THE CASE OF NEW BRUNSWICK-ABORIGINAL RELATIONS

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ROYAL COMMISSION ON ABORIGINAL PEOPLES
CANADIAN GOVERNMENTS AND ABORIGINAL PEOPLES PROJECT

THE CASE OF NEW BRUNSWICK-ABORIGINAL RELATIONS

David Milne

INTRODUCTION

This is a study of New Brunswick-aboriginal relations. It seeks at one level to review the history, identify the patterns, and monitor the state of that relationship. This is, of course, a large subject that an essay of this length can only begin to untangle. On another level, this is a study of the specific programs and policies of the province of New Brunswick affecting aboriginal peoples from the perspective of **aboriginal governance:** how far have New Brunswick programs and policies limited or encouraged self-government by aboriginal peoples?

HISTORICAL OVERVIEW

Although this study focuses principally upon modern developments in New Brunswick-aboriginal relations, any grasp of these relations requires a decent and respectful sense of history. This is even more so when the historical memory of aboriginal peoples differs so sharply from those of other New Brunswickers. For **first peoples** from those two Micmac and Maliseet nations who first lived in the Maritime region thousands of years before the arrival of white European colonists, and long before the founding of the colony of New Brunswick in 1784, remembrance of this distinctive past is fundamental to everything that follows. It necessarily sets them apart from the descendants of more recent arrivals, those colonizing peoples who came to this land merely a few hundred years ago whether as traders, fishermen, or farmers. As the opening line of the **Declaration of Mi'kmaq First Nations Rights** reminds us: "Before there was a Canada, there was the Mi'Kmaq Nation."[i]

Archaeological excavations at the Red Bank reserve on the Little South West Miramichi River, for example, show layers upon layers of ancient campsites, an almost continuous chain of living stretching back more than 2800 years. Nurtured by a woodland economy, the Micmac peoples lived as hunters, fishermen, and gatherers over a vast 50,000 square mile territory comprising what is now Nova Scotia, Prince Edward Island, northern New Brunswick and the Gaspé peninsula in Quebec. To the southwest, along the St. John River Valley, lived yet another first people, the Maliseets who spoke another ancient language and occupied this land well before the flowering of ancient Greek civilization in the fifth century. From this venerable aboriginal perspective, the experience of colonization, relatively recent yet so brutal, has been traumatic. Like aboriginal people elsewhere, in a short time they found their free and independent way of life overturned by contact with the colonizers.

Of course, the earliest contact with the French began amicably enough with an exchange of goods for furs not appearing at first to threaten Indian territory. Indeed, the French learned Indian ways, married Indian women, successfully promoted the Catholic religion among Indian people, and later allied with the Indians against the English. But there were the deadly ravages of European diseases among native peoples to consider. The introduction of European ideas and technology profoundly altered the Indian lifestyle. Still, the aboriginal image of Indian-French relations from the 1600's is a kinder one than that of the subsequent English regime. As G.P. Gould and A.J. Semple argue in their classic study of aboriginal title in the Maritimes:

> The French and Indian relationship was easygoing with few formal rules, both sides accepting the presence and rights of the other. They shared the land, In any conflict over land the natives had precedence due to their overwhelming military strength. French establishments were designed to avoid intrusion on Indian hunting grounds. This enlightened attitude was a result of the French interest in the fur trade.[ii]

The Indians noted, however, that English colonization, complete with the arrival of settlers presented a more threatening position to Indian lands and ways of life:

> Brethren, are you ignorant of the difference between our Father [the French King] and the English? Go see the forts our Father has erected, and you will see that the land beneath his

> walls is still hunting ground, having fixed himself in those places we frequent, only to supply our wants; whilst the English, on the contrary, no sooner get possession of a country than the game is forced to leave it; the trees fall down before them, the earth become bare, and we find among them hardly wherewithal to shelter us when the night falls.[iii]

Yet in the early years before English settlement had had a chance to take serious hold upon Maritime territory, there remained a genuine concern among British policymakers to try to secure "peace and friendship" with the aboriginal peoples. There were numerous and bloody wars with the Indians from 1675 through 1783 -- collisions arising from the intrusions of a colonizing power despite early recognition of aboriginal rights in international law scholarship.[iv] Moreover, the Indian alliance with the French continued to represent a serious strategic challenge to British interests, especially with their initial toehold settlements in Nova Scotia prior to the arrival of the United Empire Loyalists in the 1780's.[v] It was for that reason that many peace and friendship treaties were signed between the British Crown and native peoples, where Micmac and Maliseet First Nations were parties, at such distant locations as Boston, Massachusetts, Casco Bay, Maine, and Annapolis Royal and Halifax, Nova Scotia.[vi] In the most comprehensive and complete study of these Maritime treaties undertaken heretofore, jointly conducted by federal-aboriginal researchers, and guided by recent Supreme Court rulings, some forty *direct* treaties with the Maliseet First Nations between 1702 and 1781 were compiled, and thirty-two Micmac treaties between 1720 and 1786.[vii] Moreover, many other declarations and treaties applicable to the Micmac and Maliseet peoples, where they were not direct parties, were also recognized. This study argues that the Indian interest in these negotiations was to secure "their physical survival and territorial preservation," to pursue their "employments of hunting, fishing, and fowling wherever they pleased without being molested ... to preserve their Hunting Grounds and not see the game chased off by advancing settlements and non-Indian hunters." They wanted "a fair and honest Trade with the Europeans" and "to be free in the practice of their new religion (Catholicism) with the liberty to harbor French priests and generally speaking, conduct their own internal affairs without interference from others. The goals of the Eastern Indian were *universal* in this regard."[viii]

According to this study, these substantive interests were successfully negotiated by the Indian representatives with the British, particularly with the Dummer Treaty at Boston in 1725. The land promises in that treaty to Eastern Indian Tribes, including the Micmac and Maliseet peoples, were simple and direct:

> That the said Indians shall peaceably Enjoy all their Lands and Properties which have not been by them conveyed and sold unto or possessed by the English and be no ways molested or disturbed in their Planting or Improvement; and further that there be allowed them the free Liberty and Privilege of Hunting, Fishing, and Fowling as Formerly.[ix]

This reading of the history of the treaties has, of course, not gone uncontested. Despite the transparent inclusion of the "Eastern Indians of St. John, Cape Sables and other tribes Inhabiting within His Majesty's Territories of Nova Scotia" within the negotiated terms of Dummer's Treaty, both the presence of a simultaneous second agreement in Boston in 1725 (with no express land provisions) between the Indians and Paul Mascarene, a representative of the government of Nova Scotia, and the absence of express Micmac and Maliseet ratification of Dummer's Treaty subsequently at Annapolis in 1726, have suggested to some historians that the Dummer treaty was never really intended to apply to the Micmac and Maliseet people at all.[x] Hence, according to this reading, Micmac and Maliseet Indians were parties only to the specific agreement struck with Nova Scotia's representative, offering none of the land title available to Indian parties dealing directly with Governor Dummer at Massachusetts. This view rejects the notion of a unified British imperial policy respecting all of the Indian tribes of the Atlantic Northeast, and stresses instead the *distinctiveness* of the Nova Scotia experience. In the same vein, this scholarship rejects the application of the Royal Proclamation of 1763 to the Maritimes -- a veritable Magna Carta of Indian rights -- despite the earlier conclusions of aboriginal legal scholar, Brian Slattery, that the Proclamation applied to all of the Maritimes.[xi] No doubt these and other conflicting interpretations of the treaties will ultimately have to be resolved by the courts, but there can be little doubt that the conclusions of the joint study best reflect the aboriginal peoples' understanding of these agreements.

In any event, after the defeat and withdrawal of the French colonial empire in the 1760's, further incursions upon Indian lands continued throughout the eighteenth century, particularly with the arrival of the Loyalists in the 1780's. Of course, the principal destination of that Loyalist influx was first into Maliseet territory along the St. John River

Valley and subsequently into Micmac lands beyond.

Within a few years, in 1784, the colony of New Brunswick was formed, whose government generally responded with alacrity to the demands of settlers, while largely ignoring Indian rights. Indeed, it was the dismal record with this regime and its Indian policy that poisoned native attitudes toward the government at Fredericton, even after provincehood and Confederation. Neither consent nor compensation was provided for settler occupation of traditional Indian lands; nor were earlier licences of occupation to the Indians issued by Nova Scotia recognized. In response to Indian protests and requests for specific licences of occupation over the next half-century, New Brunswick issued many licences to Indian communities but failed to protect these lands from squatters. These reserves created by New Brunswick, as set out in Table I, themselves comprised only a very small fraction (less than 1%) of traditional Maliseet and Micmac territory.

Moreover, under pressure from settlers, the colony subsequently sold off substantial parts of Indian reserves because the land remained unimproved, arguing that dispossession was justified under the circumstances.[xii] Even then, under the terms of the 1844 Act to Regulate the Management and Disposal of Indian Reserves in this Province, many purchasers were in arrears or never paid for their Indian lands and squatter lands often received no bidders; the "benefits" from this dubious forced land sale were to be applied to Indian relief. Gould and Semple argue acidly:

> Thus, the Indians were put in the position of having their lands sold to supply enough money to provide for their own relief year by year....The colonial period witnessed the impoverishment and degradation of the Indians in New Brunswick. They were for years totally neglected and the victims of a lack of policy. When policy was created, its chief aim was to dispossess them of their reserve lands to make way for the settlement of the country and to free the Assembly from the cost of relief. Had the policies of the New Brunswick Assembly been successful, there would now be no Indian reserve land in New Brunswick. The policy failed simply because the reserve lands were the most marginal agricultural land.[xiii]

TABLE I: ESTABLISHMENT OF RESERVES IN NEW BRUNSWICK

Name		Acres
Eel Ground	1784 Licence of Occupation	3033 Following Survey Confirmed, Minute in Council, Sept. 24, 1808
Big Hole	1805 Licence of Occupation	8700 Following Survey Confirmed, Minute in Council Sept. 24, 1808
Indian Point	1805 Licence of Occupation	760 Following Survey Confirmed, Minute in Council Sept. 24, 1808
Red Bank	1807 Minutes in Council	11014 Following survey Confirmed, Minute in Council, Sept. 24, 1808
Richibucto (Big Cave)	1802 Licence of Occupation	51200 Minute of Council 1824 reduced to 6000 acres
Tabusintac	1802 Licence of Occupation	9035 Following Survey Confirmed, Minute in Council, Sept. 24, 1808
Burnt Church Point	1802 Licence of Occupation	240 Following Survey Confirmed, 1842 Survey, 2058 acres, Minute in Council, Sept. 24, 1808
Burnt Church River	1802 Licence of Occupation	1400 Following Survey Confirmed, Minute in Council, Sept. 24, 1808
Buctouche	1802 Certification by Provincial Secretary that lands "reserved for the use of said Indians"	64 sq. miles
Buctouche	1810 Licence of Occupation	3500 (remnants of 64 sq. miles)
Pokemouche	1810 Licence of Occupation 1811 reduced by Order of Executive Council	4000 2600
Pabineau	1809 Incomplete grant by Executive Council De facto Occupation	2560 1000 (acknowledged in 1838 and 1842 Schedules of Indian Reserves)

Richard H. Bartlett, Indian Reserves in The Atlantic Provinces of Canada, University of Saskatchewan Native Law Centre, Studies in Aboriginal Rights No. 9, 1986, 15.

Table II outlines the size of initial reserve establishments and their declining acreage under

New Brunswick Indian policy over the years.

Table II: Reserves established by Licence of Occupation and/or Minute of Executive Council

	Acreage					
	Year	Est.	1838 Schedule	1875 Annual Report	1927	1972
Eel Ground	1789	3,033	3,033	2,682	2,682	2,651
Tobique	1801	16,000	16,000	18,500	5,797	5,766
Richibucto	1802	51,200	4,600	5,658	2,202	2,940
Tabusintac	1802	9,035	9,035	10,300*	8,077	8,077
Burnt Church Point	1802	240				
Burnt Church River	1802	1,400	1,400	2,160	2,051	2,052
Big Hole	1805	8,700	8,700	6,800	6,303	7,300
Indian Point	1805	760	750	750*	100	100
Red Bank	1807	11,014	10,000	5,200	6,100	6,100
Buctouche	1810	3,500		4,655*	352	137
Pokemouche	1810	4,000	2,600	2,400*	485	500
The Brothers	1838	15			10	
Canous	1851	100		100	160	
	De Facto Occupation					
St. Basile	1792			722	710	766
Pabineau	1809	1,000	1,000	1,000	1,000	1,053
Renous	1828	40			100	25
Eel River			400	220	220	240
Aboushagan						200
	Grant or Purchase					
French Village	1792	720		460	460	979
Woodstock	1851	200			152	196
	Special Reserves					
Fort Folly	1840	62.5			62.50	100
Indian Island					100	100
*Fails to deduct	lands sold immediately prior to or after Confederation					
	Post Confederation Reserves					
	Crown Lands Set Part by Province					

St. Croix	1881	200			200	200
	Purchases by Dominion government					
St. Mary's	1867	2.5			2.5	327.5
Oromocto	1895	125			125	49
Gould Island	1895	16			-	-
Eel River	1907	80.5			80.5	-
Richibucto	1961-2	500				added to
(Big Cove)		approx.				Richi-bucto

Richard H. Bartlett, Indian Reserves in the Atlantic Provinces of Canada, Studies in Aboriginal Rights No.9, University of Saskatchewan Native Law Centre, 1986, 19-20.

Against this historic backdrop, native leaders hoped for better protection from federal fiduciary responsibility over Indians and Indian lands with Confederation (though native consent was never sought nor given to the founding fathers.) Henceforth, aboriginal people would not regard even the indirect extension or application of provincial jurisdiction over them with equanimity. A special federal relationship was cultivated both by the Department of Indian Affairs and by Indian peoples themselves. After the passage of the Indian Act in 1868, the New Brunswick law respecting Indians and Indian lands was repealed and all monies and lands held by provincial Indian Commissions were transferred to Ottawa. Thereafter, the Department of Indian Affairs exercised almost complete authority over reserve Indians, providing an entire complex of services from health care to housing, while leaving off-reserve aboriginal peoples subject to standard provincial law and practices. In any event, largely confined to small reserve pockets within the province, or as provincial residents off-reserve during a period of modest government when provincial programs did not much impinge upon the lives of most citizens, New Brunswick aboriginals did not occupy the attentions of the provincial government. It was not until after the Second World War, when Ottawa shifted direction and began a conscious policy of involving the provinces in the delivery of programs to aboriginal people, that the province of New Brunswick once again involved itself directly in the affairs of the Micmac and Maliseet peoples.

It was the Joint Committee of the Senate and House of Commons in 1946-48 that formally

recommended greater provincial delivery of services to Indians. In the subsequent 1951 federal-provincial conference on social security in 1951, New Brunswick, together with the other provinces, agreed to include Indians in their programs for old-age assistance and blind persons' allowances. This was the first major assumption by the province of financial responsibility for Indians.[xiv]

In 1958, after years of negotiations with Ottawa, New Brunswick signed an agreement with the government of Canada for each to pass laws ceding "all rights and interests of the Province in reserve lands except lands lying under public highways, and minerals" to the Dominion. The agreement also confirmed the grants of all patented lands by Ottawa, and made provision for the reversion of reserve lands to the Province "in the event of a band of Indians in the Province becoming extinct." The agreement was made necessary because the Judicial Committee of the Privy Council had earlier ruled that federal Letters Patent purporting to convey reserve lands to various persons were unlawful and invalid. The agreement aimed to remedy that "inconvenience" and "to settle all outstanding problems relating to Indian reserves in the Province of New Brunswick and to enable Canada to deal effectively in future with lands forming part of said reserves."[xv] Despite the broad reach of the legislative language, certainly not all outstanding problems on Indian reserve were by any means settled by this agreement; indeed, approved without the consent of the Indians themselves, the agreement quite overlooked their issues. As Bartlett argues:

> During the debates in the House of Commons and Senate no mention was made by the representatives of any party of the grievances or concerns of the Indians. The question of the substantial areas of surrendered land occupied by squatters but never sold was not raised. There is no indication that the agreement was ever referred to the Indians and nobody suggested that it had their support.[xvi]

One of the provisions of the agreement, namely a provincial right of first refusal to purchase surrendered reserve lands, subsequently carried over into a similar agreement with Nova Scotia in the same year, is unique. Bartlett explains:

It is not found in any other federal-provincial agreement respecting Indian reserve lands in Canada. Its intention was explained in the Senate:

> In connection with Indian lands bordering rivers, the province has expressed some fear that the surrender and sale of reserve lands to individuals might prove to be against the public interest. The wording of this section, while it does not prevent sales of surrendered lands to individuals, provides that the province is to be informed of any intention to sell, and it gives the province an opportunity to consider whether the purchase of the land by the province is desirable.
>
> The section furnishes various safeguards to ensure that the province through inaction cannot block a sale, and provisions are made to ensure that if the provinces decides to purchase, it will pay a fair purchase price for the land.[xvii]

Hence, in any alienation of reserve lands to third parties, including disposition of lands as part of a joint venture, Indian governments face a potential provincial obstacle. The provision restores once again a provincial voice over the disposition of reserve lands within the province.

It has been through such various federal-provincial agreements in the post-War period that Ottawa has opened the door to deeper provincial involvement in Indian affairs. Many of these intergovernmental agreements over education, welfare and other services have similarly proceeded without the consent of aboriginal peoples. These and other initiatives will be the subject of an extensive study on provincial programs concerning aboriginal peoples to be taken up below. In addition, however, the courts have opened up a wide provincial role over Indians by ruling, with only a few exceptions, that provincial laws apply of their own force to Indians and Indian lands provided that they are relation to a matter coming within provincial jurisdiction and do not single out or otherwise trench upon "Indianness."[xviii] Yet, even here Ottawa has by virtue of Section 88 of the Indian Act, first introduced in 1951, enlarged the provincial field yet further by making provincial laws affecting Indianness applicable to Indians by virtue of federal legislative adoption or incorporation by reference of laws of general application within the province.[xix] The only exceptions are that provincial law shall not conflict with the Indian Act (or other federal statute), or the terms of any treaty. Of course, with the passage of section 35 of the Constitution Act, 1982,

aboriginal and treaty rights are now "entrenched", or put beyond direct legislative attack by *either* level of government.[xx] Still, the expansion of provincial jurisdiction over Indians has been a troubling development for aboriginal peoples, causing fears for their cultural survival; these concerns led the Penner Committee to recommend that Ottawa use its powers under section 91 (24) to exempt Indian reserves from the application of provincial law and that it negotiate bilaterally over jurisdiction with First Nations. Spurning this advice, the federal government has continued to think trilaterally, to see three stakeholders over Indian policy. Moreover, with a provincial voice built into Canada's amending formula, any new explicit constitutional provisions for aboriginal self-government require provincial consent; a decade of constitutional conferences over these subjects is testimony to that tripartite reality.

It must be acknowledged that for New Brunswick, as for most provinces, there has been little eagerness to accept the federal invitation to assume a prominent role in aboriginal matters. On the contrary, virtually every provincial government in the province, whatever its political stripe, has proceeded cautiously, taking the view that the constitutional responsibility for aboriginal peoples is essentially federal. In this they have echoed the sentiments of aboriginal peoples themselves. Moreover, New Brunswick governments have long feared "offloading," the transfer of federal financial and political responsibilities onto the province. Yet with federal policy pointing relentlessly toward provincial involvement, the advent of the Indian right to vote in the province in 1963, and the growing power of Indians' organized voice in the province, there would be no turning away from aboriginal-provincial politics. The emergence of this reluctant relationship is doubtless a deeply ironic outcome after more than a century of avoidance and neglect.

PRESENT CONTEXT

Aboriginal Peoples and Organizations

Certainly too, if prominence on the political agenda of New Brunswick is seen as a function

of sheer numbers or power, there would have been little reason to predict the emergence of aboriginal issues here. Approximately 12000 strong, aboriginal people comprise less than 1 per cent of the province's population. This ratio is, of course, in marked contrast with the higher percentages of aboriginal people in the populations of provinces like Manitoba and Saskatchewan. And even though the numbers of aboriginal peoples have increased sharply in New Brunswick since Confederation -- with their rate of increase almost double that of the provincial population growth from 1881 to 1981 -- they are still a minuscule proportion. According to the census, between 1881 and 1981, Canada's aboriginal population rose by 306% (from 108,500 to 440,700), while the total population of Canada grew by 457% (from 4.3 million to 24.1 million). However, in New Brunswick as a result of limited immigration, the aboriginal population during these years grew faster than did the total provincial population. The percentage increase in the aboriginal population was 228% (from 1401 to 4605) compared to a mere 108% increase in provincial population growth.[xxi] This underlines a trend toward a growing aboriginal population even if confidence in precise population counts may be lacking.

Even now, the exact numbers of aboriginal people, both on and off reserve, within the province remains unclear. Although the production of a special national aboriginal survey by Statistics Canada in 1991 could have generated recent and reliable data, the non-participation of several First Nations in that survey prevents any comprehensive statistical assessment of aboriginal people in the province.[xxii] It is difficult to judge how far this non-participation of reserve communities might also have affected the results of the off-reserve aboriginal population. According to the Department of Indian Affairs and Northern Development, there are approximately 6300 aboriginal people on the fifteen First Nation communities within the province, an additional 3000 status Indians living off-reserve, and an additional 3500 people who have some aboriginal ancestry according to the 1991 census. Statistical data over the years also indicate depressingly familiar snapshots of high rates of unemployment, school dropouts, alcoholism,

suicide, physical and sexual abuse, and other social distress among native people. Since the province is the major provider of social and educational services, with experience in program delivery far surpassing that of the federal government, it might be thought natural for the parties to look to this level of government for some of the expertise needed to help tackle these chronic problems. Yet the level of aboriginal alienation and distrust of the province acts as a barrier to productive interaction. Moreover, the overwhelming majority of native peoples interviewed for this project do not see the province as *their* government; they continue to look to the federal government as the only level of government with which they should deal, mainly because of federal fiduciary responsibility and treaty obligations to native people. As Chief David Perley once explained, this antipathy is partly a question of history, partly a question of self-image, and partly a simple practical preference for dealing with *one*, less hostile level of government:

> It's bad enough to have to deal with one government, let alone two. In the lower levels of government there seems to be more resistance, more, dare I say it, racism. The provincial governments tend to be anti-aboriginal rights, they want us to become municipalities...[xxiii]

The same failure of aboriginals to identify with the province was also reflected in our evidence of very low provincial voting participation rates for aboriginal peoples, whilst voting in federal elections was higher.[xxiv] Therefore, despite the arrival of the right to vote for aboriginal people in New Brunswick provincial elections in 1963, there is little evidence of identification by aboriginal people with the province. This is true even though a growing number of aboriginal people also recognize with some regret the inevitability of ultimately dealing with the province over problems of land, education, taxation and resources.[xxv] Hence, once again the reluctant partnership that must somehow find expression predominantly through provincial interaction with aboriginal organizations often operating competitively both on and off-reserve, status and non-status, and increasingly across the gender divide.

The province of New Brunswick interacts with representatives of native peoples through a complicated network of aboriginal communities, councils, centres and organizations. The

foundation begins with fifteen aboriginal communities, nine Micmac First Nations concentrated mostly in the northeast of the province, and six Maliseet, dotting the St. John River system. The elected chiefs of these communities speak to the provincial government for their people in at least two different capacities over a wide range of issues of mutual concern. First, on matters of concern to their own community within provincial areas of jurisdiction, the chiefs communicate directly with the appropriate provincial minister or the premier. In addition, the chiefs join forces to speak collectively on many aboriginal-provincial issues through the tribal Councils, the Union of New Brunswick Indians, and, intermittently since 1988, through the Joint Committee of Chiefs and Ministers.

District band councils, linking groups of First Nations, can and do operate in concert for certain broader purposes. The North Shore District Council, for example, is made up of the Micmac chiefs of the Eel River Bar, Pabineau, Eel Ground, Red Bank, Indian Island, Buctouche, Fort Folly, and St. Mary's Indian Bands. Similarly, the Saint John River Valley District Council is composed of the chiefs of St. Basile, Woodstock, and Oromocto Indian bands. Most active of all, the MAWIW Council, comprising the chiefs of the largest First Nations of Big Cove, Burnt Church, and Tobique, has frequently negotiated agreements with the provincial government over various matters such as education and hunting, and it has also sponsored important research on key issues of vital aboriginal concern, such as the earlier noted joint study of Maritime treaties.

The Union of New Brunswick Indians was founded in 1967 after decades of intermittent efforts at organizing a collective voice for First Nations in the province. The Union is made of 17 Board Members, representing the chiefs of the province's fifteen reserves, plus the leaders from two bands in Prince Edward Island. The President of the Union is appointed by the Board. The Union publishes a newspaper and receives its core funding from the former Secretary of State. In much the same way that premiers collectively claim to speak for their "provinces", this Union of Indian chiefs claims to be the official collective voice of native people registered under the Indian Act

(who are named on a Band list or general list), most of whom continue to live on a reserve. Its first official objective is "to foster and promote greater self-determination of the Indian people of New Brunswick in the presence of all of their aboriginal, treaty, and residual rights." In pursuing this objective and its general goal "to foster and promote human development, social development, and economic development of the Indian people of New Brunswick," the Union interacts regularly with the provincial government and presses those issues where the chiefs have been able to achieve a consensus. It also serves as a useful forum for discussion of issues between the chiefs and the Atlantic Regional Office of the Department of Indian Affairs. Though a less practical vehicle for working out administrative arrangements with the provincial government than the tribal councils (in part because of the conflicting perspectives of its various chiefs), the Union speaks out regularly on aboriginal issues in the province. Indeed, there is growing evidence that the chiefs of the Union now see themselves as the principal authoritative voice of aboriginal people.[xxvi]

Now this network of First Nations, ultimately feeding into the national Assembly of First Nations, finds its roots in band government, the Indian Act, and the reserve system. Given that history, one should not be surprised to discover Indian governments here and elsewhere in Canada with consequent problems. Yet despite serious criticism of governments on reserves for patronage, corruption and undemocratic practices[xxvii], and despite the imposed system of governance under the Indian Act, the chiefs remain "official" if increasingly strained voices for their communities.

Of course, this organizational profile of essentially reserve status Indians and leaders by no means exhausts the field. Indeed, more than half of New Brunswick's aboriginal people live off-reserve, and of these, many have little or no contact with the reserve communities. Several other organizations of aboriginal peoples have arisen in the province to address the specific needs of these off-reserve status and non-status Indians. The most important such organization is the New Brunswick Aboriginal Peoples Council, founded in 1972 and formerly known as the New

Brunswick Association for Metis and Non-Status Indians; it acts as a major collective voice for these peoples with the province.[xxviii] Since the changes to the Indian Act in 1985 permitting more native people to claim official Indian status, the Aboriginal Peoples Council has broadened its membership to encompass many off-reserve status as well as non-status Indians. The organization is built upon 19 locals throughout the province, most of which are in the vicinity of Indian reserves. The Board of Directors is composed of 12 Zone Directors elected by the local membership. The President and Vice-President are elected by the membership at alternating annual assemblies. The provincial organization and its subsidiaries are the principal means of program delivery to the membership, as well as serving as the "political" representative of its members. Programs include an educational assistance program, several housing programs in conjunction with the New Brunswick Housing Corporation and the Canadian Mortgage and Housing Corporation, and some major economic development initiatives. The Council is also active in many broader aboriginal issues including discussions on harvesting rights and practices, land claims, and self-government arrangements. The Aboriginal Peoples Council publishes a monthly newspaper, holds annual assemblies, and also receives its core funding from the former Secretary of State.

Then there is the Four Winds Native Friendship Center that serves as a non-political social service agency for off-reserve aboriginal people in the Fredericton area. A spinoff from the 1979 formation of a Native Drop In Centre funded by the Canada Works Program and sponsored by the New Brunswick Association of Metis and Non-Status Indians and the subsequent short-lived Needup/Netup Indian Welcome Centre, Four Winds became established in 1986. It helps native peoples overcome problems of urban integration with youth and elders programs, counselling services, cultural activities, drug and alcohol rehabilitation programs, court worker, day care, housing, and employment services. In addition, it fosters cross-cultural awareness programs to improve understanding between aboriginal and non-aboriginal people. Funded by the former Secretary of State, it is governed by a Board of Directors elected at an annual assembly.

Finally, the New Brunswick Native Indian Women's Council is a loose coalition comprising both status and non-status Indians and reserve and off-reserve Indian women. It was founded in 1981 and receives some funding from the former Secretary of State in order to pursue matters of interest and concern to native Indian women, including economic development (entrepreneurship, employment, and training), childcare; family violence; Indian language and culture. The Council has been particularly active in sponsoring and administering the Native Employment Outreach Project, funded by the Canada Employment and Immigration Commission. It has a structure of local councils, and a Board of Directors elected by an annual General Assembly.

The emergence of a distinct organized voice for aboriginal women on the provincial level reflects a growing recognition that their interests are often not well represented by the established male Indian political leadership. The same pattern is true where strong womens' voices have been heard on the reserves speaking against male-dominated councils and chiefs. One of the most prominent of these is Sandra Lovelace, a Tobique woman who in 1981 successfully took her case of discrimination against Indian women under the Indian Act to the United Nations. Indeed, Tobique women have been exceedingly active in the campaign for Bill C-31. Yet, as Lovelace recently lamented: Tobique First Nation "is still a male-dominated place. Men run the reserve and make the rules." Hence, not only the divisions between reserve and off-reserve native peoples, but, it is argued, even the bias against aboriginal women finds its roots in the Indian Act.[xxix]

While most of the political divisions among aboriginal peoples in the province are a direct product of the Indian Act and other federal policies, the consequences are borne squarely by aboriginal people and the province. It is they who must work through the consequences of the often arbitrary and arcane federal definitions of "status Indians"; it is they who must pick up the political consequences of the refusal of the Department of Indian Affairs to extend its gaze beyond status Indians on reserves. The maze of aboriginal organizations erected as a consequence of

these federal policies presents a daunting challenge to unity among the Micmac and Maliseet peoples; they also leave the province with sizeable headaches over aboriginal representation and politics.

The conflict over who can speak for off-reserve aboriginal people is a case in point. Many off-reserve status Indians, even those raised in the reserve community and in close connection with it, cannot vote in band governments; at the same time, these Indians may not regard the Aboriginal Peoples Council as their political organization and voice. On the other hand, many aboriginal people who have been disconnected from the reserves can scarcely be expected to accept the chiefs in their claims to speak for aboriginal people as a whole in the province. The tensions between the Aboriginal Peoples Council and the Union necessarily complicate the work of addressing aboriginal concerns in the province. As early as 1981, Premier Hatfield appealed to the chiefs in the annual meeting of the Union of New Brunswick Indians to heal these kinds of political divisions, but the advice fell on deaf ears.[xxx] What complicates the issue further is the absence of any broader organizations, at the level of the Micmac and Maliseet *nations*, that can surmount this fundamental division. Such is the dubious legacy of federal Indian policy.

Overview of Programs and Evolving Provincial Role

As noted earlier, as the following chronology of the policy program indicates, it was with a gradual, cautious and circumspect spirit that the province began its first steps into modern aboriginal issues and politics. It had had neither opportunity nor inclination to think through the meaning of its emerging role. Apart from the worry over federal transfers of additional costs and responsibilities for aboriginal peoples that ought properly to be borne by Ottawa, New Brunswick had also to worry about claims for "citizen-plus" initiatives from natives within the province's basically egalitarian policy framework. There was little sympathy either for incurring federal obligations or for championing special rights for certain classes of provincial residents. The evidence shows that while the province would provide services as possible if the federal

government under contract defrayed the expenses, they were reluctant to get very deeply involved. Since native people viewed the province as an outside party and preferred to press the fiduciary role of the federal government toward them, there seemed at first less reason for the province to move more expeditiously. However, by the 1980's with the country's constitutional turmoil around issues such as aboriginal self-government, New Brunswick began to engage aboriginal issues more seriously even though fears over federal offloading and special rights continued. This slow provincial evolution of its policy framework toward aboriginal people is a fascinating testament to the influence of the larger national policy debate following the demise of the 1969 federal White Paper, as well as of recent constitutional politics.

Early Initiatives: Education and Housing

As indicated earlier, it was not until the late 1960's that the province of New Brunswick began to provide services on any significant scale to aboriginal peoples. Probably the critical date would be 1967 when New Brunswick's Minister of Education signed a "master agreement" with the Minister of Indian Affairs, enabling Indian children from any Indian Band to attend public schools. Prior to that time, very few Indian children living on reserves had access to public schools despite the federal policy of the early 1950's to integrate Indian students within the provincial schools. Those that did attend public schools did so under special arrangements negotiated between the local school board and the Department of Indian Affairs. Most, however, went to reserve schools until grade 8, and from there to the residential school at Schubenacadie, Nova Scotia. Under the arrangements in 1967, the Department of Indian Affairs paid the tuition fee directly to the province for every reserve child entering the public schools based on the provincial average cost, along with additional funding for ancillary services, such as the provision of native education workers and of a lunch program. This federal-provincial agreement contained commitments to establish an "Indian Education Advisory Committee", to recruit a consultant in Native education, and to establish a "Curriculum Sub-Committee," though there was no requirement for provincial accounting to Indian

leaders for expenditures and for delivery of services on their behalf.

Nor did these arrangements leave room for aboriginal communities themselves to negotiate their own agreements or to find appropriate means to express their own goals in the educational system. Persistent complaints arose from the Chiefs over the school system's delivery of poor native academic performance for the fees charged; over the high dropout rate of Indian children in the public schools; over the calculation of tuition rates; over the poor portrayal of Indian people in the educational curriculum; over the lack of native teachers as role models; and over the failure to teach Indian children their own language and culture. It was not long before some Bands announced their wish to opt out of the master agreement in favour of individually-tailored arrangements. Indeed, Kingsclear and St. Mary's First Nations opted out of the Indian Education Agreement in September, 1983; but efforts to finalize a local agreement with these bands were not successful, due principally to continuing differences over tuition rates.[xxxi]

From the province's view, basing tuition charges on the provincial average rate seemed appropriate, but aboriginal leaders considered that the figure was too high and that any overcompensation ought to benefit the reserve community, not the province. The provincial Department of Education has not received special funding to support unique native student needs and services, and therefore it argues that it cannot accordingly provide boards with more effective means to offer native students the special programs that they undoubtedly require. Boards have also proved reluctant to hire native teachers, nor has the tax disincentives for Indians working off-reserve helped to attract native teachers to the public schools.

Still, the province has responded in part to the complaints over lack of support for relevant native materials and programs in the educational system. It did proceed with the hiring of a native person as Educational Consultant on native issues in the Department of Education, supported the creation of a Provincial Indian Education Curriculum Advisory Committee to advise the department, and promoted research and writing on the province's indigenous peoples for inclusion

in the school curriculum.

Aboriginal scholarship and teaching was no doubt much assisted by the setting up of a majors program in native studies at St. Thomas University in 1981 -- the only one of its kind in Atlantic Canada -- together with the endowment of a chair in 1984 in native studies; the establishment of the Micmac Maliseet Institute at the University of New Brunswick in 1981, with a three-year grant from the Donner Foundation to provide research and publication in Indian studies and education, later received support from the Department of Education for its work on Indian languages and curriculum. In fact, the University of New Brunswick had been active from the early 1970's in Indian education with summer programs and a special B. Ed. degree program for Indian teachers that had seen more than fifty successful graduates.

During the 1970's, the government took modest steps toward tackling the native dropout rate through its annual educational assistance grant to the New Brunswick Association of Métis and Non-Status Indians. Begun in 1979, the grant of $10,000 (now $15,000) was aimed at providing financial aid for essential school supplies for needy students, and for scholarships and awards for leadership and academic achievement. The programs were developed by the NBAMNSI and administered by it. Although the program has been very helpful in keeping native students in school and encouraging completion of basic schooling, funding levels have not kept up with inflation nor with the growing numbers of applicants.

The province also experimented with a special program to help tackle alienation and dropout rates with the people at Big Cove First Nation in the Kent County Project in the mid-1980's . This program aimed to give native youth the option of being grouped together as a distinct class through the high school grades in the nearby Rexton provincial school. The program has been supported by native parents with encouraging results. There was also a special program at Tobique in 1988 with the provision of special native studies and native workers to assist students encountering difficulties with tutoring and liaison with the home environment.

The general problems respecting education for aboriginal people had been highlighted in several reports calling for a provincial policy on Micmac/Maliseet education. After extensive consultation with aboriginal people, a report written in 1984 by former Indian Education Consultant Malcolm Saulis for the Minister's Study Group on Aboriginal Education, argued for a policy statement. In 1987, another report by the Provincial Indian Education Curriculum Development Advisory Committee, backed by surveys and extensive consultation with native peoples, took a similar position. The Department of Education incorporated the recommendation and ideas of these reports in its subsequent April, 1991 Policy Statement on Micmac/Maliseet Education in New Brunswick. It argued for respect for aboriginal histories and culture, their incorporation in the curriculum, and for a *new partnership* so that aboriginal peoples could participate at all levels in the educational system. The Department promised an "native affirmative action hiring policy" for the Department, encouragement of employment equity strategies with school districts, and representation of Maliseet and Micmac people on all public advisory and policy committees. Among its principles was stress on the importance of First Nation-school district committees to tackle the problems effectively.

This apparent direction away from a centralized and standardized education toward local delivery through district-First Nation committees and agreements seemed to conform with the general aspirations of First Nations. This model also fitted well into the prevailing federal move away from the Master Tuition Agreement approach for aboriginal education toward financing arrangements following negotiated local agreements. Already various First Nations in New Brunswick had withdrawn from the Master Tuition Agreement or were announcing their intention to do so. Accordingly, the Department of Indians Affairs and Northern Development served notice to New Brunswick in November of 1992 that it intended to cancel the Master Tuition Agreement as of June 30, 1993. Bilateral education agreements have since been struck with the MAWIW Council consisting of the larger reserves of Tobique, Burnt Church, and Big Cove. Agreements for

other reserves will doubtless follow either through tribal councils or through direct arrangements.

Even if some long-standing problems are better tackled through band-negotiated education agreements, securing federal financing of the new arrangements, avoiding offloading of fiscal responsibilities, and developing new workable patterns of accountability will remain prominent concerns. At the moment, there is little guidance available to reassure the interests of all of the parties. Moreover, it is doubtful that such agreements will go nearly as far toward the long-sought dream of genuinely greater Indian control over Indian education as might be hoped. That goal is far from realized now even with reserve schools where curriculum control still remains with the Department of Indian Affairs; it will be yet more difficult to achieve *effective* control in a provincial public school system through use of these kinds of negotiated agreements, but at least an opening exists for moving toward that objective. The issue is of course considerably more complex and problematic for off-reserve and urban Indians, who, at least in the eyes of the Aboriginal Peoples Council, still look longingly at New Brunswick's system of distinct collective institutions for its official linguistic communities as a possible model for themselves. In the absence of negotiated framework guidelines on these and other basic matters, however, the drive for greater self-determination of Indian people over their educational system will likely continue to elude them. Matters are a very long way from meeting the vision of many aboriginals, namely, "Indian Control of Indian Education."[xxxii]

There was early targeted provincial activity too in relation to off-reserve aboriginal peoples in the field of housing. From 1976 on, the government of New Brunswick participated in the federal Rural and Native Housing Program, providing on a shared- cost basis 25% of the expenses of providing housing units for low-income native and non-native earners. But it was in fact principally due to the pioneering work of the New Brunswick and Prince Edward Island Association for Metis and Non-Status Indians that the deplorable housing conditions of aboriginal people began to be addressed. Its work in 1972 led to the later publication of a Housing Study

identifying the urgent housing needs of off-reserve aboriginal people.[xxxiii] The NBPEIAMNSI also launched a non-profit Housing Corporation, Skigin-Elnoog Housing Corporation of N.B. Inc., in 1973 that began to deliver housing units to its membership, particularly urban housing units, under the terms of the old National Housing Act. Skigin-Elnoog over the following years grew to become one of the largest Aboriginal non-profit housing groups in Canada. The NBAMNSI was active in lobbying for the 1974 Rural and Native Housing Program and the Urban Housing Program in 1978, and -- with the exception of a two-year interruption when the province opted out of the program -- has acted either directly or indirectly as delivery agent for the programs. The province withdrew from the RNHP in 1982 allegedly over the growing costs of the program, although native leaders suspected that the reasons were a mounting political backlash against the strong native component and administration of the program. Indeed, in the years between 1976 and 1982, the NBAMNSI delivered at least half of the program's annual allotments and provided pre and post-counselling services to clients, both native and non-native. Native leaders wished to continue to serve *all* low-income clients of the program, both aboriginal and non-aboriginal, although there was ongoing pressure from housing officials that the Council deliver the program only to its own native clientele. The changes in the new negotiated program in 1985 initially left the Council out of the delivery of the program but set a 6% minimum of the total housing program for the Council's aboriginal clientele.

This then was the basic pattern in the early modern period. Apart from the general services that the province has provided non-status and status Indians as residents of the province, there were relatively few initiatives established specifically for them. The province traditionally provided a small grant of $10000 annually in support of the Indian summer games, but this was justified as a normal part of its policy of providing assistance to community groups in the province and not recognition of any particular role in respect of aboriginal peoples. There was a small annual grant awarded to the New Brunswick Native Indian Womens Council too, but this in no way

indicated that the province saw a role for itself in core support of aboriginal organizations. In New Brunswick's view (and, indeed, in the view of most aboriginal leaders), that was a responsibility of the federal government. However, the 1979 assignment of a policy analyst, Mr. Dan Horsman, to the position of Co-ordinator of Indian Affairs, (now designated Senior Advisor on Aboriginal Affairs), did indicate that the New Brunswick government had come to feel that it needed the services of a full-time senior staff member to address aboriginal ongoing concerns. In short, the expectation for the future was that aboriginal issues would require more, not less, attention than in the past.

The Launch of Other Programs in the 1980's

It was the growing drive for aboriginal self-government and for recognition of aboriginal treaty rights in the constitutional talks that seemed to underline the need for New Brunswick to develop greater senior focus and expertise in this area. There was now a greater need for the province to grapple with the issues, including the implications of recognition of aboriginal peoples and their treaty rights under section 25 and 35 of the Constitution Acts, 1982. There was the constitutional commitment for ongoing constitutional conferences on aboriginal self-government in the mid-1980's, with aboriginal leaders engaged in discussions with Ottawa and the provinces. Even though these conferences failed to lead to new constitutional provisions for aboriginal peoples, and developments seemed to take a different turn with the emergence of the Meech Lake Accord in 1987, aboriginal self-government had now become a central and unresolved issue on the constitutional agenda of the nation. With the new amending formula, provinces had now an inescapable role in amendments affecting aboriginal peoples, just as they now seemed required partners in many discussions on land agreements that might include self- government and be constitutionalized by virtue of s.35.

But despite these large developments, self-government seemed merely to inch forward, to take incremental program steps, not constitutional trailblazing. About the most important

example of devolving some program authority to aboriginal people in New Brunswick during this period would be the Tripartite Agreement in 1983 between the Department of Indian Affairs, the provincial Minister of Social Services, and four Indian bands. Subsequently, virtually every reserve except Fort Folly has opted into the agreement. Child welfare is, of course, normally a matter of provincial jurisdiction, but with the blessings and financial support of the Department of Indian Affairs, the province agreed to authorize the reserve's own child and family services agency on site for purposes of homemaker services, child protection and child care.[xxxiv] Except for a brief period from 1980 where the province, after consultation with the Department of Indian Affairs, provided at its expense daycare and homemaker programs to certain reserves, there had been virtually no such services on reserves except for the minimum level of child protection services as required by provincial law. The province became involved in the wider delivery of social services as an interim measure in response to the serious problems regarding child protection and child care on reserves in the absence of action by Indian Affairs, but subsequently scaled back its activity in this area to avoid a permanent offloading of federal responsibilities onto the province. The 1983 Agreement, however, moved the agenda beyond the older federal-provincial seesaw patterns to make more room for greater aboriginal control. Under the plan, the roles of the three parties were as follows:

- The province continues to be responsible for the application of the Child and Family Services Act, under which Indian Band Child and Family Services Agencies operate. The Department of Health and Community Services plays a supporting role, as well as acting as the provincial agent in tripartite negotiations.

- The First Nations operate the agencies within the constraints of provincial regulation and federal financing

- The Department of Indian Affairs finances the services provided by Indian Band agencies.

While this arrangement was certainly preferable to the status quo, native people lost little time in registering their impatience with their relatively constrained role in this policy area. They objected to being reduced to an agent of provincial law in this manner, and sought genuine self-government

so that ultimately they would not be bound by provincial legislation and standards. Many specific quarrels over standards arose, including, for example, disputes over the qualifications required for supervisory staff of Band Agencies. But the issue goes much deeper: Indian leaders argue that this kind of arrangement undercuts their own values and traditions with respect to justice and child custody. As Anthony Francis has argued:

> We still today, are greatly affected by this lack of clear understanding as to who has jurisdiction over Indian issues, such as child custody and the application of justice in designated Indian territories (Reserves). We are at the present time applying child custody laws of the Province, which are totally alien to our customs and traditions. We are unable to use our own Indian values.[xxxv]

This comment serves as a useful reminder of the limits of this kind of administrative devolution from the perspective of self-government for aboriginal people.

Another program specifically tailored to the needs of aboriginal people was also launched in the early 1980's. As a result of the appallingly low representation of native persons (and some minority groups) in the provincial public service, the government decided to launch an equal opportunity program in the early 1980's. The program found its origin in a directive by Premier Hatfield in July of 1978. That statement indicated that it was the government's policy "as an employer to provide equal opportunity for employment to all persons and to ensure that all employees have equal access to training and development and career opportunities throughout the public service." An Equal Employment Opportunity Steering Committee of senior officials from line departments and central agencies was formed at that time to examine the concept and its application. In 1980, at the request of the Premier, a draft proposal for improved hiring of minority groups was advanced, together with a recommendation that a co-ordinator be appointed to work with a designated senior official for EEO purposes in each department. A co-ordinator was hired in 1981, but shifted position shortly afterward; it was therefore not until January of 1982 that a new Co-ordinator was appointed. After an initial education program for senior managers in EEO provided by an experienced consultant, and a proposal for action plans with measurable objectives

for departments in hiring women, the disabled, and Native peoples, approximately $100,000 was set aside in April to "hire disabled and native persons" as trainees en route to regular employment in the public service.

In subsequent reports on the results of the EEO program, however, it became increasingly clear that the program was not really working for Native people. In a report conducted in 1983 of the departments participating in the EEO special hiring program, the total numbers of the targeted group employed in the civil service had risen from 70 in 1981 to 104 in 1983. However, the increase was completely accounted for by the physically disabled whose numbers rose from 49 in 1981 to 93 in 1983; the numbers of Natives employed actually plummeted from 21 in 1981 to 11 in 1983. Thereafter, in addition to the regular EEO program, the government approved in 1986 a complimentary program to provide disabled and aboriginal students with summer employment. Still, by 1987, in terms of civil service employment, matters had improved only marginally, despite the presence of an EEO fund to encourage disabled and Native participation, then valued at $500,000.

TABLE III
TOTAL NUMBER OF PHYSICALLY DISABLED AND ABORIGINAL PEOPLE EMPLOYED BY THE PROVINCE

NUMBERS	1981	1983	1985	1987
Physically Disabled Employees	49	93	91	119
Aboriginal Employees	21	11	26	32
TOTAL	70	104	117	151

If the number of aboriginal people in the public service were to reflect their proportion of the provincial population of working age, that would lead to a figure of approximately 70 positions -- not an unmanageable target in the relevant public service with its annual turnover rate of

approximately 700 people. Yet when it is considered that the above total figures *include* casual, seasonal, and EEO term placements as well as "regular" permanent employees, the prospects for meeting the employment target for native people look much bleaker. Government departments have not been inclined to take the initiative to hire native peoples without using EEO program funds. And many of the temporary EEO placements would subsequently disappear without benefit of conversion to regular positions, especially in currently tight fiscal circumstances. In fact, the success rate from 1987 to 1990 -- namely the percentage of term placements appointed to permanent status -- was still only 22% for Natives.

Native participation in the later EEO Student Summer Employment Program from 1987 showed considerably better performance. Between 1987 and 1989, native people with post-secondary education won 50 of 124 summer employment posts. Certainly, there was no shortage of supply of highly trained native persons as a result of significantly enhanced native educational participation, but the barriers to longer-term employment in government and the private sector continue.

In fact, unemployment for aboriginal people is at the base of many other social problems. The unemployment rate is several times higher among the aboriginal population than among the population at large. As Charles Paul, Employment and Training Advisor to the Union of New Brunswick Indians, argued:

> Even with seasonal employment and government "make-work projects" the unemployment level [of status Indians living in New Brunswick] seldom goes below 90 percent. The tragedy of this gruesome statistic is compounded by the very young ages of the majority of this group.

Native people are not effectively integrated into the provincial labour force for a variety of reasons. Charles Paul went on:

> Indians encounter many problems in pursuit of employment. Too many are untrained and unskilled for the jobs that are available. Those who are trained, or skilled, must compete with non-Indians with the same training and skills, and almost 100% percent of the time the non-Indians will win out in these competitions. The private sector is almost totally closed

> as an avenue for the employment of Indian people. Very deep racial tensions are too common in areas immediately surrounding Indian communities, thus, eliminating any chances for jobs.[xxxvi]

In fact, the major employers of aboriginal people are Indian bands and organizations themselves who provide valuable employment for their people in administration, program delivery, and other services. It was in part due to this fact that so much stress has been placed on federal initiatives to expand aboriginal enterprises through the Native Economic Development Program and the like. Although economic development has been declared a priority in its aboriginal policy, except for its participation in the Youth Employment Strategy program, New Brunswick has not traditionally assumed a prominent role in this area.

This position may now be slowly changing. The province has offered cross-cultural awareness workshops for community college and head office staff and native craft programs, funded study of the access of native businesses to provincial programs, shared the cost of employing a native forestry technician for a year, and even offered a loan guarantee to an on-reserve business. Other substantial provincial commitments are also being considered under joint federal-provincial programs to identify and develop aboriginal businesses in the sports fishery. With reference to aboriginal youth, the province has participated in the Youth Employment Strategy, a broadly targeted federal-provincial initiative aimed at helping young people make a successful transition from school to work. The program was announced in New Brunswick on September 15, 1988, with $70 million set aside ($49 million by Ottawa; $21 million by the province) for the first three-year period. A program was to have a specific native component, although no consultations took place to involve the aboriginal organizations until December of the same year. In the following year, contracts were signed to bring both the Union of New Brunswick Indians and the New Brunswick Aboriginal Peoples Council into the program to assist in the identification of native youth and to link them to Access Centres where services would be provided.

While the YES program began to address the special problems of native youth, and provided

some role for native peoples in the delivery of these services, neither the contours of the program nor its future are in the hands of aboriginal peoples themselves.

The prognosis is not much better for aboriginal women. According to a report on Native Women in New Brunswick: Employment and Training Needs prepared by Barbara Martin in 1984, aboriginal women "feel trapped within the welfare system, want to escape that system and indicate employment as a way out, not necessarily from their communities but from a pattern of deprivation that will continue to renew itself unless broken." The survey conducted by this study found the following problems:

> Native women in New Brunswick are experiencing a very high level of unemployment; a low income level; lack of education and training; lack of or a spotty employment history; a high percentage of native women are single parents and heads of their households which present child care and mobility problems; the language barrier associated with their difficulties in both official languages.[xxxvii]

It is evident that much more needs to be done in breaking down barriers to employment of native peoples. From the perspective of the Union of New Brunswick Indians, much more decisive action is needed, with the "provincial government made to realize that they have a role and a responsibility to play in finding a solution" not only to the obvious flaws in its own equal opportunity program but in the private sector as well. Above all, "it is important to solicit the participation of the Indians themselves in the formulation of policies and programs that attempt to deal with the problem. This consultation must be meaningful and, it must be backed up with a commitment to involve them at every level."[xxxviii] The bleak economic picture points to a stereotypical pattern of discrimination against Indian people sadly typical of much Canadian life. It was in part in recognition of the unique challenges of protecting human rights for native peoples, that Premier Hatfield in the 1974 PC campaign platform promised a Natives Peoples Desk at the province's Human Rights Commission. It was not until 1982, however, that the Hon. Mabel DeWare, then Minister of Labour and Human Resources, rose to announce the new position and its mandate as follows:

- Conciliation and conflict resolution with special responsibility for investigating complaints filed by native persons under the Human Rights Act.

- Liaison with status and non-status Indian groups with respect to educational and cultural development opportunities

- Facilitating the development of employment programs designed to increase greater native participation in the work force of both the private and public sectors.

The position was subsequently filled and, in 1984, after two years of temporary operation of the office, with funds for affirmative action under the Treasury Board, the government decided to make the position permanent.

Finally, a more recent welcome initiative by the province in the protection of human rights, particularly the rights of aboriginal women from family violence, has been the opening of Gignoo on February 11, 1993, the first native women's transition house in the Atlantic region. The centre, staffed by native personnel and responsive to native values and traditions, would provide shelter in Fredericton for 18 native women and children. The idea had been proposed by the New Brunswick Native Womens Association to CMHC in 1991, and subsequent negotiations led to an agreement between Ottawa and the province to share the operating costs of the facility, with the province assuming the proportion based on usage by off-reserve native women and the federal government usage by reserve women.

A Provincial Policy Framework

With the collapse of the process of aboriginal constitutional conferences in March of 1987 and the swift agreement over Quebec's concerns in the Meech Lake Accord in April, Indian leaders in New Brunswick and elsewhere expressed their fury over the blocking of their constitutional aspiration for self-government. They took direct aim at the Meech Lake Accord and began to organize to defeat it. Probably in no province was that opposition of more consequence than in New Brunswick, particularly after the defeat of the Hatfield government in September of 1987 by the Liberals under Frank McKenna. The new premier had already expressed serious reservations

with the Accord prior to the election and now sought changes as a condition to his consent; moreover, in a subsequent report of a provincial constitutional commission, the same position was taken. Among the concerns that New Brunswick wished to see addressed in the future was the plight of the aboriginal peoples of Canada whose own constitutional agenda had been sidelined and overshadowed by the Meech Lake Accord.

Of course, at the centre of this struggle for aboriginal peoples, was the dream of self-government. The Liberal party platform of 1987 had indicated support for aboriginal self-government and for returning aboriginal issues to the constitutional table. Moreover, there was a host of related issues to be tackled, with a need for a sharper delineation of the respective roles of governments to be played in the future. Given that aboriginal matters had now assumed much more importance, in 1989 the New Brunswick government attempted to set out its thinking on the provincial role in aboriginal affairs in a formal discussion paper, entitled A Provincial Policy Framework on Aboriginal Affairs.[xxxix]

It began with a statement of principles on aboriginal affairs, and followed with policy statements on four areas: economic development, social development; aboriginal languages and culture; and aboriginal self-government. The section on principles began with the knotty jurisdictional issues around aboriginal affairs as interpreted by the Supreme Court of Canada; these decisions have barred provinces from legislating specifically on Indians and Indian lands as such, but have also left general provincial laws applicable to aboriginal peoples, even to status Indians on reserves, except where they conflict with "the federal Indian Act, Band by-laws made pursuant to the Act, and established treaty rights." The same complexity, the proposed discussion paper argued, arises in programs and services delivered to Indian peoples: some programs are either directly provided by the federal government or federally funded with provincial delivery (education, services, road maintenance, etc.); others are basic provincial services available to all residents, including Indians (medicare, hospital services, post-secondary education); while others provide,

through federal-provincial agreement, for the establishment of native delivery of programs through such bodies as the Indian Band Child Welfare Agencies.

All of this principled discussion focused almost exclusively upon Indians on reserves. For the thousands of off-reserve Indians, including status Indians, the paper argued from an essentially egalitarian position. These peoples were to have "access to all provincial programs and services on the same basis as other provincial residents." While the paper did acknowledge that several provincial programs had components expressly designed for the aboriginal population -- the native peoples desk at the Human Rights Commission, the housing program of the New Brunswick Housing Corporation, the Equal Employment Opportunity Program -- the policy focus remained egalitarian throughout. In this respect, the proposed policy framework reflected long-standing provincial policy under both Conservative and Liberal governments.

The provincial discussion paper then proposed the following set of general principles to ground "the interpretation and implementation of the policy framework, as well as the development of specific objectives and initiatives." These principles aimed at "helping aboriginal people become more active participants in New Brunswick society, [at sharing] more fully in the benefits of the New Brunswick economy while respecting the cultural heritage of the Micmac and Maliseet peoples and supporting the further development of aboriginal self-government." For, it was felt that the "key to the social and economic development of aboriginal people lies in large part in strengthening the Micmac and Maliseet societies so that aboriginal people themselves are more in control of their own destinies."[xl]

Table IV: Statement of General Principles on Aboriginal Affairs
1.Provincial participation in aboriginal affairs will be aimed at helping to strengthen Micmac and Maliseet societies in order to promote their greater economic and social self-reliance.
2.A)The provincial role in aboriginal affairs shall be complementary to the primary role of the federal government in this area.
B)At the same time, the provincial government acknowledges that it has certain responsibilities toward aboriginal people as New Brunswickers.
3.The provincial role in aboriginal affairs shall respect the unique legal, historical, and cultural characteristics of aboriginal people.
4.There shall be consultation with aboriginal organizations in the development of policy and program initiatives relating specifically to aboriginal people.

"Economic development," the discussion paper declared "is the top priority of the provincial government. In view of the high unemployment rate on reserves and the generally lower income levels of aboriginal people, it is appropriate that economic development be the Province's top priority in our relations with aboriginal people." This declaration was followed by a table outlining the policy undertakings flowing from this undertaking.

The paper drew attention to some initiatives in this area, including a Department of Advanced Education and Training workshop to help train its staff to respond better to the training needs of aboriginal people, as well as a Native Art Program in the Provincial Craft School "as part of a strategy for economic development based on Indian art and craft traditions." Further consultations with Indian organizations were promised "to explore how the Province can work more effectively with aboriginal people and the federal government on economic development."[xli]

Table V: Policy Statement on Aboriginal Economic Development
1.Economic development is a priority in aboriginal affairs for the provincial government. The province's

involvement in this area will focus on making provincial programs more accessible to aboriginal people.
2.The province's economic development strategy encompasses all New Brunswickers, including aboriginal people, whether they are living on or off Indian reserves.
3.The provincial government is committed both to the development of aboriginal businesses and to greater participation of the aboriginal labour force in the provincial labour force.
4.New Brunswick is prepared to work in cooperation with Indian bands, aboriginal organizations, and the federal government in pursuit of economic development initiatives for aboriginal people.
5.New Brunswick's involvement in aboriginal economic development will take into account the special federal role in this area, in particular, federal economic development programs for aboriginal people. In general, joint federal/provincial/aboriginal collaboration will be the preferred approach to provincial involvement in aboriginal economic development.

In the field of Social Development and Community Services, the province acknowledged the primary role of the federal government respecting "social programs and community infrastructure for Indian Bands." It also declared that

> the Chiefs have expressed the desire of the Bands to remain a "federal responsibility." For these reasons, the Province has never assumed any obligation to finance social and community services -- such as schools, income assistance, local roads, water and sewage systems, band halls -- on Indian reserves.

It concluded, therefore, that, while it would "work in cooperation with Indian bands, aboriginal organizations and the federal government to further the social development of aboriginal people," it would continue to see "reserve-based programs and services" as the "responsibility of the federal government and Indian bands," with the province offering services "on a cost recovery basis."

As for off-reserve people, the province reasserted its egalitarian promise "to provide services on the same basis as other New Brunswickers," with the possibility of "special initiatives in collaboration with Indian bands, aboriginal organizations, and/or the federal government, in recognition of the unique circumstances of aboriginal people and in keeping with the spirit of self-government." These referred to programs akin to those already negotiated, such as the Rural and Native Housing Program. The discussion paper also noted education as a "priority of the Province in view of its role in aboriginal social development," and drew attention to its new project

in School District 31 for students from Tobique, as well as its support for the Big Cove initiative.

In the policy statement on Aboriginal Languages and Culture, the discussion paper once again argued that "strengthening Micmac and Maliseet societies [was in part] a means for furthering the social and economic development of aboriginal people." Arguing that "Micmac and Maliseet cultures still exist in a contemporary setting," the Province acknowledged that "the desire of the Micmac and Maliseet peoples to maintain their distinct identities should be respected." To assist that direction in the policy fields of heritage, aboriginal languages, arts, human rights, and multiculturalism, the Province proposed the following provincial policy statement.

Table VI: Policy Statement on Aboriginal Languages and Cultures
1.The cultural heritage of the Micmac and Maliseet peoples shall be acknowledged and promoted, as appropriate, in provincial programs and activities, including in the provincial school curriculum.
2.The provincial government shall cooperate with the aboriginal people and the federal government in their efforts to retain and promote the Micmac and Maliseet languages.
3.Aboriginal individuals and organizations, including Indian bands, shall be eligible for provincial programs in support of the arts, culture, and heritage on the same basis as other applicants.
4.The provincial government affirms the fundamental dignity of all races and promotes tolerance among all cultures through its support for human rights and multiculturalism.

Finally, in the critical area of aboriginal self-government, the Province recognized:

> that aboriginal people must have the opportunity and the responsibility for their own development, both as peoples and as individuals. Neither the federal government nor the provincial government can replace the role of the family and the community in meeting the needs of people. That is why self-government is so important -- to return to aboriginal people both the opportunity and the responsibility for preparing for and shaping their future.

A provincial policy statement that held out continuing roles for federal and provincial governments followed.

Finally, the Province declared that its declarations should be understood to have clear limits.

> Removing Indian Bands from the strait-jacket of the past does not mean going to the opposite extreme of sovereign or independent Indian governments. From the perspective of the Province, self-government means that aboriginal people will have responsibilities and opportunities comparable to other Canadians within a context that will promote their ability to maintain and promote their cultures.[xlii]

As it turned out, the provincial discussion paper of November 1989 did not serve as a useful basis for building consensus on a New Brunswick role in aboriginal affairs. Instead, it provoked extraordinarily strong expressions of dissent from aboriginal organizations, both

Table VII: Policy Statement on Aboriginal Self-Government
1.New Brunswick supports a national process involving First Ministers and aboriginal leaders to consider aboriginal constitutional matters.
2.New Brunswick supports the development of a constitutional statement on aboriginal self-government through such a national process.
3.New Brunswick is prepared to cooperate with Indian band councils in the development of practical arrangements that will strengthen Micmac and Maliseet societies. Because of the federal role in aboriginal affairs, the provincial involvement in developing such arrangements will usually be through a tripartite process with federal participation.
4.The provincial government is committed to exploring the application of the concept of aboriginal self government for the off-reserve aboriginal population through a process involving federal and provincial representatives.

on and off-reserve. In fact, rarely had Indian leaders in the province been moved to such a chorus of denunciation. These vigorous expressions setting out aboriginal responses and attitudes toward a provincial role in aboriginal affairs are exceedingly important and revealing. Not only do they point toward a serious gap between then provincial and aboriginal understandings respecting a provincial policy framework on aboriginal affairs, but in their vigorousness, they actually served to move the relationship forward. Hence, the responses of aboriginal organizations themselves here play an important role in the continuing provincial evolution of its understanding of its role.

It is equally true that the distinctive criticisms of the provincial discussion paper show both

the commonalities on certain issues and the gaps on others that exist among aboriginal leaders and organizations in the province. The Union of New Brunswick Indians gave its response on July 9, 1990. It argued that the Province's discussion paper was "caught in a "time warp": this "new" provincial policy is the "old" provincial policy." It went on:

> We've seen this particular approach to aboriginal affairs played out time and time again over the last 20 years; and the province is still missing the point -- it is time to build a new relationship between your government and ours based upon mutual trust, respect, and dialogue. All we see in this "new" policy on aboriginal affairs is a restatement of time-worn provincial attitudes, misconceptions and denials.... This document establishes nothing. It preserves the status quo. It relegates us to the status of federal orphans who only have permission to come out and play in the provincial schoolyard if the federal government first feeds us, clothes us and pays the provincial schoolmaster a fat reward for the privilege of letting us visit the property we once owned outright.[xliii]

The response of the Aboriginal Peoples Council was equally negative, arguing that the provincial discussion paper in virtually all of its policy statements is "reactive" failing to come to grips with the strong provincial proactive role that is required if the serious issues with aboriginal people are to be resolved. Like the Union's argument for affirmative action programs, the Aboriginal Peoples Council called for strong action, not merely weak words and gestures. Without evidence of such commitment, "the New Brunswick Aboriginal Peoples Council sees the proposed policy framework as being non-productive, indeed it might well be called counter productive."

Both the Union of New Brunswick Indians and the Aboriginal Peoples Council found quite striking the absence of any discussion of aboriginal land and treaty rights in the provincial discussion paper. Both denounced a framework that did not even acknowledge a provincial role in this respect. Both took strong issue with the notion that federal constitutional jurisdiction over Indians could permit the province to elude its responsibility for pre-Confederation treaties and for the attacks on aboriginal rights since that time. As the Aboriginal Peoples Council put it:

> The province's deliberate attempt to create truth from the fiction that the province has had no historical or constitutional obligation to Indian people, is exposed in the attempted guise by provincial authorities to regurgitate the misconception that Aboriginal obligations begin

> only at 1867. That the Preconfederation policy and indeed treaty obligations are not significant in discussion of a policy framework on Aboriginal Affairs.

Similarly, the Union of New Brunswick Indians bluntly took issue with the same provincial misconception:

> Your paper stresses Ottawa's relationship to the First Nations because, obviously, you hope that Ottawa will pay all of the bills. But you are ignoring our old relationship with the province. We are not a bunch of federal "space aliens" who just dropped out of the sky one day into your midst. This is not Western Canada where federal power made the West "safe" for non-Indians by way of treaties before the provinces were even born. Your government is one of the direct successors of the government of old Nova Scotia with whom we established extensive treaty relations....
>
> As for our reserves, the province created those entities: and believe us when we tell you that there is a whole barrel-full of unresolved issues between our side and yours over off-reserve claims, the provincial sale of reserve lands, the application of sale proceeds, and the construction of provincial works on Indian reserve land in return for little or no compensation. Our trust relationship with Ottawa does not mean that you are "off the hook."

Both organizations called for the government to scrap the discussion paper and begin a new working relationship founded on dialogue over real issues. At the centre of such issues from the aboriginal perspective lay land and treaty rights. As the Union of New Brunswick Indians put it, they are the acid test of a new relationship, a "canary bird" to test the atmosphere of a new relationship:

> In the old days coal miners used to take a canary bird in a cage down into mine shaft with them. If the bird died, it was a sign that poison gas was present and men were in danger; if the bird lived, everything was fine in the shaft. From our perspective, your willingness to sit down and fully discuss the treaty and land claims issues -- in a full and lengthy "give and take" exchange -- is our "canary bird." If you ignore those issues the bird is dead. Our relationship is poisoned. We won't make any headway on the other issues. But if you are willing ... to explore these grave and weighty issues with us, well then, the bird is alive and well. New Brunswick will have started the process of coming to terms with the First Nations.[xliv]

At the same time, however, in terms of representational rights and powers, aboriginal leaders spoke with sharply different voices. The chiefs through the Union claimed to speak on

behalf of virtually all aboriginal people in the province and derided the idea of off-reserve aboriginal self-government. The Aboriginal Peoples Council took exception to the dominance of reserve-based considerations in the provincial discussion paper, and derided the paper's assimilationist goals for off-reserve peoples as evidenced by the paper's egalitarian and multicultural framework.

> It is an affront to MicMac and Maliseet societies [it argued] for this discussion paper which purports to be a Policy Framework on Aboriginal Affairs to include in its statement on Aboriginal Languages and Cultures any mention of promotion of Multiculturalism. For the record and for the umpteenth millionth time, Aboriginal people are not multicultural or ethnic societies that have come to this continent. Our cultures, languages, traditions, values and very being comes from Mother Earth.... [Our] Aboriginal languages and cultures exist only here in this Country ...

It argued that any adequate provincial policy framework on aboriginal peoples would have to address more seriously the unique and pressing concerns of off-reserve status and non-status Indians, who constitute more than half the aboriginal population in the province. Short of that, New Brunswick's aboriginal policy ran the danger of being dismissed as "assimilationist" and "an apartheid policy approach."

This, of course, was not the auspicious beginning that the government had hoped for with the release of its discussion proposal. However, there was clear guidance to be drawn from the experience, and the government lost little time in acting upon what it had learned. First, it officially withdrew the discussion paper as a basis for discussions, and it began to examine the recommendations of the aboriginal organizations for moving the agenda forward. By 1991, it took up, for example, the suggestion of aboriginal organizations that a series of policy forums be established in areas both raised and not raised by the government's discussion paper so as to build consensus.[xlv] Moreover, it began too to reconsider, for the first time, its posture on the treaty questions so conspicuously missing in its discussion paper. Meanwhile, in March of 1991, the government instructed its Representation and Electoral District Boundaries Commission to

"consider and propose the best approach to ensure that New Brunswick's aboriginal people are given representation in the legislative assembly, in a manner similar to the approach currently employed in the State of Maine." If acted upon, that would mean a guaranteed two native MLA's in the legislature with full debating but no voting rights. Most of all, the government continued its policy of active discussion of aboriginal issues with aboriginal leaders through the Joint Committee of Chiefs and Ministers first established in 1988.

The traditional posture of the province respecting treaty rights had been not to recognize such rights until such claims had been clarified and established by the courts. As we have seen above, by July of 1990, it had become clear that any general policy framework that did not acknowledge aboriginal and treaty rights would not be acceptable to the principal aboriginal organizations in the province. Moreover, the summer of 1990 was also the time of the Oka crisis, when collisions over land questions between aboriginal warriors and Quebec police and the Canadian army threatened to ignite passions elsewhere. The Ministerial Committee on Aboriginal Affairs (MCAA) had by the fall of 1990 determined that if its goals of maintaining a constructive relationship with aboriginal organizations and communities, and of contributing to the economic and social development of aboriginal people and aboriginal communities were to bear fruit, movement must take place both on aboriginal and treaty rights and on aboriginal self-government. Aboriginal peoples themselves across Canada were ever more insistent that this was the only practical route toward the resolution of their economic, social, and cultural problems. Other jurisdictions were already well along this road. The judicial branch, under the leadership of an impatient Supreme Court, was also providing an increasingly stronger constitutional foundation for aboriginal and treaty rights; indeed, the Sparrow decision of May 1990 indicated that section 35 provided a perfectly acceptable basis for ongoing negotiations among native peoples and governments. In any event, it was becoming obvious that the Canadian people wished to see governments address these issues in a constructive manner, with full aboriginal participation in

such a process.[xlvi] In fact, conventional wisdom in the post-Meech Canada had already concluded that it was the neglect of these facts that had done much to sink the Meech Lake Accord.

Certainly, from the aboriginal perspective, there can be no question that aboriginal and treaty rights -- encompassing such matters as hunting and fishing, self-government, and land claims -- had always been the top priority. This was their route toward a new relationship between native peoples and Canadian governments, one no longer based on suppression of aboriginal peoples, their rights, and their lands.

While the province of New Brunswick had taken some cautious steps in this direction with its 1990 interim hunting agreement for status Indians, it was well aware that these were at best short-term arrangements. The Chiefs would be unlikely to renew such arrangements in the future without acknowledgment of their treaty rights, and their legal status was unclear. By June of 1991, the government appeared ready to move forward by authorizing the Minister of Natural Resources and Energy to negotiate management agreements with representatives of aboriginal peoples that would acknowledge the existence of treaty rights in New Brunswick. However, for a variety of internal reasons, there has been little subsequent action taken by that department.

The Quest for Self-Government

Of course, one of the central issues flowing from recognition of treaty rights under section 35 of the Constitution Act, 1982, was the question of aboriginal self-government. Although the matter had not as yet been pronounced upon by the Supreme Court, aboriginal leaders, together with an influential body of scholarly opinion, did not doubt that a strong case could be made that section 35 contained a self-government dimension. [xlvii] Moreover, at the constitutional table, recognition of an inherent right to self-government was becoming a negotiating minimum for the post-Meech period. At the policy level, other jurisdictions were already moving in that direction, particularly in Ontario where acceptance of that principle had already been ceded by the new NDP government under Premier Rae. Federal policy was officially directed toward greater

self-government for Indian peoples, first in the community-based self-government arrangements under the Indian Act and in Tripartite discussions toward self-government for off-reserve peoples. Several other provinces were therefore already well along as participants and/or observers in these processes.

In fact, New Brunswick had begun Tripartite discussions on self-government for off-reserve aboriginal people in October of 1989 with representatives from the federal office of Constitutional Affairs, and the Aboriginal Peoples Council. Although the Aboriginal Peoples Council preferred that the discussions take a rights approach to self-government based on aboriginal and treaty rights, the focus of the meetings was instead "on the development of practical self-government arrangements for off-reserve aboriginal peoples." Hence, the process looked practically at federal and provincial programs in specific areas to find opportunities to serve the following official objectives:

- to increase off-reserve aboriginal peoples' opportunities to contribute to the development of government policies on aboriginal matters;
- to increase off-reserve peoples' management of and participation in services and programs directed to their particular needs and circumstances;
- to preserve and enhance aboriginal culture and heritage and
- to promote economic development for off-reserve aboriginal peoples.[xlviii]

After an initial review, agreement was reached to focus on the areas of education, training, economic development, and a family enhancement program; in Phase 11 of the talks after June 1990, the Family Enhancement Program -- providing para-professionals to assist families systematically tackle problems -- became, at the insistence of the Aboriginal Peoples Council, a priority item. As the Aboriginal Peoples Council noted, provincial programs of general applicability were not working for aboriginal people:

> These programs are not cultural specific or even culturally sensitive; the people employed in carrying out these services are not, for the most part, of Aboriginal ancestry and thus are not providing a service which is culturally sensitive to the Aboriginal people who access these

services.

The right to self determination and self reliance will only come about when the creation and administration of programs for Aboriginal people are under the control of Aboriginal people themselves.[xlix]

At the practical level, as a matter of policy, there was in any case a veritable scarcity of strategic alternatives to self-government as means of tackling the deeper social, economic and cultural problems facing native peoples. And while the idea was making headway at the constitutional level, there was nothing to prevent provinces from beginning the negotiating process and striking agreements even in the absence of a constitutional amendment affirming such a right. As stated above, Ontario was already taking that course. Moreover, New Brunswick's own Commission on Canadian Federalism had wrestled with this issue as part of its mandate for months, had heard submissions from prominent aboriginal leaders, visited Big Cove to hear native concerns directly, and had worked closely with Commission representative, Chief Albert Levi of Big Cove First Nation, in the development of its recommendations on this important subject. The Commission's work had both sensitized key Ministers and advisors to this issue, and had also prepared public opinion for the idea of native self-government in the province. In this respect, the process was not unlike that taking place simultaneously on the national scene. By the spring of 1991, it seemed timely and appropriate, then, for New Brunswick's government to proceed with this matter. In June, therefore, the government backed action in two directions in respect to this aboriginal agenda:

- first, it supported the entrenchment of the right of aboriginal people to self-government in the constitution, together with aboriginal participation for this purpose in this part of constitutional reform;

- second, it agreed to negotiate self-government agreements, where requested, with representatives of the Micmac and Maliseet Nations.

Since there remained many issues requiring resolution with the launching of these undertakings, the government looked to its Ministerial Committee on Aboriginal Affairs, in consultation with

aboriginal leaders, to work out a framework for negotiations on self-government, including a process and an agenda. The province would negotiate in consultation with the federal government where feasible, but there was no sense that provincial action was conditional upon federal support or participation.

On the question of land claims, New Brunswick felt that the primary responsibility lay with the federal government to negotiate both claims based on unextinguished aboriginal title -- so-called comprehensive land claims -- and specific land claims arising from improper alienation of former reserve lands. Since Ottawa had not accepted comprehensive land claims from the Maritime region, this kind of aboriginal land claim awaited direction from the courts or a change in federal thinking; negotiation of specific land claims of particular First Nations, in the view of the Province, was also clearly the responsibility of the federal government. For that reason, New Brunswick was disinclined to engage in negotiating land claims at that time.

Despite continuing differences between the province and aboriginal leaders, however, New Brunswick had moved a considerable distance beyond its 1989 discussion paper. Yet, apart from its apparent willingness to proceed with a hunting agreement, it had not given the land and treaty questions the serious response Indian leaders expected. For example, the Union had asked for a Federal/Provincial/First Nation Task Force to examine all the outstanding issues around aboriginal rights, treaties, and native social and economic concerns. In the Union's view, such a task force could educate governments, guide future negotiations on substantive issues, and lay the foundation for a "framework agreement" that would support future bilateral and trilateral arrangements.[1] The Aboriginal Peoples Council (through the Maritime Peoples Council) had found its proposal for research on Aboriginal rights from a regional perspective (under the Council of Maritime Premiers) rejected. Meanwhile, it continued to feel frustration that the Tripartite Process on Aboriginal Self-Government for off-reserve peoples, begun late in 1989, was merely dealing with social and economic programming and was ignoring the "real" subject of self-government. In their view, the

Tripartite process, while useful in addressing some practical problems, had strayed from its central challenge of recognizing and implementing self-government arrangements.

With the re-election of the Liberals in the fall election campaign of 1991 on campaign promises "to recognize the existence of aboriginal treaty rights," "to support the right of aboriginal people to self-government," and to work toward "implementing and exercising those rights," there was clearly much more to be done. This was especially true if the government's basic goal of "a productive relationship with aboriginal peoples and organizations" were to be realized.

It was in the same month of September 1991 that the Government of Canada released its set of constitutional proposals. Thereafter, the national politics of constitutional change became intense throughout Canada: a Joint Parliamentary Committee, five constitutional conferences one of which was exclusively concerned with aboriginal issues and extensively managed by national aboriginal leaders, provincial and territorial constitutional reports, and scores of other proposals, reports, and forums. Further ahead still lay the intense five-month process of intergovernmental negotiations complete with the participation of aboriginal leaders under Constitution Minister Joe Clark in preparation for the October, 1992 deadline set by Quebec. From New Brunswick's perspective, there was no alternative but to make the constitutional route the focus of its efforts at this stage: indeed, not least of its challenges was to complete the work of its own Commission on Canadian Federalism, to provide opportunities for public reactions, and to finalize its own position.

Liaison with aboriginal leaders and organizations would be critical, as would the preparation of all New Brunswickers for tackling the New Brunswick Commission's recommendation for entrenchment of an inherent aboriginal right to self-government. Constitutional preoccupations then were to dominate the non-constitutional front in 1992 at least until the October national referendum. This appeared to be a logical course of action since so many other outstanding aboriginal issues would be affected by the ultimate constitutional outcome -- indeed they would be defined and addressed according to the kind of constitutional status native peoples may have

achieved through that process.

On January 14, 1992, the Report of the New Brunswick Commission on Canadian Federalism was released. The Report's Chapter V, entitled "Completing the Circle - Canada's Integrity," addressed the "building of a new relationship between aboriginal and other Canadians, a relationship founded on mutual respect and equality."[li] The first part of the chapter spoke to the historic occupation "since time immemorial" of this part of North America by the organized societies of the Mi'Kmaq and Maliseet First Nations, who were prepared to live harmoniously as equal nations with the French and English peoples, sharing the bounty of the land. After teaching the white man how to survive in this land, exchanging furs for goods with him, and signing peace treaties, aboriginal people witnessed in the 1800's and beyond the reserve system, the poverty, many, many native deaths, betrayal and neglect.[lii] To address this history and to move beyond it toward a fundamentally new relationship based on trust and respect, the Commission made the following set of recommendations:

- The Constitution be amended to recognize and affirm the historic role and contribution of aboriginal peoples in the development of Canada, and that this amendment should be so expressed as to underline the fundamental importance of that contribution and to engender a relationship of mutual respect and equality among all Canadians.

- Federal and provincial governments take such steps as are necessary to ensure the full participation of representatives of the aboriginal peoples in constitutional negotiations. In keeping with this principle the Constitution should be amended to ensure that no amendment to the Constitution relating to the rights of aboriginal peoples in Canada or to the legislative authority of Parliament in relation to aboriginal peoples, including lands reserved for them, may be made without the consent of the representatives of the aboriginal peoples.

- That the Constitution be amended to recognize and affirm the inherent aboriginal right to self-government within the Canadian Constitution;

- that the federal and provincial governments negotiate self-government agreements with representatives of aboriginal peoples;

- that such agreements enjoy constitutional protection; and

- that negotiation of self-government agreements include provisions for access to resources

commensurate with the scope and nature of each self-government agreement.

- The federal and provincial governments move in concert with the representatives of aboriginal peoples toward a just definition and implementation of the treaty rights that exist in each province.

- The federal and provincial governments move expeditiously with representatives of the aboriginal peoples to identify and settle, in a just and equitable manner, those land claims that exist in each province or region.

These recommendations aimed at finally coming to terms with the most important issues dividing aboriginal and non-aboriginal peoples. They pointed toward the heart of the relationship. For "from an aboriginal perspective, the failure of governments to honour treaties, the failure to recognize the inherent right of self-government, and the failure to provide appropriate access to and use of traditional lands, is an assault, however unintended, on the essence of aboriginality." So, in the words of an aboriginal leader speaking to the Commission:

> So, why then, is it so hard for Canadians and their governments to understand that when they refuse to allow the Indian people to hunt for food year round, or when they refuse to extend recognition to Indian institutions, and powers of government, or when they refuse to address the issue of Indian Land Claims, they're not preventing us from getting a special privilege, or a favoured status, but are instead depriving Indian people of rights which we have exercised in this land for thousands upon thousands of years.[liii]

In conclusion, the Commission noted that "only by making them [aboriginal peoples] full partners in the federation can Canada's historic relationship with aboriginal peoples be restored." It continued:

> The openness of Canadians to this restoration is a test both of our political maturity and our moral generosity. As other countries and communities have discovered, however, realizing the promise of the future often depends upon a willingness to come to grips with the injustices of the past.[liv]

Following the submission of the Commission Report, the government appointed a Constitution Committee to hold public hearings upon the recommendations of the Commission. The reactions to Chapter V on aboriginal issues was, of course, critical to the government's ability to maintain momentum. Fortunately, at this juncture, major televised national conferences were proceeding to tackle many of the outstanding constitutional issues, including a special conference on aboriginal subjects on March 13-15 organized jointly by the national aboriginal organizations and Arthur Kroeger's constitutional Secretariat in Ottawa.[lv] These were assisting greatly in laying a reasonable basis of support among non-aboriginals for the constitutional recommendations respecting aboriginal peoples. But positive reactions from the provincial organizations were indispensable. On March 9, 1992, Chief Roger Augustine, President of the Union of New Brunswick Indians, appeared before the committee in the capital's Legislative Assembly Building to give his official blessings to the Commission's recommendations on aboriginal issues. He declared that the "position of the aboriginal people of New Brunswick is well defined in the report and covers our main issues of concern." He reaffirmed the primacy of land and resources -- "close relationship to the land being the very basis of aboriginal existence for thousands of years" -- and argued for "enough land so we can be economically and culturally sustaining." With respect to the inherent right to self-government, Chief Augustine looked to the federal government to "see us as a significant and equal partner in governing aboriginal affairs." And he made clear, on behalf of the Chiefs of New Brunswick's First Nations, that:

> We do not want aboriginal issues falling under the jurisdiction of the province. When executing the recommendations of the report, we strongly advise the federal government to understand we do not want to see the province ending up with the budget and responsibility to monitor our affairs.

At the same time, Chief Augustine urged the Premier to move quickly on the recommendations:

> We exhort the premier not to lose sight of the importance of these recommendations. We've waited a long time for the province to even acknowledge our rights. How long will we have to wait before we get them?

The response from the New Brunswick Aboriginal Peoples Council on February 24, 1992, was moderately positive, although the Council had several concerns with different recommendations in the report.

- In apparent anticipation of similar politics at the national level, the Council sought recognition of the "aboriginal distinct society", alongside Quebec's.(Report: recommendations 2 and 3)
- It supported strengthening equalization and the social charter, while it feared the proposed limits to the federal spending power.(recommendations 4,5,6)
- It sought assurances that labour market training for aboriginal people would fall to their own training institutions and government.(rec.11)
- Membership in joint economic development regimes be extended to aboriginal peoples.(rec. 15)

When the Council turned to the distinctly aboriginal chapter of the Report, it argued that specific mention of the off-reserve Metis or non-status Indians ought to have appeared in the report, and of their distinct problems and proposals. While it supported the substance of the recommendations concerning aboriginal peoples, the Council also wished assurances that it would be involved in any constitutional, aboriginal, or treaty negotiations. In one significant departure, it argued that aboriginal self-government ought to be thought of as a "third order of government", and that, as such, the protections of section 33 to override certain sections of the charter ought to be made equally available to aboriginal governments as to the two other orders of government. It also pressed for "guaranteed participation in the institutions of the federation -- the legislatures, Commons and Senate," and sought assurances that recommendation 25 on the Senate reflect that

commitment. Most of these suggestions would by August of 1992, through the direct participation of aboriginal negotiators, find their way into the final text of the Charlottetown Accord.

Although the provincial government had the support of the chief aboriginal organizations behind its constitutional proposals, it was by no means clear that, when some of these ideas found their way into the Charlottetown Accord, they would be similarly endorsed by the Micmac and Maliseet peoples at large in the October national referendum. Certainly, there had been little information, consultation and preparation for these proposals among the rank and file. In fact, as pre-referendum meetings among native peoples indicated, there were many aboriginal voices expressing doubts and fears about the proposals. In fact, confusion over the meaning of the Charlottetown Accord's provisions for self-government persisted during and long after the referendum campaign.[lvi]

Self-Government, Post-Charlottetown

The results of the referendum left the question of aboriginal self-government and many of the other issues unresolved. Now, for better or worse, the constitutional route for achieving aboriginal goals seemed to have closed. The government of New Brunswick, however, attempted to reassure Indian leaders that the process of accommodating native concerns would not come to a halt. After all, the constitutional foundation for aboriginal and treaty rights in section 35 remained, the government had affirmed the principles of the Charlottetown Accord respecting native peoples, and the people of New Brunswick had supported the Accord in the referendum. The government accordingly wished to see the continued development of jointly accepted goals, including access by Aboriginal people to the exercise of the rights that pertain to them, but it also wished to see respect for "the constraints of the parties." Not least of the constraints was the need for both parties to develop and promote a "consensus" throughout New Brunswick to support any jointly negotiated goals. Accordingly, the government agreed to push forward with negotiations on an arrangement to manage wildlife resources in a manner that would recognize and respect existing aboriginal

treaty rights.

It continued to hold open its offer to support self-government for Indian peoples. While constitutional amendments would be ruled out for the time being, there remained a section 35 route to achievement of self-government (agreements that would have the status of modern treaties and thus have constitutional standing), but the province had no mandate to proceed on its own and such a process would require federal participation and support as the government with the fiduciary responsibility. There were no signs of speedy movement at the federal level in this respect. There remained, too, the option of community-based self government negotiations under the Indian Act. These could provide a legislative alternative to the constitutional and treaty routes, but with just 15 slow and expensive negotiations underway in 1992 in the whole of Canada -- one of which was in Kingsclear First Nation in New Brunswick -- it would be unrealistic to expect rapid movement on this front, even with this modest model.

Yet, the experience with Kingsclear, the *only* Atlantic Canadian Band in a community-based self government process, might provide useful lessons for self-government for aboriginal peoples. Indeed, the idea of frankly testing out the viability of the community-based self-government model had been part of the thinking of the leaders in the AFN in their support for this and other experiments in self-government. It was also part of the thinking of the Department of Indian Affairs and Northern Development, when Minister Tom Siddon called these fifteen experiments "pathfinding roles for all First Nations." The negotiations between federal officials and band representatives had begun in Kingsclear late in 1991. By the fall of 1992, a preliminary draft agreement had been prepared and, at the prodding of the federal side, Chief Steve Sacobie had invited provincial **observers** to the negotiating table. If the negotiations were to deal with areas of provincial jurisdiction, such as the environment, the federal team would insist on provincial involvement. Still, because of the expectation of a constitutional settlement that would entrench the inherent right of self-government for aboriginal peoples, and hence trump this whole process,

the negotiations at Kingsclear moved at a desultory pace. It was only after the collapse of the Charlottetown Accord in the October referendum that bilateral negotiations picked up in earnest, especially with the expiry of federal funding set for the end of the 1993 fiscal year. Negotiations proceeded over subjects required by federal law, such as legal status and capacity, structures and procedures of government, membership, etc., as well as over the following subject matters: economic development, education, environment, social services, health, communications, and justice. Provincial observers attended their first meeting only on April 1, 1993, and after a brief period of withdrawal following the crisis over the taxation of Indians later in April, have continued in that role. Negotiations are continuing.

There was also the altogether exceptional case of Big Cove First Nation that appeared at first to begin its own unique track toward self-government following the disastrous string of suicides that had afflicted that community in 1992 and 1993. After the suicides of seven young men at Big Cove from June of 1992 (and at least 55 known suicide attempts), an inquest was held into their cause.[lvii] It generated a wide range of recommendations for a multifaceted tackling of the complex of problems contributing to the string of suicides. In response, the province offered on a priority basis the full services of its departments and agencies -- the Mental Health Commission, the Community Mental Health Centre at Richibucto, the departments of Health and Community Services, of Education, of Advanced Education and Labour, of the Solicitor General, of Economic Development and Tourism, and of Intergovernmental Affairs -- to help Big Cove cope with its problems. The federal departments, too, joined in a concerted attempt to come to grips with the depressing circumstances behind the community's tragedies.

However, it was Chief Levi's view that the absence of self-government was the root cause of the suicides and other similar maladies at Big Cove. Hence, in addition to consideration of various practical strategies to deal with the immediate problems of his people, he pressed for prompt discussions on self-government for Big Cove First Nation, based on the recommendations

in Chapter V of the New Brunswick Commission on Canadian Federalism. Acknowledging that the constitution would not be changed to recognize an aboriginal inherent right to self-government, Chief Levi expected action by both the federal and provincial governments on the other recommendations. Appointing his own commission of native negotiators, with responsibility to explain issues and explore self-government with the people of Big Cove as they went along, Levi saw the discussions ultimately leading to a framework agreement and accord over jurisdiction, lands and resources, and economic and fiscal arrangements.

The Minister of Intergovernmental Affairs, with the approval of the MCAA, agreed to proceed towards a proposed agenda and process of negotiations in preliminary tripartite talks with federal and aboriginal representatives on the subject of self-government, with the understanding that any decision to begin actual negotiations would be made later by Cabinet. However, these discussions had barely begun before a major change took place in the government at Big Cove, following Chief Levi's announced retirement. In June of 1993, Chief Simon was elected along with a fundamentally new Council. This change at Big Cove led this First Nation to stress the immediate issues of economic development and youth unemployment rather than any longer-term goal of self-government.[lviii] Hence, the tripartite process on self-government at Big Cove ended hardly before it began.

In any event, aboriginal leaders in New Brunswick and elsewhere could hardly fail to notice the general drop of interest in Indian self-government by non-Indian governments. By July of 1993, the AFN was denouncing this retreat from self-government, particularly by the federal government. According to Big Cove former Chief Albert Levi, it was "more than clear that since the 26th day of October, all non-Indian government have moved the issue of Indian self-government off their political agendas."[lix] While recognizing the reasons for that political change, he knew that self-government nonetheless remained essential to his people. "Gaining control over our lives is a life or death issue for us." But it was Chief Roger Augustine, President

of the Union of New Brunswick Indians, who spoke most bitterly of the anger in his heart and soul when, after the collapse of the Accord, "we were back in a flash to being lowly Indians again, as the civil servants knew we had lost the potential power to some day control our destiny."

> Our hopes for the constitutionalized form of self-government have been hopelessly lost. Our hopes now lie on the side of the highway of progress, badly wounded, bleeding with the sap of anger and frustration. But we shall heal quickly and rise again to fight the battle which was forced upon us more than 500 years ago, when the Europeans crossed the mighty waters and invaded our territories...We shall break away from this reservation bondage and once again regain what was more important than anything else, our dignity, our self-confidence and our lands.
>
> We entered the Charlottetown arena with open hearts and open minds....Now that we have been rejected in the area of compromise, we now take the next and perhaps more hazardous step. We shall act without the permission of the Constitution of this country.[lx]

The Politics of Gaming

Throughout 1992 and 1993, the issue of the economics of gambling as a native development policy had been growing as an important dimension of self-government in the province. Encouraged by the spectacular success of American Indian communities with casinos and gaming, some Indian leaders in the province had already begun to move into high-stakes bingos as a tool for economic development. Under Canadian law on gambling, the Criminal Code requires provincial licensing of such activity. Nonetheless, the Tobique First Nation has operated several bingos with potential prizes in the $75000 to $85000 range, for example, without acquiring a licence from the Province. Meanwhile, the provincial maximum payout has been set at $15000 per event. While leaders of First Nations claim jurisdiction over such activities on reserve, the province is seeking to establish formal agreement with aboriginal leaders for licensing and enforcement of reserve gambling. In keeping with its goals of avoiding ruinous competition, using gaming to provide resident charitable organizations with funding, and ensuring a "level playing field" amongst stakeholders through uniform rules and conditions on gambling (payouts, timing, products, etc.), the Province has tried, in effect, to remove any differences between native and

non-native gambling activities.

Such a uniform and egalitarian provincial position, of course, constrains native leaders in their pursuit of distinctive and profitable avenues for reserve gaming. In the view of aboriginal leaders, this egalitarian provincial framework, once again ultimately fails to take into account the distinctive nature of Indian **nations** and of aboriginal rights. And while the province expresses considerable doubt over whether the American experience with native gaming could easily apply in Canada where the gaming market is well-developed and the law provides less autonomy to native peoples in these areas, aboriginal leaders are not at all convinced. They look more and more to gaming as an important resource for economic development.

Hence, under these conditions, mooted provincial offers to consider self-licensing for Indian gaming on reserves on the *same* provincial terms and conditions as other licensing bodies was scarcely attractive to Indian leaders. Such licensing authority, while apparently devolving authority onto first nations respecting gaming, would in fact bind and constrain the kind and scale of gaming upon reserves. In this respect, administrative devolution to aboriginal groups could be seen as a means of ensuring compliance with the provincial goal of an egalitarian level playing field amongst stakeholders. Nor would the compliance apply only to regulatory standards and *means* -- it necessarily extended to the *ends* -- the nature of the permitted gaming activities themselves. At no point was the dichotomy between aboriginal and provincial elite perspectives more sharp than on the question of the appropriateness of casinos. After the collapse of the Charlottetown accord, this disagreement became more and more pronounced, with aboriginal leaders urging further discussion and cautioning the government not to announce a firm policy position on this question.

It was therefore with considerable bitterness that aboriginal leaders learned on December 9th, 1992, in a statement by the Minister of Finance, Hon. Allan Maher, of the decision of the province not to approve "the establishment of casinos in the province at the present time." The minister went on to argue that casino gambling has not been part of our economic strategy to date

and is not essential to future economic prosperity. We prefer an economic base that can be driven and sustained by more positive and productive economic activity.

In an attempt to soften the impact of the decision, the government promised to consider "a limited number of giant bingos on reserves" and "off-reserve, on specific occasions." In addition, the government indicated a willingness to "turn over to first nations an increased share of revenue from video lotteries operated on reserves."

On another front, by April of 1993, after many months of consideration and discussion, the Policies and Priorities Committee of the Cabinet approved consultations between the Department of the Solicitor General in the province, the Solicitor General of Canada, and representatives of First Nations in the province on the implementation of the federal First Nations Policing Policy in New Brunswick. The goal was to discuss the implementation of a policy on selected reserves through the establishment of a special contingent of First Nation officers within the existing provincial policing service provided by the RCMP. That idea was hardly new. In 1973, following the Report of the Task Force: Policing on Reserves, the Department of Indian Affairs and Northern Development had received authorization to launch precisely such an experimental program (known as Option 3B) with the provinces. At that time, in order to promote native participation, normal educational requirements were set aside, training periods were shortened, and a rank of "special constable" was fashioned for these recruits. The goal was to supplement provincial policing resources to reserves and to integrate natives into the regular force. All provinces except Ontario, Quebec, and New Brunswick participated in the program, and, following the expiry of the program, participating provinces subsequently raised these officers to full constabulary rank. Hence, when the federal government decided in June of 1991, after two-year study and consultative period, to announce once again a new First Nations Policing Policy to improve on-reserve policing services and to develop native-specific law enforcement strategies, New Brunswick had an opportunity to revisit and rethink its earlier decision.

Now committed to increasing the scope of native self-government, any new policing arrangement would in the view of the province ultimately be aimed at placing the enforcement of policing within the full administrative control of the First Nation community. Indeed, that is the objective of the federal program itself. Whether that goal would best be achieved directly and promptly, or rather through a transitional interim system, such as a special contingent of First Nations officers within an existing police service, remains a matter of debate.

In any event, there can be little doubt that, from the provincial point of view, whatever its merits, this policy could be seen as another dangerous precedent pointing to an emerging pattern of federal offloading of its responsibilities onto the provinces. The province had traditionally not accepted cost-sharing of on-reserve services, an area regarded as a federal responsibility. With the growing federal shifting of reserve-based programs to its line departments, and growing cost-sharing offers to the provinces from those departments, the older DIAND-centred sense of responsibility seemed to be evaporating at the centre. The politics of the deficit no doubt would contribute its own dynamic to this process.

The government continued to deal with these many initiatives affecting aboriginal peoples within its traditional administrative and political framework. The machinery was centred on a Ministerial Committee on Aboriginal Affairs (MCAA) with "responsibility for managing the provincial relationship with Aboriginal leaders and communities as well as the responsibility for advising Cabinet and its Committees on all Aboriginal affairs." The Committee, chaired by the Minister of Intergovernmental Affairs as chief co-ordinating minister on all aboriginal issues, was composed of the ministers of Natural Resources, Health and Community Services, Finance, Advanced Education and Labour and the Solicitor-General. It, in turn, was supported by a similarly designed Deputy Ministers' Committee on Aboriginal Affairs. While each "department and agency would continue to have "the lead role in the formulation and implementation of policy matters falling within its mandate," each would reflect the government's broader policy

commitments.

Although the idea of a formal provincial policy framework for aboriginal peoples had been set back by the disastrous reception of the November 1989 discussion paper, the government had not lost interest in its utility. The idea continued to be raised in meetings with aboriginal leaders. Indeed, the evolution of the government's post-referendum thinking on an aboriginal policy frameworks could be detected in its briefer May 1993 set of policy commitments on aboriginal affairs. They were as follows:

1. To further the self-reliance and well being of the Aboriginal people of New Brunswick both on and off reserve, through pragmatic social and economic development initiatives.

2. To respect the Aboriginal and treaty rights of the Mi'Kmaq and Maliseet peoples in a way that promotes harmony and collaboration between Aboriginal and non-Aboriginal people.

3. To participate in practical projects that support the continued development of self-governing arrangements for First Nation communities.

The philosophy here -- of seeking practical solutions, of building change through consensus, of stressing self-reliance in social and economic initiatives -- was really an offshoot of the government's broader policy vision for the province of New Brunswick. In this way, the government hoped to respond to the distinctive concerns of aboriginal people without losing the coherence and integrity of its overall mandate. At the same time, however, it was unlikely that adherence to the second policy commitment to "respect Aboriginal and treaty rights" could easily be squared with the predominant non-aboriginal commitment to egalitarianism and resistance to "special rights." It was even less likely that this fissure could be successfully bridged where the government had not yet been found by the courts actually to owe **legal** obligations to aboriginal peoples.

The potential collisions between these two worlds -- universal rights versus recognition of distinctive and unique rights -- had already been exposed in the October referendum campaign. It had revealed its face in many other areas too, putting real constraints upon the options available to

the government. Yet the government had not undertaken to explain adequately to the general public the nature of aboriginal rights or of the fiduciary responsibility of the Crown to Indians; that kind of information, together with information on federal funds flowing to the province for native services, might have helped bridge some of the misunderstandings between native peoples and the general public. Perhaps no issue revealed the extent of this gap between aboriginal and general public understandings, nor the potential for violence in these attitudes, than did the sudden eruption of passions around New Brunswick's changes to taxation of Indians in the spring budget of 1993.

New Brunswick Policies for Indians: The Case of Taxation

The question of provincial taxation of Indians in New Brunswick had, in fact, always been an issue of contention, particularly over the previous two decades. Indian lands and incomes on reserves were already immune from provincial taxation. But there was still the issue of the application of provincial sales taxes to Indians within the province, both on and off-reserve. Native leaders on reserves had always taken the view that Indians ought not to be paying tax to the province since they did not receive provincial services akin to those of other provincial residents; in their view, most services were either directly delivered by the federal government, or were provincial services funded by the federal government. Provincial arguments to the contrary, namely that Indian people received many provincial services on the same basis as other citizens -- medicare and hospital services, post-secondary education, provincial roads and highways, etc. -- failed to change the prevailing Indian perspective.

In response to complaints from the Union of New Brunswick Indians early in the 1970's, New Brunswick amended its Social Services and Education Tax Act to exempt status Indians from its sales tax on goods and services, other than "prepared meals, spirits, wine, beer, or accommodations, when the goods are delivered to a reserve."[lxi] For purchases over three hundred dollars, the legislation required that Indians apply for a refund for the tax paid whereas purchases under that threshold were not subject to tax at source. In 1980, the threshold for tax refunds was

raised to $1000, but more importantly, the requirement that the goods be consumed or delivered to reserve lands was repealed. Hence, from that point, New Brunswick joined Saskatchewan as the only provinces to provide exemptions from the tax for status Indians for off-reserve use.

These tax arrangements virtually guaranteed conflicts and not a little confusion on all sides. On the one hand, from the provincial government's perspective, these measures appeared to be generous indeed by the standards of other provincial jurisdictions. Both reserve and off-reserve status Indians benefited from exemptions over a wide range of expensive goods and services. The revenue loss was estimated to be at least one and half million dollars. To add to the "costs" to the province, this system had also generated problems in native and non-native relations, and not solely because of lack of public understanding of the distinctive rights of aboriginal peoples. Tax breaks for Indians in commercial activities competitive with non-native businesses were obvious challenges to any notion of a "level playing field." An 11% advantage in contracting, service industries, and trucking, for example, (where taxes on materials, heavy equipment, and tractor-trailers would be considerable), was bound to generate non-native complaints. Moreover, there were persistent concerns over potential abuse of privilege of these exemptions, through re-sale of goods to non-natives.

From the aboriginal perspective, on the other hand, apart from the general inclination to regard provincial taxes as inappropriate and illegitimate, there were several specific problems. New Brunswick's provisions to apply provincial tax to Indians for consumption of certain goods, namely tobacco and spirits consumed on reserve, appeared to be clearly a violation of the Indian Act itself. Then there was the administrative headaches associated with seeking rebates for taxes paid in excess of $1000. These and other concerns had been the basis for ongoing complaints from the Union of New Brunswick Indians. Indeed, the Union had for several years been proposing to the government the removal of the application of provincial taxes to Indians altogether. In addition, some Indian leaders were also objecting to the provincial government's retention of that

part of established programs financing based on the Indian population count in the formula. They sought the transfer of these funds to the native communities.

Under these circumstances, it was with considerable alarm and bitterness that aboriginal leaders learned that the government was in fact moving in the opposite direction, toward increasing the provincial tax burden on Indian peoples. On budget night, March 31, 1993, the government announced that it would remove the tax exemption altogether for off-reserve Indians and confine the tax exemptions strictly to sales of goods and services to status Indians purchased on or delivered to reserve lands. In effect, New Brunswick had decided to move its tax treatment of aboriginal peoples toward the more conventional system used by most other provinces.

The rationale provided by the government argued that all New Brunswickers must share in the burden of restraint caused by recession and rising debt. The government needed more revenue and this change would make a small contribution toward that objective. In fact, planners in the Department of Finance had for some time been concerned about the anomaly of New Brunswick's aboriginal tax policy, of the cost to the province of the tax exemptions, and of the dubious legal status of New Brunswick's charges for certain goods like tobacco and spirits consumed on reserves. Moreover, tightening up on aboriginal tax exemptions was already taking place by other governments, and being planned by others.[lxii] Apparently oblivious to the political dangers, finance officials saw this kind of measure as contributing to the "share the pain" political logic of restraint.

Yet it was immediately apparent upon the release of the budget that this measure would ignite resistance among aboriginal people as nothing else had done. Despite opposition from most chiefs, natives decided to adopt moderate Oka-like resistance tactics. Within a day of the release of the budget, a road block was raised at Eel Ground reserve in the north; within a week, four protest blockades of roads and highways were thrown up throughout the province by enraged natives. Others followed, including an attempted blockade of the TransCanada Highway west of

Fredericton and even one at Restigouche reserve in Quebec. At one time or another, roadblocks went up or down at many of the 15 Micmac and Maliseet reserves across the province, but most were peaceful, most allowed vehicles through slowly, and police often rerouted traffic. Yet, in response, apart from a willingness to discuss methods of compensating status Indians for goods for reserve consumption acquired but not delivered to reserves, the government refused to budge. Relations between native and non-native New Brunswickers became increasingly ugly; indeed, some non-natives in the north demonstrated their own rage at Red Bank First Nation on April 10th by attempting to march on the reserve with tirearms and chains and to erect their own counterblockades to keep natives in. It was clear that native and non-native relations had reached a new low, with the government's objective of a harmonious public consensus around a new aboriginal policy framework set back. After several weeks of confrontation and intense talks with aboriginal leaders, Finance Minister Allan Maher announced its compromise on April 27th that

> The Province has recognized the concern raised by some Indian leaders relating to purchases by natives made off-reserve for consumption on-reserve but not delivered by vendors or their agents to the reserve. In some cases delivery by the vendor because of distance or the size of the order, may be impossible. Therefore, the Government is prepared to consider some form of a limited rebate program for natives living on-reserve for certain purchases where evidence is supplied indicating the goods were taken to the reserve and consumed there.

Subsequently Indian leaders, declaring victory, announced the end of direct actions on the roads, though they promised on-going legal battles over the tax questions and Indian land claims. In short, by the spring of 1993, hardly six months after the joint efforts of government and aboriginal leaders to secure ratification of a constitutional agreement promising a profoundly new relationship with aboriginal peoples, the climate had become soured, if not poisonous. Progress in tackling the issues would be slow and painstaking.

ASSESSING THE RELATIONSHIP

It was former Big Cove Chief Albert Levi who gave public expression to the bitter disappointment of New Brunswick aboriginals at this juncture in a speech to the students of Mount

Allison University. Looking back in the aftermath of the defeat of the Charlottetown Accord, he explained his role in serving on the New Brunswick Commission whose recommendations later formed the basis of the province's position in the constitutional talks and of the subsequent betrayal of the Indian interest:

> The events of the early 1990's convinced me that I had to get more involved in the struggle by my people to control their own lives. When the Premier of this Province offered me a seat on a new Commission looking at the country's constitutional problems, I accepted. I worked very hard on that Commission to educate new Brunswickers about where Indians were coming from, and where they wanted to go. I cannot express to you my happiness when the Commission agreed that the right of Micmac people to self-government was born out of 10,000 years of history and should be put into the constitution. The New Brunswick Commission on Canadian Federalism also recommended that our treaties should be respected and our land claims should be settled. This Report formed the basis of the position of the Province in constitutional talks. Many of the ideas in the Report made their way into the Charlottetown Accord.
>
> Of course, we all know that the Accord was rejected by Canada. A majority of New Brunswickers accepted the deal, but that has meant nothing for Indians. I guess we are still a broken people. This week I watched the province cheer as the government watched its French language amendment go through the Parliament of Canada. That amendment was promised in the Charlottetown Accord. But what has happened to the Indians since the referendum? Our funding was cut; Indian rights were attacked in the courts; our land claims were ignored: Indians are back to "square one." Does this sound familiar?[lxiii]

The recognition accorded the French and English-speaking peoples in the constitution of the province through the bilateral amendment early in 1993 -- alongside silence and inaction over the constitutional recognition of the province's *first peoples* -- was, of course, a symbolic and galling reminder of a longer history of neglect. Coupled with the other current setbacks -- the rejection of plans for New Brunswick to be the first province in Canada to guarantee legislative representation to first peoples[lxiv], the rejection of Indian plans for casinos on their reserves, the rolling back of Indian tax exemptions -- despair has quite dislodged hope. Though some program improvements are proceeding, the glacial pace of change only seemed to confirm the frustration Chief Levi had long expressed over the gap between rhetoric and reality.

> The Indian business is being neglected [by federal and provincial governments]. Indians in New Brunswick cannot pass one more law within their own territories, or hunt one more deer for their families, or control one more acre of land in this province than was the case 50

> years ago. The words of government are so very sweet, but the taste in the mouths of the Indians is very, very bitter.[lxv]

While by some measures, it might be argued that a modest increase in aboriginal control over programs affecting their lives has come about as a result of administrative devolution such as Indian child welfare agencies, these arrangements have as often as not been attacked for ignoring Indian values and forcing aboriginal conformity to non-Indian values. From an aboriginal perspective, both the substance and the symbolic recognition of self-government has quite eluded them. And while the problems that afflict aboriginal communities in the province are complex and multifaceted, there can be little doubt that community healing and the emergence of a system of governance sensitive to the distinctiveness of Indian values are essential to their solution.

It is easy to ignore these realities and to imagine that other priorities -- unemployment, economic development, education -- are more critical. It is even easier for non-aboriginals to think that these policy challenges can be addressed outside of or apart from resolution of appropriate self-government arrangements. Yet, as the results of a recent extensive Harvard research project on sixty-seven American aboriginal communities indicates, *"de facto* sovereignty and effective institutions of self government" are "two factors more than any others that distinguish successful tribes [in economic and social development] from unsuccessful ones." Prior to the 1970's when American aboriginal policy shifted toward self-determination, there were virtually no success stories in economic development on reserves; afterward, with the opportunities flowing from enhanced powers of self-government, there have been many. As Stephen Cornell and Joseph P. Kalt argue:

> The reason why tribal sovereignty is so crucial to successful development is clear. As long as the Bureau of Indian Affairs or some other outside organization carries primary responsibility for economic development on Indian reservations, development decisions will tend to reflect outsiders' agendas....
>
> Transferring control over decisions to tribes does not guarantee success, but it tightens the link between decision-making and its consequences. Tribes have stronger incentives to make appropriate development decisions than the BIA because they are the ones who more directly bear the costs and reap the benefits of those decisions.[lxvi]

In order for the forms of self government to work, however, they must be discharged by institutions that achieve "a match between the formal institutions of governance on the one hand and the culture of the society on the other." Tribal institutions, tribal constitutions, cannot function appropriately when imposed by outsiders "with minimal attention either to indigenous forms of government or to the broad diversity among Indian tribes." All of this suggested that "constitutional reform is the appropriate first step toward sustainable economic development."[lxvii] Such research findings ought to reinforce the logic and legitimacy of the drive for aboriginal self-government in Canada.

However, in an increasingly liberal and egalitarian Canada under the charter, where many citizens increasingly reject the very notion of unique constitutionally entrenched collective rights, pursuit of any such program of recognition of collective rights, including aboriginal rights to self-government, faces serious obstacles. Egalitarian resistance arises whether the recognition and entitlements flow to French and English-speaking communities, to protections for Catholic schools in Ontario, or to aboriginal peoples.[lxviii] Albert Levi, former chief of Big Cove, spoke to those tensions in the status of rights in a speech to the Commission on Canadian Federalism:

> We are Indians "in" Canada, not really "of" Canada: "Canada," the nation, did not make us into peoples, or give us our laws and our languages, or grant us our rights: These things we had long before there was a "Canada"; these things we carried into "Canada" through our treaties and other arrangements; these things are Indian alone -- not really "special" or "higher" rights to the rights of other Canadians, but "different".[lxix]

This was language deeply reminiscent of the debate around Quebec's distinct society, and it raises the same fears among charter Canadians now as it did during the recent referendum debate. Aboriginal peoples are caught in this tension and it deeply constrains the actions of government, whether federal or provincial. However, for New Brunswick there is greater familiarity with this tension between individual and collective rights, and a greater willingness to strike a balance that recognizes collective rights. This is evident in its constitutional acceptance of bilingualism, and of its recent decision to entrench Bill 88's recognition of the French and English-speaking communities in the province's constitution. With this expansion and entrenchment of the rights of

Acadians, there would seem to be little justification for the government not moving forward on collective rights for aboriginal peoples in New Brunswick.

Apart from the principled tangle with charter ideology, there are also practical reasons for provincial caution. As noted earlier, the province has an extensive rural and relatively have-not population in close proximity to the 15 Indian First Nation communities. Many of these rural residents feel that they do not enjoy material benefits higher than those on nearby reserves, nor do they see the same influx of funding through provincial programs that they see flowing from federal coffers to the reserves. Sometimes smouldering and longstanding land disputes also continue between the people on the reserve and the residents of the immediate area. As the march on Red Bank over the tax issue indicates, white people immediately adjacent to reserves often tend to be more volatile over Indian issues and more resistant to Indian claims than other provincial residents.

There are also perceptions of Indian overfishing, of violations of gaming regulations, and the like. Such perceptions feed resentment. In fact, some of the major provincial lobby groups affecting aboriginal people, such as sporting and fishing associations, tend to be the most vocal in opposition to aboriginal practices. Under these circumstances, it is understandable that fears would arise over collisions between Indians and sportsmen on the rivers and in the forests of the province.

As we have noted in this study on New Brunswick and aboriginal people, there had always been resistance from the earliest times to special advantages for Indian peoples. Even in the modern period, the government has until very recently felt constrained to argue that Indians can claim no special consideration respecting provincial government programs over and above those normally accorded to any other member of the population. This resistance to any notion of special status, for example, led a committee in 1974 to reject many recommendations calling for special programs or adaptations for native peoples from the fields of justice, economic development, and welfare. It obviously barred consideration of recommendations for a special

native affairs ministry. There is always a fear that any departure from egalitarian treatment will find the province assuming what ought to be a federal role. As the NBAMNSI put the matter in 1984:

> Since 1973 the major obstacle preventing any initiative on the part of the Provincial Government towards resolving the socio-economic conditions of Aboriginal people here in the Province has been the attitude that the Government by doing anything of a special nature would be seen as accepting provincial responsibility for Aboriginal People, particularly Metis and Non-Status Indians.

In many respects, New Brunswick-aboriginal relations are not in this respect dissimilar from those prevailing in most other provinces in Canada: caution and a reluctance to move decisively on aboriginal issues on the part of the province; frustration by aboriginal people at the glacial pace of change.

The federal role is, of course, critical. Neither the province nor the aboriginal people are well served by federal avoidance of the issues or by fears over declining federal funding and commitment. It is no secret that New Brunswick, like other provinces, fears federal offloading of its financial and political responsibilities, especially in the light of the restrained current fiscal climate. The trend of transferring responsibility for programs for Indians from Indian Affairs to regular federal departments -- whether in respect of health services, economic development, or policing -- is also a deeply worrying sign of federal blurring of its constitutional responsibilities. So, too, is the trend of federal offers to share-cost aboriginal programs with the province. Obviously there is political as well as financial incentive in these trends since Ottawa can thereby displace "public displeasure and aboriginal dissatisfaction from Ottawa to the provinces."[lxx]

Despite the apparent inevitability of provincial-aboriginal interaction in the future as in the past, there can be no ignoring the legacy of a long and often tragic history of relations. Levels of trust are consequently not high.[lxxi] They are certainly not improved by the bitter showdown during the sales tax crisis of 1993. Indeed, one aboriginal leader has declared that "the provincial government set back race relations in the province by one hundred years because of events during

the '93 Easter weekend."[lxxii] The evidence from our interviews with native people indicate that aboriginal people in the province do not fully understand the nature and evolution of the provincial role over aboriginal peoples within the province. Chiefs of First Nations continue to take the view that they should deal with the federal government and that the province should not significantly impinge upon them. Similar though less sharp attitudes prevail among the leaders of organizations of off-reserve aboriginal peoples. But, as many aboriginal leaders and others reluctantly acknowledge, the reality of ongoing aboriginal-provincial relations seems inescapable.

CONCLUSION

No doubt at this stage in the evolution of aboriginal politics in New Brunswick, it will be the action of the aboriginal peoples themselves that will most determine their future. It is they who best know what needs to be done to move their agenda forward. Already, given the political impasse over the sales tax measures and over addressing land claims, the battle has most recently shifted toward the judicial branch. On November 1, 1993, Roger Augustine, Chief of Eel Ground First Nation, began a legal action on behalf of the Union of New Brunswick Indians to strike down New Brunswick's March 1993 Sales Tax measures affecting Indians. The Union also seeks a declaration that the Royal Proclamation of 1763 applies to New Brunswick, and that virtually the whole of the province of New Brunswick is tribal land that has never been ceded nor lawfully acquired by the Crown. Moreover, the Union argues that the whole of the province, with very minor exceptions, is also *reserve* land for the purposes of exemption from taxation under section 87 of the Indian Act, not just the small acreages allotted to Indian bands as indicated in Table 2 earlier. Hence, it claims that all status Indians enjoy exemption from the tax, or in the alternative, that the tax is invalid where it applies to the sale of goods and services to status Indians for use on reserves.

Hardly had this action begun before the Aboriginal Peoples Council joined the action as an intervenor to press both land and tax arguments on behalf of all off-reserve aboriginal peoples. This new chapter in the struggle of aboriginal peoples and the province will no doubt prove to be an

important milestone. The question of the application of the Royal Proclamation of 1763 to the Maritime provinces has always been a contentious and unresolved issue. Moreover, through this route, the centrality of the land and treaty questions can once again be brought to centre stage.

It would be reasonable, I think, to see the initiation of this high-stakes legal action as a strategic response to the recent setbacks over taxation of Indians, the referendum results on the Charlottetown Accord, and the failure to make subsequent progress in activating a negotiation process over land and treaties. Despite the fact that the aboriginal package was the most widely supported of any in the Charlottetown Accord, aboriginal leaders correctly predicted a decline in the political will to pursue their agenda following the referendum defeat.[lxxiii] In addition to declining elite interest, there has also been a sharp drop in levels of national support for the principle of aboriginals' inherent right to self-government since October of 1992: the Canada West Foundation reported that support for that principle had dropped from 58 per cent in September of 1992 to 34 per cent in November following the referendum.[lxxiv] This is not an encouraging climate of national public opinion; after the sales tax fiasco of 1993, the will to proceed in New Brunswick may well have further eroded. In any event, even though the provincial premiers recently reaffirmed their support of aboriginal self-government at Beddeck in Nova Scotia, Indian leaders know that the constitutional process is blocked unless developments in Quebec once again force its reopening.

Recourse to the courts is, of course, a high-risk strategy for *both* aboriginal peoples and governments. Although judicial review has recently proved to be a promising avenue for moving the aboriginal agenda forward, the zero-sum (winner-take-all) outcomes of a court of law may not be practical; certainly, it cannot be counted upon as a foolproof longterm strategy. But when politicians have much less political capital invested in aboriginal issues, it may well be a risk that aboriginal leaders feel must be taken. It may even be that the judicial route must prove a *necessary* prelude to serious negotiations of land and treaty issues. In this reading, only edicts from the

courts, setting out governments' *legal* obligations to aboriginal peoples, may force some reluctant governments and publics to begin negotiations of these hard issues in earnest. According to this view then, the intelligent use of legal avenues may make an indispensable contribution to subsequent negotiations and ultimate resolution of aboriginal issues.

Over the next two years, too, there will undoubtedly be a further unfolding of Quebec nationalism with the drive of the Parti Québécois and the Bloc Québécois for Quebec independence. The unleashing of this nationalism, with its stress on collective rights and self-determination, will undoubtedly feed into aboriginal nationalism and politics, raising once again the salience and visibility of these issues. In fact, the parallels between these nationalisms and their tortured interaction in Canada's recent constitutional odyssey is quite remarkable.[lxxv] If reactivated in 1994 and 1995, politicians will once again be compelled to give aboriginal questions attention as "megaconstitutional questions."[lxxvi]

Of course, the work of the Royal Commission on Aboriginal Peoples can itself be expected to make an important contribution to the reassertion of aboriginal issues upon the country's agenda. It can help educate Canadians to the issues, set out avenues and options, and inject new political will for their resolution. In the course of its work, the Commission will shed light on the profound historical and cultural differences between aboriginal and non-aboriginal perspectives, sensitize Canadians on the need for respect and healing, and show the way forward. Ultimately, the Commission will open up for honest dialogue the ways in which aboriginal people themselves can address their painful spiritual, social, economic, and political problems. Among the more important internal issues to be addressed will be the nature and future of aboriginal government and its relationship to other governments in Canada. The process of change will go on. Hence, whether in New Brunswick or elsewhere in Canada, it would be unwise to regard any current impasse over aboriginal issues as anything more than an interlude.

NOTES

i. Declaration of Mi'Kmaq First Nations Rights, document adopted by the National Council of Mi'Kmaq Chiefs, March 22, 1989.

ii. G.P.Gould and A.J. Semple, eds., Our Land: the Maritimes. The Basis of the Indian Claim in the Maritime Provinces of Canada. Fredericton: Saint Annes Point Press, 1980, 4.

iii. From Broadhead and O'Callaghan, eds., Documents Relating to the Colonial History of the State of New York (Albany, 1853), X, 269, cited in Gould and Semple, Our Land: the Maritimes, 4.

iv. See the treatment of aboriginal rights in international law in the work of Francisco de Vitoria, Hugo Grotius, and Samuel Pufendorf in Bradford W. Morse, ed., Aboriginal Peoples and the Law: Indian, Metis and Inuit Rights in Canada (Ottawa: Carleton University Press, 1991), chapter 2.

v. For a scholarly review of the role of the Indians in the military and political struggles of the period, see Stephen E. Patterson, "Indian-White Relations in Nova Scotia, 1749-61: A Study in Political Interaction," in Acadiensis, Vol. XXIII, no. 1, Fall, 1993.

vi. The reference to peace and friendship treaties is misleading, since it tends to underplay the serious commercial and political elements contained within them. In addition to the above-mentioned Our Land: the Maritimes, see As Long as the Sun and Moon Shall Endure: A Brief History of the Maritime First Nations' Treaties, 1675 to 1783. (The Big Cove Education Program, Big Cove, New Brunswick, 1986).

vii. See "We Should Walk in the Tract Mr. Dummer Made," A Written Joint Assessment of Historical Materials Collected, Reviewed, and Analyzed by Treaty and Fisheries Policy Branch, Indian and Northern Affairs Canada, and the MAWIW District Council Relative to Dummer's Treaty of 1725 and all other related or relevant Maritime Treaties and Treaty Negotiations, submitted to the New Brunswick Chief's Forum on Treaty Issues, Saint John, October 1-2, 1992.

viii. Ibid, 31-32.

ix. Ibid, 53.

x. Stephen E. Patterson of the Department of History at the University of New Brunswick has developed a careful scholarly assessment of the treaties that breaks sharply from the conclusions of the joint federal-aboriginal study. I am grateful to him for his kindness in letting me review his paper in early draft form on "Native Treaties and Aboriginal Rights in 18th-Century Nova Scotia", a piece that will doubtless in due course appear in published form.

xi. See Brian Slattery, The Land Rights of Indigenous Canadian Peoples, D. Phil Thesis, Oxford University, (Native Law Centre, University of Saskatchewan, 1979).

xii. See parts of the Moses Perley Report of 1841 criticizing the infringement of Indian rights in

W.D. Hamilton and W.A. Spray, Source Materials Relating to the New Brunswick Indian, Fredericton: Centennial Print and Litho Ltd., 1976.

xiii. G.P.Gould and A.J.Semple, eds., Our Land: the Maritimes, 59-60.

xiv. See Anthony Long and Menno Boldt,ed., in association with Leroy Little Bear, Governments in Conflict? Provinces and Indian Nations in Canada, Toronto: University of Toronto Press, 1988, 4.

xv. See the Agreement between Canada and New Brunswick respecting Indian Reserves, S.C. 1959,c.47, in Richard H. Bartlett, Indian Reserves in the Atlantic Provinces of Canada, Appendix A, 81-86.

xvi. Ibid, 66.

xvii. Ibid, 71

xviii. The case law arises in R.v. Hill (1907) where the Ontario Court of Appeal held that a provincial law confining the practice of medicine to qualified physicians applied to Indians; in Four B Manufacturing v. United Garment Workers (1979) where the Supreme Court of Canada held provincial labour law applied to a shoe-manufacturing business which was located on a reserve, was owned by Indians, employed Indians, and was funded by the Department of Indian Affairs; in R. v. Francis (1988) where the Supreme Court held provincial laws applied to an Indian driving a vehicle on an Indian reserve. See the treatment of provincial legislative power over Indians in Peter Hogg, Constitutional Law of Canada, 3rd edition, Toronto: Carswell, 1992, 671-679.

xix. See Dick v. Queen (1985) where Justice Beetz argued for the Court that section 88 permitted provincial laws affecting Indianness to apply because "these were the only laws to which s. 88 needed to apply, because these were the laws that could not apply to Indians of their own force." That position was reaffirmed by the Supreme Court in Derrickson v. Derrickson [1986] and in R. v. Francis [1988]. Ibid, 677.

xx. Naturally, like other entrenched rights in the constitution, treaty rights are not absolute. They can be limited for pressing and substantial public concerns that are "demonstrably justified", and where the means are carefully chosen to limit the rights as little as possible. In effect, any legislative limits to such rights must meet the kind of exacting section 1 Oakes test necessary for limiting a Charter right or freedom. As Peter Hogg has argued: "the standard of justification for a law impairing a treaty right would be very high indeed." (Ibid, 692) It is worth noting, moreover, that treaty rights, unlike most charter rights and freedoms, are *not* subject to any legislative override.

xxi. All of this data is readily available from a study of the census over these years.

xxii. The following Indian Reserves and Settlements were incompletely enumerated: Big Hole

Tract 8, Burnt Church 14, Eel Ground 2, Kingsclear 6, and Tobique 20. Appendix A. User's Guide: 91 Aboriginal Data. Statistics Canada. The 1986 census data for Burnt Church and Kingsclear is also incomplete. As a result, no statistical analysis of First Nations in New Brunswick will be offered in this essay.

xxiii. David Perley, cited in chapter on Tobique, New Brunswick, in Larry Krotz, Indian Country: Inside Another Canada, Toronto: McClelland and Stewart, 1990, 200.

xxiv. Of almost fifty aboriginal people interviewed for this project in the province, more than three-quarters voted at one time or another in federal elections, while far fewer voted at any time in provincial equivalents. The reasons given by those interviewed were that provincial elections were felt to have no relevance to them. While this data is scarcely a "scientific sample", it does point to a wide voting differential indicative of native peoples' lack of identification with the provincial government. For a broader look at recent trends in aboriginal voting, see David Bedford and Sidney Pobihushchy, "Dependency: Cross-Cultural Interpretations of Voting," Paper presented to the 1993 Atlantic Provinces Political Studies Association, St. Francis Xavier University, Antigonish, N.S., October 16, 1993.

xxv. Of the aboriginal people surveyed, including aboriginal leaders and organizations, the opinion was virtually split between those who recognized that dealing with the province was inevitable (if undesirable), and those who clung to their status as North American Indians with special nation-to-nation relations with the federal government.

xxvi. A recent example of the high political profile that the Union likes to see for itself on a province-wide basis can be gleaned from the December 1993 proposal to reconstitute the Union into what leader Roger Augustine calls a "shadow cabinet" where Indian chiefs on the board would function like cabinet ministers for departmental areas of responsibility such as health or fisheries. This would be a bold attempt to create an aboriginal parallel structure whereby chiefs could presumably speak authoritatively to their federal or provincial counterparts and even receive and administer funding directly on such matters. See news report, Telegraph Journal, December 13, 1993.

xxvii. Acknowledgment of these problems and their persistence at one time or another on most reserves in the province of New Brunswick came up repeatedly in this author's interviews with aboriginal peoples, academic and other experts, and even some aboriginal leaders themselves. These problems arise from the ubiquity of politics on Indian reserves where "virtually nothing happens that is not governed by politics ... [where] public money figures hugely in almost every project, and in almost everyone's salary ... either as social assistance, or as the salaries of those who are on the community payroll" in a universe of rules "right down to who may or may not be defined as a member of the community." Such is the unhealthy "life-and-death power" of politics on Indian reserves. The result for Victor Bear of Tobique is a system where "every job is a political appointment and paid out of the public purse. Political connections land the jobs, patronage is the rule. Graft is an ever-present threat....The system is rife with inefficiency and corruption." Larry

Krotz, Indian Country: Inside Another Canada, 153, 194.

xxviii. At one point, the Prince Edward Island off-reserve native peoples were also a part of the New Brunswick Association for Metis and Non-Status Indians, but they broke away to found their own council in 1974.

xxix. See the comments of Caroline Ennis, and other Tobique women on this point in "Tobique, New Brunswick", chapter 9, of Larry Krotz, Indian Country, 204.

xxx. The UNBI responded by passing a resolution at its annual meeting not to recognize Premier Hatfield as representing the constitutional concerns of the Micmac and Maliseet First Nations.

xxxi. Though a provisional agreement was made with the Tobique First Nation in the mid-1980's, negotiations ceased after changes in provincial and Tobique governments.

xxxii. This is of course the title of the document by the National Indian Brotherhood for national action on the education front in the early 1970's. The Department of Indian Affairs in February of 1973 gave official departmental blessing to the education goals of the document.

xxxiii. See Metis and Non-Status Indians Housing Conditions in New Brunswick and Prince Edward Island, 1973.

xxxiv. Note, however, the case of the Spallumcheen Band of British Columbia that through its own by-laws in 1980 ousted the jurisdiction of the province of British Columbia in child welfare. See P.J. Johnson, Native Children and the Child Welfare System (Toronto: Lorimer, 1983) and Nicholas C. Bala, et. al., eds., Canadian Child Welfare Law (Toronto: Thompson Educational Publishing, 1991), chapter 8.

xxxv. Anthony Francis, presentation to the New Brunswick Commission on Canadian Federalism, April 9, 1991, 6.

xxxvi. Charles Paul, Presentation to the Commission of Inquiry on Equality in Employment",

xxxvii. Native Women in New Brunswick: Employment and Training Needs. prepared by Barbara Martin, Employment and Immigration Canada, November, 1984, 2.

xxxviii. Charles Paul, Ibid, 6.

xxxix. See Discussion Paper on a Proposal for a Provincial Policy Framework on Aboriginal Affairs, New Brunswick, Department of Intergovernmental Affairs, November, 1989.

xl. Table and quotations, Discussion Paper, p.4

xli. Ibid, 5-6

xlii. Ibid, 10

xliii. Response to the Provincial Policy Framework on the Aboriginal Affairs, Union of New Brunswick Indians, July 9, 1990, 1-2.

xliv. Ibid, 7-8

xlv. While that idea had drawn interest, in fact these forums were never held.

xlvi. It was only a matter of months after the collapse of the Meech Lake Accord that the newly established Citizens Forum -- an ambitious program of town-hall meetings with Canadians led by the Spicer Commission -- demonstrated this strength of public opinion around aboriginal issues. The public pressed for negotiations on native self-government and land claims. That public support continued throughout the subsequent constitutional process that culminated in the Charlottetown Accord.

xlvii. Of course, the Royal Commission on Aboriginal Peoples has itself adopted such a position early before the submission of its report. See The Right of Aboriginal Self-Government and the Constitution: A Commentary. February, 1992.

xlviii. Statement of Objectives for the Off-Reserve Tripartite Process in New Brunswick, October 1989.

xlix. NBAPC, Final Report for the Tripartite Process, June 1990, 5-6.

l. A giant stride in this direction, however, took place with the submission of the earlier mentioned joint federal-aboriginal study of Maritime treaties in 1992. It showed substantial agreement the treaties "ARE Treaties of Substance" with "overall similarities between the Eastern Indian Treaties and those entered into by First Nations in Ontario and Western Canada." See "We Should Walk in the Tract Mr. Drummer Made," 6.

li. Report of the New Brunswick Commission on Canadian Federalism, January, 1992, 31.

lii. Ibid, 31-33

liii. Ibid, 38

liv. Ibid, 39

lv. See David Milne, "Innovative Constitutional Processes: Renewal of Canada Conferences, January- March, 1992," in Douglas Brown and Robert Young, eds., Canada: State of the Federation: 1992 (Kingston: Institute of Intergovernmental Relations, Queen's University, 1992), 26-52.

lvi. Confusion over the precise nature and meaning of "self-government" was evident in the interviews conducted with aboriginal peoples for this project. Neither its definition nor its operation could be easily grasped. It is also worth underlining the persistent concerns and fears among native people over the nature of aboriginal governance as it then stood
and whether the accord might consolidate and entrench that system. That critical view arose frequently in interviews with aboriginal people for this project. For a candid indictment of band government as imposed through the Indian Act, see Daniel N. Paul, We Were not the Savages: A Micmac Perspective on the Collision of European and Aboriginal Civilization. (Halifax: Nimbus Publishing, 1993), esp. Chapters XV and XVII. Doubtless there were also many aboriginal people who felt the constitutional package either did not go far enough or was too vague in its financial and other provisions.

lvii. An eighth suicide followed in July of 1993, once again rocking the community.

lviii. It is worth underlining here too that the results of the aboriginal survey following the 1991 census also demonstrated that aboriginal people within the province were by no means united in the view that self-government was the chief remedy to their problems.

lix. Chief Albert Levi, Presentation to Tripartite Forum on Self-Government Arrangements for Big Cove First Nation, March 31, 1993, 1.

lx. Chief Roger Augustine, Tobique First Nation, cited in Public Hearings: Overview of the Second Round, prepared by Michael Cassidy and the Ginger Group Consultants for the Royal Commission on Aboriginal Peoples, April 1993, 5-6.

lxi. An Act to Amend the Social Services and Education Tax Act, Section 3 11.1 (1) and (2), May 31, 1974.

lxii. Nova Scotia had, for example, tightened up its regulations in May of 1989. Even the federal government was moving toward a much tougher review of its tax treatment of aboriginal peoples, off reserve. Denis Lefèbre, Assistant Deputy Minister in Revenue Canada, informed aboriginal organizations in December 1992 that, as a result of the decision in the Williams case, Ottawa will be changing the rules to take away tax advantages for head offices on reserve whose employees worked off-reserve.

lxiii. Chief Albert Levi, speech to the Students of Mount Allison University, March, 1993.

lxiv. In the July 1992 Report of the Representation and Electoral District Boundary Commission, the commission argued that, due to major differences among aboriginal and non-aboriginal organizations over the nature of aboriginal representation and voting, that the matter should be further studied and reported upon.

lxv. Chief Albert Levi of the Mi'kmaq First Nation at Big Cove and Member of the new

Brunswick Commission on Canadian Federalism, Speech to The Commission, April 9th and 10th, 1991.

lxvi. Stephen Cornell and Joseph P. Kalt, "Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations," in Stephen Cornell and Joseph P. Kalt, eds., What Can Tribes Do? Strategies and Institutions in American Indian Economic Development, (Los Angeles: American Indian Studies Center, University of California, 1992), 15.

lxvii. Ibid, 17, 18, 21.

lxviii. Probably the most noteworthy scholar to discuss the way in which the charter has changed Canadian political culture in complex ways is political scientist, Alan Cairns of the University of British Columbia. His work has underlined the curious way in which the charter has simultaneously accelerated equalitarianism at the level of both citizen and province, while spawning at the same time collective rights and "constitutional minoritarianism." For a representative sampling of these themes, see Alan C. Cairns, Disruptions: Constitutional Struggles from the Charter to Meech Lake, ed. by Douglas E. Williams, (Toronto: McClelland and Stewart, 1991) and Charter versus Federalism: The Dilemmas of Constitutional Reform, (Montreal and Kingston: McGill-Queens, 1992).

lxix. Chief Albert Levi, Commission on Canadian Federalism, April 9-10, 1991.

lxx. See Augie Fleras and Jean Leonard Elliott, The Nations Within: Aboriginal-State Relations in Canada, the United States and New Zealand. Toronto: Oxford University Press, 1992, 49. It provides a brief useful review of the politics of fiscal constraint and some supporting scholarly literature.

lxxi. This is self-evident from the historical record, but received further confirmation in the results of our interviews with aboriginal people, status and non-status both on and off-reserve, throughout the province.

lxxii. In interview with research assistant, Marlene Ward, summer, 1993.

lxxiii. For an empirical assessment of the levels of public support for the aboriginal component of the Charlottetown Accord, see Richard Johnston, Andre Blais, Elisabeth Gidengil, and Neil Nevitte, "The People and the Charlottetown Accord," in Ronald L. Watts and Douglas M. Brown, eds., Canada: The State of the Federation, Kingston: Institute of Intergovernmental Relations, Queen's University, 1993.

lxxiv. Shawn Henry, "Public Opinion and the Charlottetown Accord," Calgary: Canada West Foundation, January, 1993. Gallup had reported 47% support for the principle in January of 1992 and 58% in September; Environics tracked the 34% figure in November of 1992.

lxxv. See Peter H. Russell, Constitutional Odyssey: Can Canadians be a Sovereign People?, 2nd

ed., (Toronto: University of Toronto Press, 1993) for elaboration of this interaction. See also Daniel Salée, "Identities in Conflict: Quebec and the Aboriginal Question", paper delivered to the Atlantic Provinces Political Science Association, St. Francis Xavier University, Antigonish, N.S., October 15-17, 1993, for a Quebecer's struggle with the issue of these conflicting identities.

lxxvi. Megaconstitutional issues are those "concerned with the [very] identity and fundamental principles of the body politic", that "touch citizens' sense of identity and self-worth", that are "exceptionally emotional and intense", and that most threaten the foundation of the federation itself. Peter Russell, Ibid, 75.

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This essay has been a ground-breaking exercise that could not have been completed without the generous support and assistance of the Government of New Brunswick and many aboriginal people and organizations throughout the Province. Since the essay is built upon a variety of sources -- a study of documents, background bibliographical sources, and the completion of scores of interviews with Indian people, some academic specialists, and government officials in the province -- the work would not have gone forward but for their commitment of time and attention. While I am unable to acknowledge most of them here individually, I do wish to thank most sincerely all those who contributed in these ways to this project.

In that respect, I also wish to thank Ms. Marlene Ward for her carrying out of interviews with aboriginal people in the province for this project over the summer of 1993. It was exhausting work conducted over a very tight timetable, but she managed to interview almost fifty aboriginal people throughout the Province. Of the 48 interviewed, there was a good cross section of aboriginal opinion, including that of aboriginal leaders, aboriginal women, and aboriginal youth, including off-reserve urban natives. Big Cove, Buctouche, Indian Island, Burnt Church, Red Bank, Tobique, and Woodstock were among the bands visited. Interviews were also conducted with representatives from four native organizations in the Province: the Union of New Brunswick Indians; the New Brunswick Aboriginal Peoples Council; the Fredericton Native Friendship Centre; and the New Brunswick Native Women's Council.

I am also grateful to those who agreed to be readers, aboriginal and non-aboriginal, of the preliminary draft of my manuscript. My special thanks here extend to Mr. Dan Horsman, Senior Advisor on Aboriginal Affairs in New Brunswick, for his detailed and meticulous comments, as well as to Mr. Kevin Malone, Assistant Deputy Minister of New Brunswick's Department of Intergovernmental Relations and Mr. Bruce Judah of the Department of Justice. I also wish to thank Professor Robert Leavitt of the Micmac Maliseet Institute and Ron Gaffney of Fredericton for their comments. All have helped save me from errors in fact and interpretation, but of course none bear any responsibility for what, despite their best efforts, may stubbornly remain.

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