy of Indian political leaders and administrators is occupied with negotiating with DIAND officials. To the extent that these dealings are between administrators it places band leaders on the periphery outside the important decision-making process. The Penner Committee was quite emphatic on this issue,¹⁷ and the Drury study made similar comments about the funding of community government in the Northwest Territories by the territorial government.¹⁸ The objective proposed for funding community government by both studies was the provision of general purpose funds through block transfers on the basis of a formula that takes into consideration local needs, resources, programmed, and services.

Clearly, funding arrangements, including the strings attached, the structure and form of negotiations, the clarity, objectivity and fairness of the funding formula, and the arbitrariness of the federal government in giving or withholding funds, will have a crucial effect on the success or failure of aboriginal self government.

The present arrangements are far from satisfactory. They demand inordinate time and energy from aboriginal leaders, and these scarce resources could be better used elsewhere. They frustrate many of the purposes of aboriginal self-government, such as encouraging planning, and devolving responsibility and accountability. They also must put excessive administrative burdens on DIAND. They seem almost designed to force some bands into indebtedness and financial problems.

If, as appears likely, self-government is extended to many hundred individual aboriginal self-governing units, some order will have to be placed in the arrangements for financing. Five year funding arrangements, predictability and consistency will have to be made part of the process. There will also have to be some sort of arbitrator or tribunal which can evaluate and decide on complaints from self-governing units. Much of the responsibility for making these administrative improvements belongs to DIAND. The prospect of the present

arrangements (it would be too kind to term them a 'system') being extended to negotiations with several hundred self governing units is appalling, particularly in the waste of aboriginal leadership resources. The present arrangements, to say the least, do not comply with the basic principles that should be observed in the financing of aboriginal self government

Coopers and Lybrand, the chartered accountants who examined the funding of devolution for the Penner Committee, felt that DIAND should not be the funding agency for Indian bands. Rather there should be a new funding agency, separate from DIAND and the other line agencies. It should have:

- no program delivery or other responsibilities that might be in conflict with its funding responsibilities;
- some immunization from political pressures; (this is one reason both federal and provincial governments have used Crown corporations where they are involved in financing external aid, municipalities, universities and hospitals);
- some participation by Indian representatives (this can be achieved through boards of directors);
- some decentralized structure where the Indian bands desire this; and
- planning, budgeting, accounting, financial control, audit and evaluation procedures that are considerable simpler than those imposed on line departments of the federal government, such as DIAND.¹⁹

Much of the pressure for excessive controls and lack of flexibility came from the treasury board, and this new agency would have to be free from the board's unreasonable demands. Some of these controls are discussed below, under accountability.

The Penner Committee recommended that a new ministry of state be created to handle financing arrangements. This would be separate from DIAND, and directly under the privy council office. The Coopers and Lybrand proposal has the advantage of Indian representation. Whatever the route taken, there must be some consistency and predictability in the system, so that aboriginal self-governments can plan and budget without the uncertainty and waste of energy of the present arrangements.

Accountability under the existing policies of devolution of service delivery, the Penner Committee found, was a time-consuming and frustrating business. The department allocated funds on the basis of a

detailed line-by-line budget, and demanded accounts in the same sort of detail. The costs of the monitoring and controls demanded by DIAND amounted to over 25 per cent of the total funds for programmed. The study by Coopers and Lybrand for the Penner committee concluded that these complex and cumbersome controls were not needed. For units the size of Indian bands, one page could contain adequate financial information. Further, DIAND was constantly changing coding forms, and requirements, so that bands constantly had to learn new procedures. Far too much of the time and energy of band leaders and administrators was spent on these cumbersome requirements for financial accountability.

The Penner Committee concluded that these arrangements were appropriate for agents, not for self-governments. A better system would be to have aboriginal self governments accountable to their own people instead of to the federal government. They felt that agreements between the federal government and Indian recipient governments would be preferable:

Each agreement would state the amount of the grant, indicate broadly what government functions it was intended to cover, and call for, as a minimum, an annual audited financial statement, prepared by an independent auditor, confirming that the funds had been expended for the agreed purposes. But within these broad parameters, each Indian First Nation government would be free to allocate the funds as it judged best according to its own priorities and policies.

The responsible use of funds can be best ensured if internal accountability systems form an integral part of the new Indian governmental structure. The Committee considers such arrangements to be crucial and for this reason recommended earlier that federal recognition of each Indian government should only be accorded if its people have put adequate systems in place. For the same reason the Committee would urge that grants be made only to Indian governments whose effective internal accountability arrangements have been recognized in this way.

The transfer of federal funds to Indian First Nation governments to fulfill agreements requires parliamentary approval. If a system of grants is introduced, however, the Committee would not expect a federal minister to be held accountable by Parliament for the ways funds are spent by an Indian government, just as federal ministers are not held to account for the way provincial governments spend federal equalization payments. This is a very important principle. In Canadian parliamentary practice a grant

has legislative force, and Parliament takes full responsibility for the payment. This is what makes the grant so well suited for Indian self government.²¹

Subsequent legislation has been more or less in accord with the Penner proposals. Provisions for the making of grants by parliament were included in both Bill C-52 and C-93. Accountability to the band was required by both bills, though only Bill C-52 explicitly required accountability to the minister.

The Neilsen task force also recognized the problems posed by competing demands for accountability:

The movement toward responsible Indian government at the community level challenges government wide standards of accountability enforced by Treasury Board and central agencies. Conversely, the accountabilities required by Parliament are seen as a constraint to local decision making. It is not yet evident how band councils can be more accountable to their members and to Parliament simultaneously; block funding is being explored as a possible remedy.

Ultimately, legislative changes may be required to the Indian Act, as well as changes to Treasury Board approved planning and control structures of departments authorized to fund aspects of Indian local government.²²

The study noted that sixty per cent of the Indian and Inuit Affairs budget, or approximately \$800 million, was administered at the community level. There was, however, a continuing need for band management support: fifty-two bands whose operations were audited in 1984 received "qualified" audit reports.²³ At the same time, management skills at the band level were demonstrably better than a few years earlier, largely as a result of the local government support programmes of DIAND.

Much the same sort of issues arise in the Northwest Territories in the relations of accountability between local governments and the territorial government, as between bands and DIAND. Most communities in the Northwest Territories will, for the foreseeable future, be unable to raise significant revenues from the local tax base. The Drury study found that the territorial government dominated the budget process, and because "budget negotiation is mainly between local and territorial administrative officials rather than between elected representatives, local political accountability for budgetary outcomes is attenuated and irresponsibility encouraged."²⁴

Several conclusions can be reached on accountability. *First*, financial accountability is essential to effective and efficient aboriginal self government. *Second*, aboriginal self government can operate with a minimal framework of accountability to the federal government and parliament. *Third*, especially during the transition period, there will be a strong need for training and support as aboriginal self governments and their personnel learn to handle new responsibilities.

9 POLICY-MAKING

Of great importance to aboriginal self governments, once they are in place is how policy making will be performed. An important feature of post and present programmes and policies towards aboriginal Canadians is that the policy questions have been posed more in terms of service delivery and levels of service than in terms of types of programme, and programme development. The Hawthorn study saw the function of Indian self government as primarily the delivery of services at the community level. The Indian Affairs Branch saw its function as primarily being one of transferring responsibility for service delivery to bands, or to the provinces, as happened with education and welfare. The concerns of the Branch were to establish the appropriate levels of service and funding, and to ensure that the delivery of services, whether through the Branch, provincial agencies, or bands, was conducted in a proper manner. The questions of whether the types of programmes were appropriate, and of whether something totally new and different might be needed, were not asked. In effect, it was the *rational* element of policy making that was lacking.

These are the fundamental criticisms implicit in the Penner Report's examination of education, child welfare, and health care.¹ The report does not make this entirely clear, because it makes no conceptual distinction between service delivery and programme development. Rather it lumps the two together, speaking in one place of Indian people, in order to pursue their goals, needing "real power to make their own decisions and carry out their own plans for Indian education", and in another place of "the testimony on education and child welfare, where possible systems for delivery of services were described."² The distinction is crucial to understanding the question of policy making in aboriginal self government. The small size of most bands makes it impossible for them to conduct activities of programme development in such complex areas as education, welfare, health, justice, or economic development. The band will adapt programmes devised elsewhere for

delivery within the community. The band will not, and cannot, create these programmes.

Until now there has been a gap. No agencies performed the functions of programme development and creation of new types of programmes. The Nielsen task force pointed out some of these deficiencies. It commented that "The most significant feature about Indian and Inuit education is the degree to which responsibility for its control has been transferred to the local community over the last 15 years." At the same time, "Results from the federal reserve school system have been disappointing, largely because it has never been resourced as a full, professional system." Similarly the results from Indian participation in provincial schools have not reached expectations. The emerging band operated system, on the other hand, "has the potential for overcoming these past deficiencies, but it also suffers from a limited perception and resourcing as a full, professional system." Band operated schools are funded as local schools rather than as an Indian school system.

DIAND has not filled this gap. The Nielsen study noted that although DIAND "has attempted to provide a full array of federal, provincial and municipal services to status Indians", it had not succeeded. A crucial reason for the failure was that DIAND did not have "the 'specialist' expertise of other departments or levels of government."⁴ In effect, DIAND did not see its responsibilities as including the development of special curricula adapted towards natives and native languages and culture. It devolved responsibility for education to the provinces, which in turn for the most part did not do much programme development. Or, it devolved education to the bands, which could see the need, but did not have the resources. Nevertheless, despite these limitations, when Indian education has been successfully adapted to special Indian needs it has, as the Nielsen task force concluded, been through band control.

The Nielsen study made similar comments about social assistance and welfare, including child welfare:

Although DIAND has long provided these services on the basis of custom and to meet federal policy objectives, in more recent years, it has done so by utilizing both the services and the standards established under provincial legislation. While this is in accordance with the authority granted to provinces, it has led to major dissatisfaction among Indians, who claim that: a) forced relocation of Indian children-in-need with non-native families is a form of "cultural genocide", and b) because of their "91 (24)" and treaty relationship with the federal government, they object to

provinces attempting to exercise authority over Indian life on reserves.⁵

Just as the content, resources, and teaching style of education will need to be adapted and changed to meet native needs, so will welfare. The concept of welfare, and approach to it, of non-native society and provincial governments is often not appropriate to the needs of Indian communities:

Many Indian Bands have utilized part of their social assistance funds to help create employment on reserves, particularly under Work Opportunities Programs (WOP) or New Employment Expansion and Development (NEED) program. This concept of "Workfare" as opposed to Welfare finds a great deal of favour in Indian communities. Unfortunately, it falls outside the general philosophy and administration of CAP programs, and provinces cannot agree to recognize such initiatives.⁶

Similarly, the programmes of Indian children's aid societies would likely be quite different from those of non-native communities, and extensive research, programme development, and evaluation would be needed to make them effective and equitable.

DIAND did not consider as its responsibility the function of developing programmes appropriate to the particular needs of native communities. Nor does it appear that DIAND recognized that the need for such special programmes and policies existed. Rather, it chose to devolve the function to the provinces, which in turn treated Indian communities like others, and applied the same programmes, policies and standards to them. This created inappropriate programmes, and harm to native communities, regardless of how efficient or effectively services were delivered. The Nielsen study makes similar criticism of DIAND Indian and Inuit adult care programmes, where the department "has developed no professional expertise for offering these services on reserves," but when aged Indians are moved to institutions off the reserve (a provincial function) "treatment is said to be impeded by the unfamiliarity of the patient's surroundings and language barriers."

The point in highlighting these criticisms here is not to castigate DIAND. The Nielsen task force emphasized that many of the problems in child welfare had been alleviated through tripartite agreements and native control of service delivery. Rather, the intention is to point out that programme development is an essential part of policy-making, and that it has been seriously neglected in the evolution of the political and

administrative structures for dealing with many of the programmes for native Canadians.

There is a danger that the development of aboriginal self government will ignore the need for this aspect of policy-making. It will not provide the administrative structures necessary to perform programme development, and will fail to provide the financial resources needed for them. A serious gap in policy-making resources and performance could be passed on to aboriginal self government and perpetuated in them. Another danger is that competition and rivalry among provincial governments, aboriginal groups, and DIAND could make the development of useful policies and programmes difficult.

In other words, for aboriginal self-government to become something more than improved service delivery (which is, of course, an extremely important objective) some provision must be made for the functions of programme development. Under present arrangements this function for the most part is not done well, or not done at all. The band level is too small to be the appropriate unit to perform this function.

The Northwest Territories and the Yukon form a larger unit than any band in the south. Nevertheless, they have a problem of finding the financial and professional resources they will need for policy-making and programme development. Every step they take towards assuming full provincial status and responsibilities makes these problems more apparent and acute. This is one of the arguments put forward against provincial status for the territories. The existence of several native languages and culture within both the Yukon and the Northwest Territories exacerbates these problems.

Non-Status Indians and Métis face a somewhat different problem. To the extent that they have not been recognized as a separate peoples with their own special needs (a very large extent indeed) there have been only small efforts to create special policies and programmed for them. This is changing, and will change further. But how it changes is tied not only to questions of their special rights and land claims, but also to questions of the extent to which provincial governments are prepared to recognize their particular identity and needs, and to the extent to which provincial governments accept responsibilities for aboriginal peoples in general, whether Status or Non-Status Metis or Inuit. However, once a provincial government accepts the need for special programmed and policies for all aboriginal peoples, the question arises of how programmes and policies should be developed.

For both, policy and programme development must be performed at a level greater in scope and resources than the local community. For policy and programme development to be conducted effectively, the

self-governing units will have to work together and support institutions capable of providing these services. There are several possibilities.

The national aboriginal organizations which already exist could be used. These are presently supported by the Secretary of State and DIAND at over \$100 million annually. There are at present 57 such organizations. Many are national only in the sense that they receive their funding directly from the national government in Ottawa, and in reality represent provincial, regional or tribal aboriginal peoples. These organizations participate in and represent aboriginal Canadians in constitutional discussions. The government can also seek advice from them on policy and programme issues. At the same time, the aboriginal representative organizations are vocal, active advocates of aboriginal peoples' concerns. "The leadership and specialist skills developed in these organizations (i.e. legal and constitutional, education, communications, financial, administrative, etc.) benefit not only the individuals involved, but governments, native people, the media, academic community and other sectors of Canadian society as well."⁸

These associations have concentrated on political and constitutional issues. They do not yet have assured long term viability in their present form. Nevertheless, they are a logical location for policy and programme development. With greater stability, and closer links with their constituents, their potential resources of knowledge, experience, and specialized professional skills could become a vital part of the policy-making process in aboriginal self government.

There are examples of specialized aboriginal organizations which perform some programme development activities. Some provincial school boards have been created to serve the exclusive needs of Indian schools. Examples are the Nass Valley School district in British Columbia, and the Cree School Board in Quebec. The Manitoba Indian Education Association was established by the chiefs of Manitoba in 1979 to help meet the educational needs of the Indians of Manitoba. It now has two components. The education services section provides information and assistance in research, curriculum, special education, local control and such matters. The student services section counsels and assists Indian students. Such supra-organizations as these appear to be essential for Indian schooling to be successful. Band control of schools has produced better retention and success rates than federal or provincial control. However, as the Nielsen study noted: "The major constraint on their further development appears to be that they consider themselves to be, and are funded as, local schools rather than as an Indian school system."⁹

Post-secondary aboriginal education will require facilities far beyond the capacity of any local aboriginal community to provide. High schools

are beyond the resources of most bands. The Northwest Territories, covering over 1 million square miles, has only three high schools. At present secondary education for the most part "is delivered to aboriginal Canadians by the provincial governments and local school boards. Aboriginal school boards involving a great many aboriginal communities would be needed to deliver secondary education as a service of self-government. And resources beyond the school board level - perhaps even beyond the competence of the provincial level - will be necessary for secondary education programme development.

National institutes of aboriginal education, welfare or justice are possibilities. The various corporations and trusts for aboriginal peoples could combine their resources and expertise to assist economic development. Another possibility is aboriginal universities and colleges. The Federated Indian College of Saskatchewan, and the Gabriel Dumont Institute (for Metis) show great promise as models for research, training and the dissemination of knowledge.

Perhaps a less likely possibility is that DIAND itself could become a policy development resource. The department has seen itself not as a policy and programme development body so much as a service delivery agency. Its central policy in recent years has been devolution rather than improving programme content.

Doubtless the end result will be a wide variety of agencies engaged in many different sorts of policy development. There is a risk of spreading efforts too thin. And there is an additional risk of instability and lack of representativeness of organizations. There are, and will be, severe difficulties in coordinating and directing policy studies for as many as five hundred aboriginal self governments, several hundred tribal councils, over a dozen language and cultural groups, and the multiplicity of cultural, social and economic conditions of aboriginal Canadians. An essential requirement for success is recognition of the need for study and work that is not being adequately done, or even done at all, at present. Improved financial resources are essential here.

10 PERSONNEL ADMINISTRATION

While the workforce for aboriginal self government will be a significant total of aboriginal employment, and a large number in its own right, its size will be too small to fit-in a bill-t, auclac~ in the normal sense of the term. It will be so small that many of the assignments of responsibilities, divisions of tasks, and power relationships will be based on personalities rather than on formal job descriptions. This will also hold true for relationships between the political leaders and the administrators. There is a danger of over specifying and over formalizing relationships and tasks in such small units. Nevertheless, there will also be reasonably well defined roles.

The band chief and the band councillors are likely to have similar responsibilities and functions from one self governing unit to another. So also are the band secretary and treasurers. The band manager, the social assistance administrators, and public work supervisors will also have similar duties from one band to another.

The implications of this are that common job descriptions can be written for many of the positions in aboriginal self government. Following from this, the qualifications needed for the posts can be identified. Training programmes can be established for them. Some work towards this has already taken place under the sponsorship and direction of DIAND, and the process of devolution of service delivery in recent years has been marked by increasing competence of chiefs and committees on the one hand, and band employees on the other. Training of new or potential employees and councillors, the upgrading of the skills and professional competence of existing employees and councillors, and continuing research and development of resources for these posts are essential. The band level will be too small to ensure [that these general development activities are performed adequately. DIAND, or some other supra-organization must perform them. Aboriginal self government will not succeed if they are neglected.

For band employees, an important question is whether the administrative branch of a self governing unit is a professional. Career

service. The growing technical demands of administration, and continuing trends at all levels of government, strongly suggest that most employment in aboriginal self-governments, at least in the key central positions, will be by career civil servants with professional or technical qualifications of some sort.

Other approaches are possible. Posts in the public service sometimes are not parts of a career, professional service in which appointment is on merit. The spoils system which historically operated in the United States is such a system, giving posts in the service as rewards to party supporters, and changing personnel from those of one party persuasion to another when governments change. This approach is far from extinct in Canada, either at the federal or provincial level. Aboriginal communities might choose to regard posts in their public services as rewards or welfare. Appointment to them could be on a short-term (say three to five years) basis rather than as a permanent career. This could spread both responsibility and cash income widely within the community.

The disadvantages of this sort of system are that it can be weak because poorly qualified people are selected over the more able, and that it can be expensive, and fail to do what it ought because of incompetence. It can also be unfair because it makes employees beholden to their political executive in a way that compromises principles of neutrality, impersonality, and impartiality.

Assuming that a career professional civil service is desired, a number of subsidiary issues arise.

One of these is the conditions of service. It is normal for employment in the public service to entail generous retirement, medical, and vacation benefits. Salaries are usually better than those obtained elsewhere (see Table I).¹ Employment by the federal government in northern regions, particularly the territories, includes special education, leave, and other benefits. DIAND employees already form an economic elite in most Indian communities. A question that only time and experience will answer is the extent to which aboriginal self-governments will tolerate and accept the existence of such an elite under their employ. If they, and their citizens, are not prepared to accept it, are they then likely to be willing to accept inferior employees prepared to work at low wages?

Table I - Employment in Selected Northern Regions*

	Total	Gov't	Non-Gov't	Total	Gov't	Non-Gov't
	10,995	7095	14,061	10,995	7095	14,061
	37.7%	34.6%	37.7%	37.7%	34.6%	37.7%
number of employees	1,310	925	17,307	1,310	925	17,307
average income	18,218	12,985	18,218	18,218	12,985	18,218
% native employees	34.3%	67.2%	34.3%	34.3%	67.2%	34.3%
native income as a % of non-native	61.4%	71.0%	61.4%	61.4%	71.0%	61.4%
Northwest Territories						
number of employees	625	1,835	18,894	625	1,835	18,894
average income	15,475	18,215	18,894	15,475	18,215	18,894
% native employees	24.8%	31.3%	27.1%	24.8%	31.3%	27.1%
native income as a % of non-native	76.4%	71.2%	76.4%	76.4%	71.2%	76.4%
Yukon						
number of employees	480	1,020	18,448	480	1,020	18,448
average income	13,447	19,431	12,997	13,447	19,431	12,997
% native employees	9.9%	4.8%	48.5%	9.9%	4.8%	48.5%
native income as a % of non-native	57.8%	58.4%	75.0%	57.8%	58.4%	75.0%
Northern Saskatchewan						
number of employees	745	1,900	14,111	745	1,900	14,111
average income	11,533	15,340	13,544	11,533	15,340	13,544
% native employees	37.6%	33.3%	85.6%	37.6%	33.3%	85.6%
native income as a % of non-native	80.0%	62.6%	81.6%	80.0%	62.6%	81.6%
Northern Quebec						
number of employees	1,170	1,100	13,850	1,170	1,100	13,850
average income	17,722	11,668	17,048	17,722	11,668	17,048
% native employees	209%	35.0%	22.7%	209%	35.0%	22.7%
native income as a % of non-native	70.8%	65.4%	82.6%	70.8%	65.4%	82.6%
number of employees	12,640	11,770	12,640	12,640	11,770	12,640
average income	16,537	16,537	16,537	16,537	16,537	16,537
% native employees	11.9%	63.0%	11.9%	11.9%	63.0%	11.9%
native income as a % of non-native	68.5%	68.5%	68.5%	68.5%	68.5%	68.5%

*Derived from 1981 census data, and from C.E.S. Franks, "The Public Service in the North", Table 5.

Though evidence on this score is hard to assess, there are some grounds for suspecting that the present gap between public service and aboriginal persons is acceptable to the aboriginal peoples because the gap is on many grounds: ethnicity, education, social status, income, career expectations, culture, technical competence, language skills, etc. In other words, the community accepts that non-aboriginal persons get paid more because they are different and better qualified. As educated aboriginal persons are available to fill posts in self-government, will the same tolerance exist? If not, many educated aboriginal persons, who already have more than a foot in non-aboriginal culture, might choose not to work for aboriginal self-governing units. If they do work for aboriginal self-governments, and receive the same pay and benefits as non-aboriginal persons currently receive, a class division will arise in many communities. The disparity between aboriginal and non-aboriginal incomes (as shown in Table D) in government helps mask this problem at present: aboriginal persons are a sub-class within the public service as within the larger non-aboriginal society.

The aboriginal representative organizations funded by the federal government receive their funds on a formula basis which uses federal job classification standards for calculating staff costs. It might well turn out that, if present arrangements are continued, employment in the representative associations is more attractive than in the band level self-governments, and that there will be a steady flow of the more able people to the senior level. At present, as Table I shows, the local/band level pays less well than the senior levels. This, however, might reflect the many low-paying jobs at the local level rather than great disparities between senior administrators at the various levels. These issues of pay and benefits are particularly acute for professionals, such as teachers, nurses, and welfare officers, for whom aboriginal self-governing units will be competing with the provincial or even national level.

The practice has developed in Canada at all three levels of government - federal, provincial, and municipal - that public servants belong to unions, which represent them in negotiations on pay, benefits, and conditions of work. Collective agreements between unions and governments also cover grievance procedures, protection against arbitrary dismissal, disciplinary procedures, and other matters. They can also include procedures for hiring, promotion, and job classification and reclassification, and so on. Public service unions are powerful bodies. They protect employees against willful and arbitrary actions of employers. They can also, in management's view, tie management's hands when faced with problems with employees. Despite their faults, however, unions are a necessary protection to ensure an impartial, civil

service and merit system, protected from the whims and vagaries of changing political leadership.

If aboriginal self-governments are to have a professional, merit, civil service, then some body must perform the functions now performed at other levels by the unions, and previously by the civil service commissions. An institutional means has to be created for negotiation and discussion between the two sides. Employees must be protected from arbitrary dismissal and unreasonable demands, and their pay, benefits, and opportunities for promotion must be established through some fair procedure.

The choice is between some sort of collective negotiation and agreement between unions and management, or through some powerful independent agency. The self-governing units will be too small to have their own public service commissions. On the other hand, a union representing all the employees of aboriginal self-governments might be on such a big scale (like CUPE or NUPGE) and so much more powerful than any single unit of self-government that the scales would be unduly tipped in favour of the employees.

A possibility which deserves exploration is of several or many self-governing units combining to establish a negotiating body which would deal directly with a union and sign the collective agreement. If self-governments have school boards that are separate from band councils, the same sort of procedure could be followed with teacher's unions.

Some aboriginal self-governments might prefer to adopt none of these approaches, and deal with employees in a direct, ad hoc way, without the intervening public service commissions or unions. This is the way many local and municipal and some provincial governments operated before public service unions became powerful. In modern times, however, this has the potential for reducing the attractiveness of employment to career-minded, competent, professionals. It could produce a lower quality public service and less satisfactory administration.

A question which the federal government has been trying to resolve for over twenty years is the degree of participation of Francophones and Anglophones in the public service. Until the nineteen sixties the federal public service was dominated by English speaking employees, and English was in effect the exclusive language of administration, except when dealing with the public at the local level in Quebec. Since then, concentrated and costly efforts have been made to increase the use of the French language in administration, and to increase the participation of French speaking Canadians.

The comparable challenge which faces aboriginal self-governments is to ensure adequate participation in their civil services by their own

members. This has variously been described as creating a "representative" service, or as "indigenization".⁴ The facts of the present circumstances, as indicated in Table I, are that native Canadians are seriously under-represented in the various public services which deal with them. Where aboriginal persons are employed, it is at the lower end of the pay range. The average aboriginal income as a percentage of non-aboriginal income, ranges from a low of 50 per cent for federal employees in Quebec to a high of 83.7 per cent for hospital employees in the Yukon. The gap between pay of aboriginal and non-aboriginal persons is much greater for males than for females, which reflects the clustering of females at the low end of the pay scale. The differential tends to be less at the local/band level. In effect, aboriginal persons fill a high proportion of the lower paying jobs, and a small proportion of the professional, highly paid jobs at the top. Self-government ought also to mean self-administration. The challenge is to uncover the obstacles which have prevented more effective participation by natives, and to establish some way of overcoming them.

A fundamental problem is the absence of enough adequately trained aboriginal Canadians to fill the positions in the public service. So far, the school system has not produced enough adequately trained aboriginal people. With aboriginal control of the SCHOOLS, this is improving. However, for many years to come, additional training, outside the school system, will be needed for potential employees who do not have the proper formal educational achievements. As the Nielsen task force noted, "A concerted, continuing effort will be required in this area [improving management skills at the band and tribal council level] to support the evolution of Indian self government and constitutional development North of 60."⁵

The federal government has recognized this need, and has created many programmes for training aboriginal people. The sixteen identified by the Nielsen task force, most of which were directed towards employability in general, and not just in the public service, included over 7,300 Indian and Inuit trainees in institutional training under CEIC. A further 4321 were supported through complementary DIAND programmes. The Northern Careers Program of the federal public service commission was singled out as "a long-standing, well-structured program to encourage on-the-job training for all native people at all levels of the public service North of 60."⁶ The National Indigenous Development Program of the public service commission was targeted at improving the levels of participation of aboriginal people in management units and management of level positions. DIAND programmes were not, however, available to Métis and Non Status Indians.

In general the task force was critical of the government's training programmes for not being targeted closely enough to job opportunities. This criticism is especially valid in relation to aboriginal self government.

There are likely to be more than 8,000 salaried jobs within aboriginal self government administration, 16,000 posts in the school system, the additional positions in health, welfare and other activities, the positions in supraorganizations and the federal and provincial governments. This is a huge market for trained and qualified aboriginals. Aboriginal persons who complete post secondary training are markedly more successful than non-aboriginal persons in finding employment. Their overall success rate is better than 90 per cent. Even a little post secondary education makes them marketable.⁷

The same sort of opportunities should exist for aboriginal persons who, though they have failed to complete formal secondary schooling, have proven capable of handling the responsibilities of administrative positions. Training programmes targeted to positions in self government are essential. So also is a reconsideration of the formal qualifications for posts in government administration. Personnel administration should compensate for past deficiencies in the educational system, so that aboriginal persons of proven competence can be appointed and promoted, despite the absence of formal educational achievement. Adult and community education are needed to fill these gaps.

At this point in time, the Inuit, in preparing for the creation of Nunavut in the eastern Arctic, are perhaps the most aware of the challenge in staffing self-government. A study prepared for Inuit Tapirisat criticizes existing territorial government training courses because they:

invariably serve the interests of the non-native employees of the government. They are designed and marketed to non-native career conscious civil servants, many of whom leave the North after a few years. Like the federal programs described later, they are not linked to a manpower development strategy for Nunavut.

The training opportunities generally available for Inuit in the Northwest Territories, with few exceptions:

are designed for lower level entry into the workforce - clerical, technical, and manual job postings. For the most part, the present training system reinforces class distinctions and promotes institutional racism wherein the often transient, non-native employee rises quickly while the native northerner is destined to menial work at the bottom of the system.⁸

A subsequent task force concluded:

that government supported initiatives such as land claims, devolution and territorial division will fail unless [raining opportunities are provided to qualify Inuit for middle and senior management responsibilities. Present policies, programs and training initiatives of the federal and territorial governments have not seriously addressed Inuit training needs and priorities in a long-term developmental context.⁹

The Inuit are now actively engaged in developing a strategy and training programme. They are keenly aware of the risk of the government and administration of Nunavut being swamped by non-aboriginal administrators and professionals. To provide the Inuit personnel in time will strain training resources to their limits. The James Bay Cree have not yet resolved this:

The complex technical nature of the new regime has made the Cree highly dependent on non-native technical staff, consultants, and lawyers. Technical self-sufficiency would appear to be a distant goal.¹⁰

In another study I made the comment that:

Many observers, including myself, have found it strange that, on the one hand, it is often difficult to recruit competent persons in the north, that once recruited, they don't stay, and that high turnover is a constant problem, while at the same time a large native population is unemployed and dependent on welfare. The reason given for the anomaly is usually that natives do not want the jobs, or are uninterested in being trained for them.¹¹

These reasons are wrong. Experience shows that aboriginal people are keenly interested in training and education, provided the programmes are appropriate. They are also interested in employment.

Staffing the senior and professional levels of aboriginal self-government is one of the greatest challenges facing both aboriginal communities and DIAND. It needs urgent, immediate attention and the commitment of substantial energy and resources.

At the lower levels, of semi-skilled and non-skilled labour, several jurisdictions have already shown that employment can be adapted to aboriginal needs. The James Bay Cree rotate many jobs at three or four month intervals, so that the benefits of wage employment are distributed

equitably within the community. The same sort of flexibility can enable traditional hunting and gathering activities to be combined with wage employment. These avenues need to be developed more fully. Government employment will continue to be the most important economic activity in most native communities for many years to come.

Central initiative is needed to ensure that adequate resources of trained aboriginal persons are available to staff self-government. Various posts like band secretary, band treasurer, band administrator, social assistance administrators, public works supervisors, band chiefs and councillors are readily identifiable, as are the requirements of these posts. It should be no great problem to create a training programme to ensure a supply of qualified aboriginal candidates. Staffing the school system is perhaps more difficult, but 30 per cent of teachers of Indians are now Indians. More, and better teacher training programmes are vital.

There is a lesson to be learned from the past. Many of the problems of devolution have been caused by a failure to foresee the training and staffing needs. Coopers and Lybrand reported that one chief, whose band had financial problems, in part because of difficulties in dealing with DIAND, felt that:

the whole process of program transfer has been thrust upon the bands with little preparation and inadequate on-going support. He has little respect for the quality of advice and assistance provided and would prefer to deal with private consultants. As an example, the chief seeks more advice from his auditors than from Band financial Advisor. His auditors gave a three-day seminar on Financial management which taught him more than he has learned in twelve years from DIAND.¹²

One unhappy chief does not make a case. But the point is still important that training must be made available, and it must be good. Otherwise aboriginal self-government runs the risk of falling flat on its face. The federal government must make a serious commitment to training and staffing; if it does not, its commitment to aboriginal self-government (and to economic development) is suspect.

11 INTERGOVERNMENTAL RELATIONS

Whatever their functions and structure, aboriginal self governments will have a continuing need for interaction and relationships with each other, and with other levels of government. Several of the important aspects of these relationships have been identified in this study. In the *financing of self government*, there will be an annual series of negotiations between aboriginal bodies and the federal government. In *policy-making*, aboriginal self governments will need to coordinate their activities to ensure satisfactory programme and policy development. In *accountability*, there will be a continuing, though it is hoped, reduced, relationship to the funding agencies. In *personnel administration*, there will be a need for training, setting of administrative and employment standards, and other activities that will require resources beyond the level of a single self governing unit. *Service delivery* will also demand on going dealings with both federal and provincial agencies.

The Canadian model of federal provincial relations – the most visible and discussed model – is not likely to be the model most suitable for the inter-governmental relations of aboriginal self governments. Canadian federal provincial relations are enormously expensive and time-consuming. They demand the continuing attention and work of political leaders and legions of bureaucrats. They are processes with very high symbolic and political value. They are conducted by one federal and ten provincial governments, and this small number enables much of the relationship to be conducted through highly visible platforms of executive federalism, such as First Ministers' Conferences. Each of the governments involved, with the exception of one province, represents more people than all the Status Indian and Inuit in Canada combined.

In contrast, there are likely to be several hundred aboriginal self-governments, with an average of fewer than 1000 members, and with civil services containing fewer than a dozen employees. Physical limitations would prevent anything more than a token interchange between leaders of the federal and aboriginal self government levels at a First Ministers' Conference.

At the same time, the resources of aboriginal communities are stretched by even the present levels of interaction. Various estimates put the amount of time spent by band leaders in negotiating financial arrangements with DIAND at thirty to forty per cent of their working time. Other estimates of the time involved in accounting to DIAND are comparable, at thirty to forty per cent. This leaves precious little over for the core activities of *governing and* administering. The system of devolution of programme delivery has evolved in Canada so that there is a large body of DIAND employees whose function is to monitor, control, and advise bands, and a very large expenditure of time, money, and energy on both sides goes into these processes.

Clearly there will have to be some system of simplified but effective management of the relationships between the federal government and aboriginal self governing units. These will involve changes and developments at the levels of both aboriginal self government and the federal government.

At the level of aboriginal self government, the central issue is the extent to which units will cooperate together. As we have already seen, there are now 57 aboriginal representative organizations at the national, provincial, and other levels. These organizations are effective and powerful pressure groups, and express aboriginal viewpoints at constitutional and other conferences. Most observers see an enhanced role for these associations with the coming of aboriginal self government. Sally Weaver, though she thought that the goal of self government would be achieved at the band and reserve level, also thought that:

This process will be facilitated by the development and maintenance of stronger national and provincial lobbying organizations, representing band interests, which can keep pounding, pressing, and monitoring the federal government. So I see a band-level government supported by provincial and national Indian organizations as being the most sensible and viable model of Indian government.¹

Gibbins and Ponting went even further:

The implication is clear. Effective participation in *intergovernmental relations* will be impossible without the creation of aboriginal "supra-governments" - that is, aboriginal *governments* that transcend the level of the local community. Without provincial and national aboriginal governments, there is little realistic prospect of self-governing aboriginal communities being integrated into the existing intergovernmental system...

The nature of intergovernmental relations also necessitates *governmental* organizations that can impose decisions upon individual community governments, and from which communities would not be free to withdraw on matters of policy dispute. In effect, government at the community level would become analogous to municipal government, because the legislative power of provincial and national aboriginal governments would supersede that of the community level aboriginal governments. In other words, *the price of self-government may be the surrender of some aspects of self-government to new and larger aboriginal organizations.*

As Gibbins and Ponting see it, the native representative associations will be transmuted into a new level of aboriginal self government, analogous to the provinces. The band level of self government will then bear the same relationship to this new level as municipalities now do to the provinces. Only in this way can aboriginal self government be fitted into the pattern of intergovernmental relations.

This proposal raises questions of both the purposes of self-government, and the perceptions and desires of aboriginal Canadians. Leroy Little Bear et al. argue that:

With both the Canadian government and local band councils reluctant to delegate governing powers to pan-Indian organizations and given the uneven distribution of wealth, the cultural diversity, the geographic dispersion, and the legal divisions of Indian constituencies, it is unlikely that pan-Indian government will soon be realized.²

Bands may prefer to preserve their own autonomy. The present relationships with DIAND, despite their faults, are at least a known commodity. Incremental changes to them, rather than a sortie into the unknown territory of aboriginal supra-governments, might remain the preferred choice for many years, although in some instances self-governing units already do, and will doubtless want to, cooperate in service delivery and other activities.

The organizations created for these purposes might not be supra-governments with legislative power, as envisaged by Gibbins and Ponting. Instead they might function as set-vice agencies, assisting self-governments, but not controlling and directing their activities.

There are many examples of such supra-organizations at present. Among the most interesting is the Federation of Saskatchewan Indian Nations (FSIN). This assembly of Indian nations includes bands that

make up the Salteaux nation, the Assiniboia, the Dakota Sioux, the Dene Chippewyan, and the Cree Nation. The FSI comprises 69 bands, ranging from 85 to 3,000 members, with some bands on as many as eighteen or twenty reserves. The 69 band chiefs comprise the Regional Council of the FSIN. They meet for a week four times a year to conduct research, develop policy and plan strategy.⁴ Under the Regional Council are seven district councils, comprised of the chiefs of the district. This is the level at which the treaties are implemented, and that common goals and common policies are formulated.

The FSIN has identified four major functions on which to concentrate: educational development, economic development, socio-cultural development, and political development. It is attempting to develop an Indian policy for each of these functions. The FSIN is, for example, designing a 'Saskatchewan Indian Education Commission' that will be assigned the responsibility to develop and provide quality Indian education. Indian elders will control the curriculum and administration of education.

The Saskatchewan Federated Indian College is the most successful aboriginal post secondary institution in Canada. It offers a four-year degree programme, which had 220 graduates by 1984. The Saskatchewan Indian Community College offers business management, vocational, and professional skills. The Federated Indian College provides pre-law and pre-nursing preparatory programmes for aboriginal students from across Canada, who then enter other institutions for their professional degrees. In noting the success of these institutions, the Nielsen task force proposed that:

Further consideration should ... be given to the effectiveness so far exhibited by the existing provincially-accredited, Indian controlled post secondary institutions. The financial base for the present institutions should be recognized, and their potential for further success care fully analysed.⁵

This is as close to enthusiasm as the task force got.

The FSIN also is attempting to develop a policy for economic development, and a system of native justice to replace the provincial judicial system. The FSIN is designing these social institutions

in an effort to build bridges among our people. We are *not* designing those Indian institutions to change Sioux to Cree, or Cree to Dene. We *are* creating those Indian institutions so that we can more effectively communicate and relate to each other.⁶

In the political sphere, the FSI has designed an Indian government constitution which will protect band autonomy. It will include powers to the chief's council, to the elder's council, and to the chief and the headmen. Specified powers will also be delegated to the district and regional councils, and to the national organizations.

The FSIN had developed from the bottom up, as a means of creating greater effectiveness and coordination. It comes from recognition of common needs by the bands and tribes of Saskatchewan. It is an extremely useful and interesting example of what can be done to create the best sort of intergovernmental relationships among aboriginal groups within a province.

A further issue in intergovernmental relations will be how the federal government organizes itself to deal with aboriginal self-government. The current arrangements for financing and accountability are far from satisfactory, and DIAND itself must change drastically if present faults are not to be perpetuated.

12 SELF-GOVERNMENT, SELF-ADMINISTRATION, AND THE COMMUNITY

The struggle to achieve self government will consume much of the time and energy of aboriginal leaders and communities over the next several years. Aboriginal self-government is so important a means to achieving self-determination and control of government and administration by the communities themselves, that there is some risk that it will be looked at as a final goal, an end in itself. In some senses it is an end in itself, for self government will give aboriginal communities the means to make choices about where, and how, they want to direct their energy and resources. Self government will become an established framework for politics and administration. But in a very important sense aboriginal self government is a means, not an end. It is a means for enabling the aboriginal community to perform the functions assigned to it. It is a means of making choices among competing functions and demands.¹ From this, three things follow.

First, important and difficult decisions are still to be made after self-government is achieved. Aboriginal self government in itself by no means assures happiness or better government. The history of decolonization is filled with instances where independence was followed by severe traumas of corruption, inefficiency, strife between rival ethnic groups, economic colonialism by foreign corporations, brutal criminal laws and police forces, and so on.

Many of the difficulties of governance are masked to a colonized people because governance is carried on by the others, the colonizers, not themselves, the colonized. But self government means hard choices. The resources of aboriginal self governments will be limited. They will have to choose between emphasis on economic development as opposed to redistribution, new schools versus new sewers, a health centre versus caring for the aged, and so forth. There will be conflicting views on priorities and needs. These will have to be resolved. Some people will win, some will lose. Winners, losers, and decision-makers will all be part of the same community.

In these processes some expectations will not be met. Quite possible most will not be. The effort and energy involved in achieving something as big and important as aboriginal self-government means that both leaders and community are likely to develop unrealistic expectations of what it will do, and what it will mean to have it. There will inevitably be a period of disillusionment and let-down as it proves not to be solution to problems, but a means of choosing how to solve them, and as it also becomes evident that some problems are not easy to solve, and perhaps are even unsolvable under any system of government, colonial or otherwise. Coming to terms with this will not be made any easier by the stresses and tension within the community because of new power relationships and new decision-making processes.

Second, aboriginal self-government will create pressures within the community. Employment in the new civil service will be the biggest single economic activity. The better-paid, professional levels in the civil service will become a middle class with different education, aspirations, and social and economic conditions from those who remain in the traditional or welfare economies. This has already caused some stress in the James Bay Cree:

Cree society has experienced a significant degree of class differentiation brought about by the technical nature of the Agreement. A new group of Cree bureaucrats has emerged. Defined by their understanding of at least one technical area, physical separation from their Cree communities, and close ties with government agencies, public bodies and their own consultants, they stand apart from Cree wage-earners, and hunters and trappers.

In one sense this is a sort of economic and social development. A new professional middle class is likely to pass on the same values of achievement and expectations to their children. This is the public service equivalent of the petty bourgeoisie which has been the engine of economic development in many non-aboriginal communities through the growth of small scale business. But it is also a potential source of severe stress, as the community divides into have and have not groups. These divisions are masked when the well-paid employees are non-aboriginal persons and from outside the community, as is the norm at present. They will emerge with the increasing presence of aboriginal persons within the civil service.

The new, rational and representative system of government might also come into conflict with traditional forms of decision-making. Aboriginal communities will doubtless be able to adapt to these institutions: elders

can still play a powerful role either through direct participation or through informal roles of advising and counselling; the family can still be the central social unit, and make the effective choices of who becomes the political leader, and who gets the training for a civil service post; and the values of consensus can prevail in representative government. Nevertheless, the distance between traditional aboriginal politics and governance and representative rational aboriginal self-government and administration is great, and bridging it will create stress.

In some ways aboriginal self-government will be a means of achieving continuity and maintaining the status quo - its role in the preservation of aboriginal culture, and retaining a traditional life style - is of this sort. In other ways - economic development, cultural adaptation - it is a means for causing change. Balancing continuity and change will be a constant challenge.

Third, self-government is not going to be easy. There is a limited resource of qualified manpower in aboriginal communities. Their small size will handicap them in performing some essential functions. They will have to develop an entirely new set of relationships with supra organizations for policy and programme development, and for intergovernmental relations. Their financial resources are going to be limited.

A crucial element in their success or failure will be how the federal government organizes to deal with them, particularly in financing and accountability. Present arrangements, with detailed controls by DIAND, excessive and changing demands for accountability, and uncertain funding with both DIAND and Treasury Board making their often conflicting contributions, are more designed to encourage failure than success. An essential, fundamental step towards making it possible for aboriginal self-government to succeed is for the federal government to re-organize and re-think its procedures and principles for dealing with self-governing and self-administering units. There is far too much confusion, uncertainty, red-tape, and inequality in the present arrangements. Improvements to the federal administration are at least as important as those to aboriginal administration.

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