

**ABORIGINAL SELF-GOVERNANCE WITHIN THE
PROVINCE OF NEW BRUNSWICK**

FINAL REPORT

BY

**THE NEW BRUNSWICK
ABORIGINAL PEOPLES COUNCIL**

FREDERICTON, NEW BRUNSWICK

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I. EXECUTIVE SUMMARY

This report focuses on the vision that the New Brunswick Aboriginal Peoples Council (NBAPC) regarding self-government for the off-reserve Aboriginal peoples of the Province of New Brunswick. In line with these efforts, the NBAPC formulated several questions that attempted to cover the full basis of the issues. These questions are:

1. How are the cultures of Aboriginal Peoples in NB reflected in their patterns of governance?
2. How does the absence of a land base affect the operations and processes of NBAPC?
3. How did the presence of treaties affect and reflect patterns of Aboriginal governance?
4. What should be the rights and responsibilities of citizenship in NBAPC?
5. How can the Canadian Constitution be amended to fully accommodate the aims and aspirations of the off reserve aboriginal peoples in NB?
6. How can aboriginal governments best contribute to the political and economic self-sufficiency of off-reserve aboriginal people of NB?
7. What are the powers necessary for the off-reserve Aboriginal peoples to live in co-existence with other Canadians?
8. What will be the major institutional forms of governance in NB?
9. How will traditional ways of decision making be incorporated within the institutional design of Aboriginal governments?
10. How will this form of government be held accountable?
11. What will be our financial basis for self government?
12. How can the Council design and deliver programs and services in an effective manner?
13. How can the Council be involved in developing and managing land, water and natural resources?
14. What dispute mechanisms will be used within the Aboriginal communities and governments and with other communities and governments?

15. How will our model of self-government affect women, youth and seniors?
16. What programs and services will be needed by our peoples from the Federal, Provincial and Municipal Governments?
17. What are the existing problems and necessary arrangements for the process of transition to a fuller form of Aboriginal government and self-reliance to take place?

In an effort to properly address these questions, the report has been divided into several sections. It begins with an introduction which is subdivided into a brief history, an overview of the New Brunswick Aboriginal Peoples Council, and a comparison of Aboriginal forms of governance in their traditional and current patterns. The comparison of these patterns determined that the current forms of Aboriginal Governance are a hybrid of traditional and non-aboriginal contemporary practices. The following chapter, *Aboriginal Self-Governance: the Threshold*, summarizes the current constitutional standoff concerning Aboriginal issues. This chapter also describes the overall foundation of self-government for the off-reserve Aboriginal peoples of New Brunswick that currently exists. Finally, this chapter identifies the existing rights and responsibilities of the membership of the NBAPC and how self-government will alter those rights and responsibilities. *Process: the Pathways of the Future* notes the process of program and services design that exists and will exist under Aboriginal self-government, and identifies the format and agenda that these programs and services will take. The overall basis of program and service design and delivery is based on a "family up" scenario, as opposed to the "top down" scenario utilized by contemporary non-Aboriginal governments. The chapter *Governance: Forms and Process* is an in depth analysis of Aboriginal government financing, land issues and how Aboriginal self-government will affect and include women, youth and seniors. It also includes specific program and services design, intergovernmental disputes and resolution procedures, and perceived roadblocks to Aboriginal self-government.

The financing necessary for Aboriginal self-government is proposed to come from many sources. These sources include attainment and management of a viable specific land base, provincial and federal block and conditional grants, natural resource and land use taxes, royalty payments, lump sum settlement fees and federal transfer payments. These various sources of resourcing could form many possible combinations, but the long term goal is self-sufficiency, which entails moving away from reliance on federal and provincial discretionary funding programs.

The land issue is an ongoing problem between Aboriginal peoples and federal and provincial governments. The NBAPC feels that there is sufficient unspoiled land in the Province of New Brunswick to assure a viable specific land base. The NBAPC does not wish to build its own reserve, but instead desires a land base to preserve some undisturbed land in New Brunswick and to have access to renewable resources that can be managed in a sustainable manner to provide a secure source of resourcing.

One of the concerns of Aboriginal self-government is how will it affect the women, youth and seniors of the community. This paper details how these segments of the population are currently involved in the NBAPC and its political mechanisms, and indicates the commitment from the NBAPC as to maintaining and increasing their involvement. Also discussed is how these people participate in the formulation of programs and services and how these programs will be designed and implemented.

This paper also looks at potential intergovernmental disputes and recommends possible resolution systems and approaches. One aspect of intergovernmental disputes is the roadblocks presently existing in the federal and provincial government systems regarding Aboriginal self-government. This paper explores some aspects of this issue, from the apparent lack of political will on the part of the federal government to the inability of the federal and provincial governments to maintain the pace set by the court system as to its recent judgements concerning Aboriginal rights and freedoms

The NBAPC considers that the time is ripe for the formation of Aboriginal self-government, and that the NBAPC is in an ideal position to form the foundation of such a government for the off-reserve Aboriginal peoples of New Brunswick. It is felt that the overall form of Aboriginal Self-Government in New Brunswick should be Tribal. Tribal Government would represent the Micmac and Maliseet peoples of the Province in their overall political functions and Tribal concerns. The Band Governments and the NBAPC would oversee their individual concerns on a community or community of interest bases. Each Tribe would also have representatives in the Provincial Legislature.

Aboriginal Self-Government will become a reality regardless of the socio-economic-political climate of Canada. Solutions to the questions posed by Aboriginal Self-Government will not occur overnight as the problem has been building for 500 years, and solutions can only be arrived at if there is the political will from all levels of government involved. Yet Aboriginal Peoples have demonstrated their continued commitment to the resolution of their problems. The recent Premiers' Conference at Baddeck has also indicated the willingness of the provinces to arrive at a solution. All that remains is for the federal government to respond to the demands of the Aboriginal peoples of Canada in their pursuit of self-government. As indicated in opinion polls of the People of Canada, the Ordinary Citizens of Canada are also firmly behind the Aboriginal Peoples in their struggle against injustice.

II. PREFACE

Since the arrival of the first European settlers over 400 years ago, the Aboriginal Peoples of Canada have been in a constant struggle to maintain their cultural integrity and autonomous government. While the struggle has at times appeared to be a losing battle, Aboriginal Peoples have become the fastest growing segment of the Canadian population and are regaining their strength and cultures.

As the Aboriginal Peoples of Canada revive their cultures, an awareness has increased that in the socio-political reality of Canada today, their lives are not their own. This awareness has led to the growing movement towards regaining autonomous Aboriginal government. In the face of seemingly overwhelming odds, the Aboriginal peoples of Canada have made great headway towards being recognized as a distinct segment of the Canadian cultural melange. We prefer to consider ourselves as citizens plus.

Over the last 20 years, Aboriginal advocacy organizations have sprung up across the country to fight the unjust and arbitrary policies of the Federal *Indian Act* and its offspring, the Department of Indian and Northern Development (DIAND). These organizations have made slow progress toward regaining Aboriginal autonomy. The Charlottetown Accord, although defeated, was a huge step towards gaining autonomous control of Aboriginal government by Aboriginal peoples. The process of forming the Accord assisted in education of the Canadian public and, more importantly, in the ultimate acceptance of the inherent right of Aboriginal self-governance by the political powers of the day.

The awareness of the inherent right of Aboriginal self-government by the ruling powers of Canada was demonstrated by its public acknowledgement by the provincial Premiers at the 34th Annual Premiers' Conference in Baddeck, Nova Scotia. Although the candidates running in the present federal election campaign are carefully steering clear of the topic of Aboriginal self-government, the elected party will have to deal with this issue soon after the election has been decided.

The Aboriginal peoples of Canada are of a diverse nature, and each cultural group/tribe and Band has its own vision of self-government. This paper has been developed in response to a request from the Royal Commission on Aboriginal Peoples. It describes the model of self-government that is envisioned by the New Brunswick Aboriginal Peoples Council (NBAPC) for those Aboriginal peoples living in the Province of New Brunswick who are not resident on a federal reserve.

This paper is in no way intended to represent a definitive and final answer to the question of how the NBAPC would operate and function as a seat of self-government. Achieving and managing self-government must be an evolving process. While this presentation attempts to categorize and propose solutions to various problems and concerns posed by the question of Aboriginal self-government, it is necessary to note that these categories represent artificial divisions of the whole, and there may be similarities between

categories. The questions posed by Aboriginal self-government for the off-reserve peoples of New Brunswick are complex and difficult to effectively box into "specific" categories with possible solutions.

III. ACKNOWLEDGEMENTS

This document would not have been possible without the knowledge and input of Frank Palmater, Gary Gould and Henry Phillips. The experience that these individuals have in dealing with Federal and Provincial Governments, Aboriginal issues and Constitutional issues have assisted in making this presentation a viable and realistic assessment of current Aboriginal Reality and the struggle for viable Aboriginal Self-Government.

The author wishes to thank the staff of the New Brunswick Aboriginal Peoples Council for their patience and support during the research and writing of this document. The author also wishes to thank Professor L. Brown of the University of Victoria and the questions that she posed during our discussions, Governor J. Padrill of the Penobscot Nation in Maine, and the constituency of the NBAPC for their strength, humour and infectious sense of purpose.

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Researcher, Housing Officer

IV. METHODOLOGY

This paper is based upon documents that have originated from the New Brunswick Aboriginal Peoples Council since its inception, and many other documents that have been published across Canada (see Appendix E). These background papers have dealt with various topics and issues concerning the Aboriginal Peoples of New Brunswick living off-reserve. This document attempts to pull together the disparate topics covered in the papers.

The focus of this report was based upon a series of questions that were designed to address the issue of self-governance for the off-reserve Aboriginal peoples of the Province of New Brunswick.

Primary research was also used in the writing of this report. Senior staff of the NBAPC were interviewed (F. Palmater, President of the NBAPC and G. Gould, Manager of Skigin Elnoog Housing Corporation and former President of the NBAPC) as well as L. Brown of the University of Victoria. During the Annual General Meeting with the constituency of the NBAPC, August 1993, the author also discussed the issue of Aboriginal self-government with several individuals and groups of the membership.

A series of interviews with the Governors of the Passamaquoddy and Penobscot Nations of the State of Maine, USA were arranged and the author visited the Governors at their reservations. Unfortunately, due to scheduling problems at the reservations, the author was unable to interview the Governors of the Passamaquoddy Nation.

The Interview with Governor J. Padrill of the Penobscot Nation in the State of Maine was very informative and provided a plethora of information and ideas regarding the management of Aboriginal Self-Government.

V.

ABSTRACT

While the inherent right of Aboriginal self-government has been accepted and recognized by the Provincial Premiers of Canada, the Federal Government has sidestepped the issue since the loss of the Charlottetown Accord. As the Aboriginal Peoples of Canada move towards a resolution of the self-government issue, the construction and presentation of models of Self-Government is required. The model presented by the NBAPC attempts to clarify the needs of the off-reserve Aboriginal peoples of the Province of New Brunswick. This model proposes political structures and process, possible resources for governmental functions, land base solutions, and probable inter-governmental affairs as a third level of Government.

VI. INTRODUCTION

VI.1 A BRIEF MARITIME ABORIGINAL HISTORY

Although archeological evidence is relatively scarce and open to interpretation, it is generally accepted that the first peoples of North America arrived shortly after the last Ice Age (about 12 to 13,000 years ago), arriving across continental EurAsia to North America over a land bridge which existed where the Bearing Straight is presently situated. These peoples are thought to have arrived in several influxes, following the retreating glaciers and the game animals that came to feed on the newly exposed lands. The Aboriginal Peoples of the Maritime Area simple state that they have always lived on Turtle Island.

The Aboriginal Peoples of the Atlantic Maritime area have been here for approximately 11,000 years, and have formed a wide variety of cultures and languages during that time. As the land recovered from the retreat of the glaciers and the sea was pushed back by the rebounding land recovering from under the crushing weight of the glaciers, the Aboriginal peoples learned to adapt to the ongoing ecological changes and to live in harmony with the environment. Nature provided an abundance of food, shelter and medicine to these early peoples, who passed the knowledge of their forefathers from generation to generation through oral histories, legends, stories and example. These peoples came to be defined by the land and saw themselves as an intrinsic part of the Circle of Life.

While war existed, archeological evidence indicates that trade occurred amongst the Tribes, extending from Newfoundland to Florida. Tribes typically lived in family groupings that constantly moved over large areas of land in the pursuit of game and other foods. Tribal gatherings would occur at least once a year at important hunting or fishing grounds and were significant socio-economic events in the lives of the Tribes and provided a substantial forum for discussions of governmental issues.

The only written records that exist concerning these peoples are from the Europeans who arrived about 400 years ago. The Europeans saw the Aboriginal peoples as savages, uncultured and ignorant. The Europeans typically failed to see that Aboriginal culture was highly developed and structured, and in fact operated with much less adversity and fewer injustices than were present within the invaders socio-political systems. Occasionally, a different view was expressed; for example, a Jesuit Priest did note that:

I should consider these Indians incomparably more fortunate than ourselves... for, after all, their lives are not vexed by a thousand annoyances as are ours. They have not among them those situations or offices, whether in the judiciary or in war, which are sought among us with so much ambition. Possessing nothing of their own, they are consequently free from trickery and legal proceedings in connection with inheritances from their relatives. The name of serjeant, or attorney, of clerk, of judge, of president are unknown to them. All their ambition centres in surprising and killing quantities of... wild beasts

in order to obtain their flesh for food and skins for clothing they mutually aid one another in their needs with much charity and without self-seeking. There is a continual joy in their wigwams. The multitude of their children does not embarrass them, for, far from being annoyed by these, they consider themselves just that more fortunate and richer as their family is more numerous" (Le Clercq: early 1600's).

Initially the Europeans had no effect on the Aboriginal cultures, but the Europeans gradually introduced their technology, religion and diseases, Aboriginal culture was forced to adapt in order to survive the European presence.

Although the European colonists generally looked down on the Aboriginal peoples and their beliefs and practices, the initial colonies could not have survived as well as they did without the presence and assistance of the Aboriginal peoples. The early Jesuits looked on the Aboriginal political system with incomprehension, describing the system as:

...in these assemblies, if there is some news of importance, as that their neighbours wish to make war upon them, or that they have killed someone, or that they must renew the alliance, etc., then messengers fly from all parts to make up the more general assembly...they resolve upon peace, truce, war or nothing at all, as often happens in the councils where there are several chiefs without order and subordination...." (Jesuits: 1610-1791).

The concept of democratic government was the most profound gift that the Aboriginal people gave to the incoming colonists (in addition to the many food staples, such as corn, squash, beans and the pumpkin, which allowed for their survival).

European religious leaders looked on Aboriginal spirituality as heathen, and they worked to convince the Aboriginal peoples of their supposed paganistic ways -- hence, their way of life. The priests often condemned the ways in which the Aboriginal people worshipped and gave thanks to the Great Spirit and the abundance around them, failing to notice the similarities in which the two disparate cultures practiced their forms of "Religion."

Aboriginal People were mystified as to why it was inappropriate to pray in front of a fire (the Priests felt that it would lead to fire worship) when the Priests prayed in front of candles; as to why the burning of sweet grass was wrong when the priests utilized incense in their worship services; and as to why sweat lodges were so heathen when the priests asked the people to construct and gather in a Church. Eventually, many of the Aboriginal people lost faith in their Sakoms, as the Sakoms failed to cure and fell victim to the deadly diseases brought by the Europeans, and they converted to Christianity.

In the last 400 years since initial contact, the Aboriginal peoples of the Maritimes have suffered greatly under the European colonists and Canadian government. Aboriginal populations and culture were decimated through war, disease, non-Aboriginal government

and poverty.

However, in the last quarter century, the Aboriginal peoples of the Maritimes, as well as the rest of Canada, have made significant gains in their efforts to be recognized and respected as the First Nations of Canada, and in their demands to once again be self-governed peoples with access to their original rights and freedoms.

VI.2 THE NEW BRUNSWICK ABORIGINAL PEOPLES COUNCIL

The New Brunswick Aboriginal Peoples Council (NBAPC) was established in 1972 as the New Brunswick Association of Non-Status Indians. It was established initially to deal primarily with the discrimination factors present in the *Indian Act* at that time. With the implementation of Bill C-31, the NBAPC began to focus on other Aboriginal issues within Canada and the Province of New Brunswick. The NBAPC has become a Parent organization representing the Off-Reserve Aboriginal Peoples of New Brunswick within its membership, in their constant struggles to gain recognition of their original Rights and Freedoms.

Over time, the NBAPC has dealt with many Aboriginal issues, such as harvesting rights and practices, land claims, Off-Reserve Aboriginal housing and Aboriginal self-government. The NBAPC has also assisted in the formation of other Aboriginal Associations both within the Province of New Brunswick and Canada. It continues to strive to represent the voices of the Off-Reserve Aboriginal peoples in the realm of Provincial politics, as well as in the sphere of Federal politics through our affiliation with the Native Council of Canada/Congress of Aboriginal Peoples.

The NBAPC is a non-profit Aboriginal political and advocacy association registered under the Societies Act of New Brunswick, with the following aims and objectives:

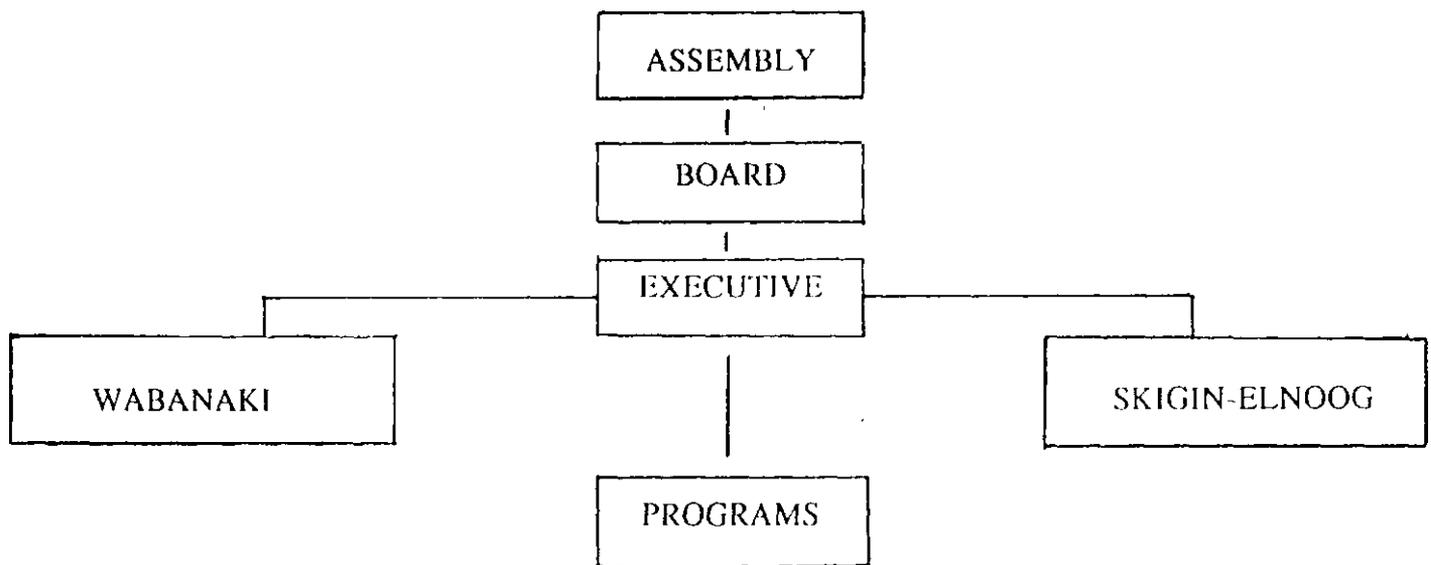
- To aid and assist people of Aboriginal ancestry (indigenous people of North America) in New Brunswick to form local organizations for the purpose of advancing their general living conditions.
- To work with all levels of government, public and private agencies and industry to improve social, education and employment for people of Aboriginal ancestry in New Brunswick.
- To foster and strengthen cultural identity and pride among people of Aboriginal ancestry in the Province of New Brunswick.
- To inform the general public of the special needs of the people of Aboriginal ancestry in the Province of New Brunswick and their efforts to achieve full participation in the economic, social and political life of the province.

- To co-operate with all other Aboriginal organizations whose aims are similar to those of this society.
- Above all, to work together toward re-affirmation of our Aboriginal Rights as Aboriginal People in the Province of New Brunswick.

(See appendices A and B for a copy of the NBAPC Constitution and Mission statements).

Figure #1 demonstrates the current Political structure and decision making process of the NBAPC.

NEW BRUNSWICK ABORIGINAL PEOPLES COUNCIL



Currently, the Aboriginal peoples of New Brunswick are a divided people. According to DIAND in 1990, of a *registered* population of 7,908 Aboriginal people in the Province of New Brunswick, 32% lived off the reserve. A year later, in the 1991 Stats-Canada census, 12,815 people self-identified themselves as Aboriginal in the Province of New Brunswick. Using these figures:

OFF-RESERVE POPULATION ANALYSIS

Off-Reserve Aboriginal population (1986 Census)	6,310
Number of Self-Identified Aboriginal People in New Brunswick (1991 Census)	12,815
Off-Reserve make up	
- Reserve status	
- Metis	
- Other groups status and non-status from outside province	

RESIDENT INDIAN POPULATION BY SEX AND RESIDENCE (INDIAN AFFAIRS)

January 1985, prior to Bill C-31	- 5,944 (total under Indian Act)
	- 4,566 On-Reserve
	- 1,365 Off-Reserve
Total population of Indians bands, reserves and settlements in New Brunswick registered under the Indian Act (schedule of Indian bands, reserves and settlements, Indian & Northern Affairs (1990)	8,377
Total registered Indians estimated for tax purposes by the Province of New Brunswick living off-reserve	3,000
Total Population living on-reserve	5,377
Total number of self-identified Aboriginal people in New Brunswick	12,815
Total number of self-identified Aboriginal people in New Brunswick living off-reserve (estimate)	7,438

These figures indicate that 58% of Aboriginal people living in the province of New Brunswick are living off-reserve. These people live in both rural and urban areas and may or may not have close ties to the Reserve communities. The 1981, 1986 and 1991 Statistics Canada figures show a definite trend -- an increase of the off-reserve Aboriginal population in the Province of New Brunswick as well as in Canada as a whole.

The NBAPC Housing and Poverty study, conducted in 1989, clarifies the constituency of the NBAPC. This study consisted of a comprehensive survey of 251 families (887 people), representing 14% of the total off-reserve Aboriginal population of New Brunswick. These families had an average income of \$12,097.00 per annum, which was well below the poverty line for that year (\$17,697.00 per annum). The majority of these families' lives reflected their poverty status, and 44% of the households were single parent homes. At that time, Statistics Canada estimated that a healthy food basket for a family of four would cost \$5,913.44 per annum, while the study indicated that not one family had even been close to that amount with which to purchase groceries. Of the study subjects, 31% of the individuals who were ready and able to work were employed full time, while 50% were unemployed. It must be noted that, in the current economic times, the number of employed individuals has decreased to levels lower than those experienced in 1989. It was found that only one individual in the study group had graduated from university, and that only five individuals had even some university training. The study data further indicated that the off-reserve Aboriginal people in New Brunswick did not perceive a great future for their community. They did, however, get significant support from the people around them, and given that importance any major move could be devastating for their families.

Due to divisions between those Aboriginal people living on and off-reserve, and their present socio-economic status, some of the off-reserve Aboriginal people have lost touch with their ancestral roots and languages through isolation and exposure to the pervasive North American culture through its media. The NBAPC is attempting to assist these people in gaining self-esteem and independence from the fist of poverty that holds them. The principal step towards gaining self-esteem and independence is the initiation of Aboriginal Self-Government.

V1.3 ABORIGINAL GOVERNANCE: THEN AND NOW

The patterns of governance within the cultures of the MicMac and Maliseet peoples of New Brunswick were, at their most basic form, tribal. Although the two separate tribes have their own distinct forms of governance, they both share similar patterns. These common patterns of governance, both within the tribal and intertribal context, were based on the principles of consensus government. Consensus government was achieved through a process in which the community (defined as an inter-tribal confederacy through to an individual family, would discuss issues and possible solutions, such that everybody who had a concern was heard in an open and non critical way. After discussions ended, a decision was made based upon the general opinion of the community. It was expected that dissenters would

exist, and each individual was responsible for deciding whether or not to abide by a decision. Decisions were generally made in regard to the needs and rights of the collective first, and the needs of the individual second.

The key to these discussions was the opportunity for each individual to express an opinion if they so desired to. Each statement was respected and accepted without personal criticism, and the proceedings, respecting all of the individuals involved, were designed to arrive at a consensus in order to preserve social integrity. As can be seen in the negotiations that accompanied the signing of Treaties in the Atlantic Region, discussions were protracted and indicated the care to which the Wabanaki Confederation (of which the Micmac and Maliseet peoples were members) considered their deeds. In the words of one Jesuit Missionary:

...in these assemblies, if there is some news of importance, as that their neighbours wish to make war upon them, or that they have killed someone, or that they must renew the alliance, etc., then messengers fly from all parts to make up the more general assembly...they resolve upon peace, truce, war or nothing at all, as often happens in the councils where there are several chiefs without order and subordination.... (Jesuits: 1659)

These traditional patterns of governance formed the basis of the Aboriginal communities in New Brunswick.¹

Many treaties were signed in the initial centuries of contact between the Wabanakis peoples and the European settlers. These treaties were contracts between two sovereign nations, and were attempts to outline cease fires, pacts of non-aggression, and regulations of

¹ The implementation of the *Indian Act* and reserve system and the imposition of non-aboriginal forms of government, however, made it extremely difficult, perhaps even impossible, to continue these traditional patterns in their pure form. Although the Aboriginal communities in the Province of New Brunswick have resisted the forces of assimilation within Canadian culture, it must be recognized that a certain amount of acculturation has occurred within the Aboriginal community, and that this fact is demonstrated in the current forms of self-government which exist. Today, there is a combination of traditional and non-aboriginal patterns of governance. The current patterns, then, while no longer reflecting purely traditional forms of governance are none-the-less still resonant with tradition. For example, while consensus decision making was effective in building and maintaining the community, it was typically a long and involved process. In today's world, where business and management decisions are required as quickly as possible, consensus decision making has been transformed into the "rule of the majority." This rule of the majority, in its non-aboriginal usage, often does not allow all of those individuals with concerns to be heard. In the Aboriginal usage, however, the rule of the majority allows those individuals with concerns to be heard and taken into consideration in the final vote. This process allows for faster decision making, and while it is not as community oriented as the consensus decision making process, it has become a powerful blend of traditional and non-traditional methods of decision making.

trade, and to clarify land disputes over boundaries between the Europeans and the Aboriginal inhabitants. Of primary concern in these treaties was the division of land and the ongoing hostilities that existed as the European settlers continued to encroach on and desecrate Aboriginal lands. A constant source of irritation and concern within the Aboriginal community, these encroachments by land hungry squatters and speculators often led to wars, in which the settlers were driven back from the present day borders of New Brunswick and Maine down through to Boston.

In an effort to stop these costly wars, in 1725 the Massachusetts Bay Colonies, under the command of Lieutenant Governor Dummer, initiated a treaty which was to form the basis for the majority of treaties to come in the Atlantic Region. The treaty, termed Dummer's Treaty, set out the most concrete land boundaries to that date,² and was constantly referred to and re-ratified in successive Treaty negotiations after 1725.

It must be noted that the discussions leading to and the text of the treaties never mentioned, or even considered, that the Aboriginal nations were anything other than sovereign and responsible for their own government. The cessation of Aboriginal Government was never required as part of the treaty process. The Treaties were not designed to alter the governance that existed within the Aboriginal communities and did not change the patterns of governance within these communities.

In 1762, at the request of the British Monarch, Governor Belcher of Halifax issued a Royal Decree designed to prevent hostilities with the Aboriginal population in the Province of Nova Scotia (which included the present day province of New Brunswick). This Proclamation of 1762, as it has come to be known, attempted to define those areas that belonged to the Aboriginal Peoples. The Proclamation stated:

Wherefore in dutiful Obedience to His Majesty's Orders I do accordingly publish this proclamation in His Majesty's Royal name, Strictly in joining and requiring all Persons whatever, who may either willfully or inadvertently have seated themselves upon any lands so reserved to or claimed by the said Indians, without any lawful Authority for so doing, forthwith to remove therefrom.

And whereas Claims have been laid before me on behalf of the Indians for Fronsac Passage and from thence to Nartigonneich Picktoug [Pictou] and from thence to Cape Jeanne [Cape John], from thence to Emchich, from thence to Ragi Pontouch, from thence to Tedueck, from thence to Cape Rommentin [Cape Tormentine] from thence to Miramichi, and from thence to Bay Des Chaleurs, and the environs of Canso. From thence to Mushkoodabwet [Musquodoboit], and so along the coast, as the claims and possessions of the

² The boundaries, although concrete relative to earlier treaties, were still very vague.

said Indians, for the more special purpose of hunting, fowling and fishing, I do hereby strictly enjoin and caution all persons to avoid molestation of the said Indians in their said claims, till his Majesty's pleasure in this behalf shall be signed.

And if any person or persons have possessed themselves of the same to the prejudice of the said Indians in their claims before specified or without lawful Authority, they are hereby required forthwith to remove, as they will otherwise be prosecuted with the utmost Rigour of the Law (Belcher, 1762).

Figure #2: Maximum and minimum interpretations of the area of land outlined in Belcher's Proclamation. Adapted, with permission, from *Our Land, The Maritimes*.

What did eventually change the patterns of governance which existed within the Aboriginal communities was the mass emigration of Loyalists after the American War of Independence from 1776 to 1783. The Wabanakis peoples had chosen to ally with the "Rebels" and had lost significant numbers of their population to war, disease and starvation. They were further treated with contempt by the Loyalists after the war's conclusion. The new invaders rapidly took over land through massive grants from the Crown, which rewarded the loyal soldiers that had fought in the War of Independence, and they simply ignored the treaties and proclamation to their benefit.

Initiated by the influx of non-aboriginal people onto Aboriginal lands and made easier to the weak position of the Wabanakis peoples, the reserve system began to be established in the Maritime Provinces. The Micmac and the Maliseet tribes were handed out tiny remnants of their former lands with total disregard to their culture, or even to their survival.

Although the Aboriginal peoples of the Province brought their complaints regarding the loss of land and the disregard of the treaty before the controlling government of the time, their concerns were continually ignored. When hostilities between France and England occurred, the British Government would attend to some of the concerns of the Aboriginal peoples by providing supplies and some minor land concessions, in order to guarantee Aboriginal friendship in the event of war between the two European Powers. As soon as the threat of hostilities between France and Britain ended, the Aboriginal Peoples were once again ignored and forgotten.

As the political power and military might of the Aboriginal peoples of the Maritimes was reduced due to population decreases and land loss, the Provincial and Federal/Crown Governments increasingly attempted to control the Aboriginal people and their culture through acts of legislation. This legislation consistently ignored the Treaties and Proclamations of the past, and was designed to confine the Aboriginal peoples on smaller reserves and to make public use of the land previously reserved for the Aboriginal Peoples. The treaties would not have affected governance if the later settlers had maintained the intent and letter of the treaties, but this was not the case.

Today, in the sphere of Maritime politics, the Federal Government views the treaties as an indication of the extinguishment of Aboriginal land claims, in spite of the fact that no such accommodations are mentioned in the treaties. The NBAPC asks that the pre-Confederacy Treaties be actively acknowledged, as indicated in the Sparrow and Fowler cases, and that our treaty rights as specified within these treaties be acknowledged. This would require the Federal and Provincial Governments to reflect the pace set by the Supreme and Provincial Courts as they acknowledge Aboriginal rights and the power of the Treaties. It would also require an end to the existing harassment by the Federal and Provincial Governments in regard to the practice of Aboriginal rights.

A related pressing problems that exists today for the off-reserve Aboriginal peoples of the Province of New Brunswick is the lack of a specific land base. Since the implementation

of the *Indian Act* and the reserve system, well over half of the Aboriginal people within the Province of New Brunswick have lived off-reserve, and therefore have existed without a specific land base. The cultural basis of Aboriginal peoples in the Province of New Brunswick is their special relationship with the land and, in essence, they are defined by the land on which they have subsisted and lived. Lack of a specific land base and living space has seriously eroded the cultures of Aboriginal Peoples. When the bond between the Aboriginal peoples and the land on which they lived was cut or severely restrained, the bonds within the Tribes and individual communities began to erode as well. It is only recently that healing has begun within these communities and Tribes, but a larger land base is required to continue and further the process of healing.

To some extent, however, while the off-reserve Aboriginal people of New Brunswick do not have a specific land base, the Province of New Brunswick has always been viewed as Aboriginal land in its entirety. The Aboriginal communities of New Brunswick have always felt that the lands outside the reserves are traditional lands, and have continued to use them for harvesting and spiritual practices, as was promised in all the Treaties signed in the past. For example, a treaty signed in 1779 states:

...That the said Indians and their constituents shall remain in the [Micmac] Districts before mentioned, Quiet and Free from Molestation of His Majesties Troops or other good Subjects in their Hunting and Fishing...
(from An Indian Treaty document executed at Windsor on the twenty-second day of September, 1779).

Provincial and Federal Governments have continually ignored all of the provisions of past Treaty documents. These Governments have further indicated, on numerous occasions, that the Treaties are proof of title extinguishment, "proving" that the Aboriginal peoples of New Brunswick do not own the land in the current system of "fee simple acquisition," and thus having no right to use the lands in question. This logic has led the Federal Government to state that all Aboriginal land claims in the Atlantic Provinces have been "superseded by law". It should be noted, however, that in not one of the Treaties was extinguishment of land title ever indicated or provided for. The treaties did maintain that the lands deeded to the settlers would remain the property of the settlers, but that no more land would be sold to the encroaching colonists.

Although the absence of a specific land base does not effect the operation of the NBAPC, having a viable specific land base would be beneficial in the struggle to gain economic self-sufficiency and ensure cultural healing. This desire for a specific land base is not centred around the need for a place to build a reserve for the off-reserve Aboriginal peoples of New Brunswick; instead, it is intended as a "tool" to create wealth and resources for the benefit of the off-reserve Aboriginal community, and for cultural and spiritual well being. A sufficient amount of unspoiled Crown Land exists within the Province of New Brunswick (an example would be the Christmas Mountains area in Northern New Brunswick) to allow a specific viable land base which the off-reserve Aboriginal peoples could utilize and

manage. Another reasons for this desire to have a larger land base is that it would allow for the preservation of at least some of the undeveloped land in New Brunswick, as a heritage for our children and their descendants, as well as for the next generations of non-aboriginal people.

Another difficulty today is the lack of representation in both the Federal and Provincial Governments where many decisions which effect Aboriginal peoples are made. The NBAPC therefore proposes that representatives of Aboriginal peoples have government seats in the Legislature and the House of Commons, to represent issues of importance to them. This proposal has a precedent in the Maine State Government, where an Aboriginal seat has been available since the early days of the Massachusetts Bay colonies. Although the representative who holds this seat cannot vote, he or she participates in debates and in committees formed to design policy, particularly in cases in which the proposed policies are seen to affect the Aboriginal constituency of Maine. In the case of the NBAPC proposal, the representatives should be full voting members on the floor of the New Brunswick Legislature and in the House of Commons. The NBAPC further suggests that at least one representative be appointed from each of the NCC and AFN, so that Aboriginal peoples who live both on- and off-reserve are represented.

VII.

ABORIGINAL SELF-GOVERNANCE: THE THRESHOLD

The Aboriginal Peoples of Canada view this time and place in history as the threshold of regaining control over their internal affairs through a variety of forms of self-governance, and as a time of rebirth and reaffirmation of their cultural integrity and the gaining of their freedom from the bondage of poverty. While the Aboriginal community is aware of the continued resistance towards self-government from various levels of the Canadian government, it is committed to the struggle to regain and reaffirm its heritage. One aspect of this struggle is the desire to achieve a constitutional entrenchment of the right of Aboriginal peoples to self-government. Although the recent Charlottetown Accord was rejected, the NBAPC still believes that a number of the changes proposed in the constitutional debates still be implemented, including the entrenchment of the right to self-government (see Appendix B for a listing of these changes). In a poll conducted by Angus Reid shortly after the failure of the Referendum regarding the Charlottetown Accord, 88 percent of the Canadian Public believed that the Aboriginal section of the Accord related to Aboriginal self-government was completely acceptable; what was not acceptable to them were other sections of the Accord.

In addition to these constitutional changes, it is also felt that the formation of a Triple E Senate, initiation and maintenance of equalization payments to Aboriginal Governments, and an equalization of services could also accommodate the aspirations of the Aboriginal peoples of New Brunswick. In making these changes, the Federal and Provincial Governments would have to take a responsibility for addressing the interests of all Aboriginal peoples of the country, not just those who are defined for the benefit of the Federal and Provincial Governments through the *Indian Act*.

In addition to a constitutional entrenchment of Aboriginal self-government, the federal and provincial governments should also change the currently existing power structure such that Aboriginal peoples are given parity with other Canadians. This redistribution of power is necessary if off-reserve Aboriginal peoples are to live in co-existence with other Canadians. This change in power distribution can simply be defined as Aboriginal self-government. Through self-government, a new relationship between the Aboriginal and non-Aboriginal peoples of New Brunswick and Canada would be established for the benefit of both communities.

Precedents for self-government now exist in the Canadian political system. Examples of this situation are the Acadians of New Brunswick and the Québécois of Quebec. These minority communities are treated as self-governing communities within the bounds of a Province (in the case of the Acadians of New Brunswick), and within the bounds of a Nation (in the case of the Québécois). These two communities, within the sphere of their political context, have the power to control their own governments with reference to culture, education, linguistic, heritage preservation and, to some extent, provincial economy.

A recent publication by the Royal Commission on Aboriginal Peoples, entitled *Partners in Confederation, Aboriginal Peoples, Self-Government, and the Constitution*, has

suggested that Aboriginal self-government is already a part of the Canadian Constitution. While the thesis of that publication is hopeful in its application, it is based upon a multitude of "if's". The NBAPC does not wish to disregard the publication and its thesis as a viable option for Aboriginal People in the pursuit of self-government; rather, they see it as another possible option outside of a more concrete constitutional entrenchment of Aboriginal self-government.

In addition, both the Federal and Provincial Governments must recognize Aboriginal birthright and respect commensurate treaty rights which are beyond those defined within the existing *Indian Act*. Combined with these is also the right to participate in the nation's voting process for Aboriginal representatives. Achievement of these powers would greatly assist in the healing of communities and the individuals within.

With constitutional protection of Aboriginal self-government and a redistribution of currently existing powers, the major institutional form of Aboriginal government in the province of New Brunswick would be Tribal government. Both the Micmac and the Maliseet Tribes will have a Tribal government that would represent and govern the Tribe as a whole. Again, each Tribe would have a representative sitting in the Legislative Assembly to act on the behalf of each Tribe in matters that affect them.

In light of the current division between the on- and off-reserve Aboriginal peoples of New Brunswick, the reserve governments could provide program and service delivery for those peoples living on- Reserve, and the same programs and service delivery could be mirrored by the NBAPC for Aboriginal peoples living off-reserve. While Aboriginal self-government within the province of New Brunswick is expected to take the form of individual communities of interest and/or parent organizations which will oversee the political needs and requirements of the off- and on-reserve peoples of New Brunswick, Tribal organizations could act for both the on- and off-reserve peoples in situations where both groups share the same programs and services. Tribal organizations could also deal with such things as school boards and Aboriginal economic development agencies such as the Wabanaki/First Peoples Development Corp.

As previously indicated, the major form of the traditional Aboriginal government decision-making process is Tribal government. This governance structure involves all of the members of the Tribe in the making of decisions and setting of policies which will govern and direct the Tribe as a whole. Individuals, both men and women, traditionally participated in Tribal government through the act of consensus decision-making. Consensus decision making is a time proven method that has been handed down through the generations. The process of consensus decision-making utilizes traditional group cooperation within the Aboriginal community, is community building and assists in maintaining harmony within the community. Consensus decision-making also utilizes the traditional skills of careful listening and observation which are important cultural assets. While "Rule of the Majority" has been adapted as the current form of decision making within Aboriginal Communities, the process of arriving at decisions through "Rule of the Majority" has been infused with the Traditional

Consensus decision making process, forming a developing hybrid.

Within the decision making process, family is of extreme importance to Aboriginal peoples and constitutes the basis of Aboriginal Communities philosophy, values and programs. Whereas contemporary Non-Aboriginal Government is based on the bureaucracy or top down formulation, Aboriginal Government is based on the family, or bottom up scenario. This focus on the family as a bases for all decision making in the community leads to the inclusion of all members of the community in community based decisions. This focus has been corrupted to some extent by the non-traditional forms of government that has been forced on Aboriginal peoples through the policies and procedures of the federal government, DIAND, and provincial governments. The NBAPC is committed to retaining this family focus and to further develop this commitment. A new program formulated by the NBAPC, called the "Family Enhancement Program", is family based and designed to assist the off-reserve Aboriginal peoples of the province of New Brunswick out of poverty and its harmful effects.

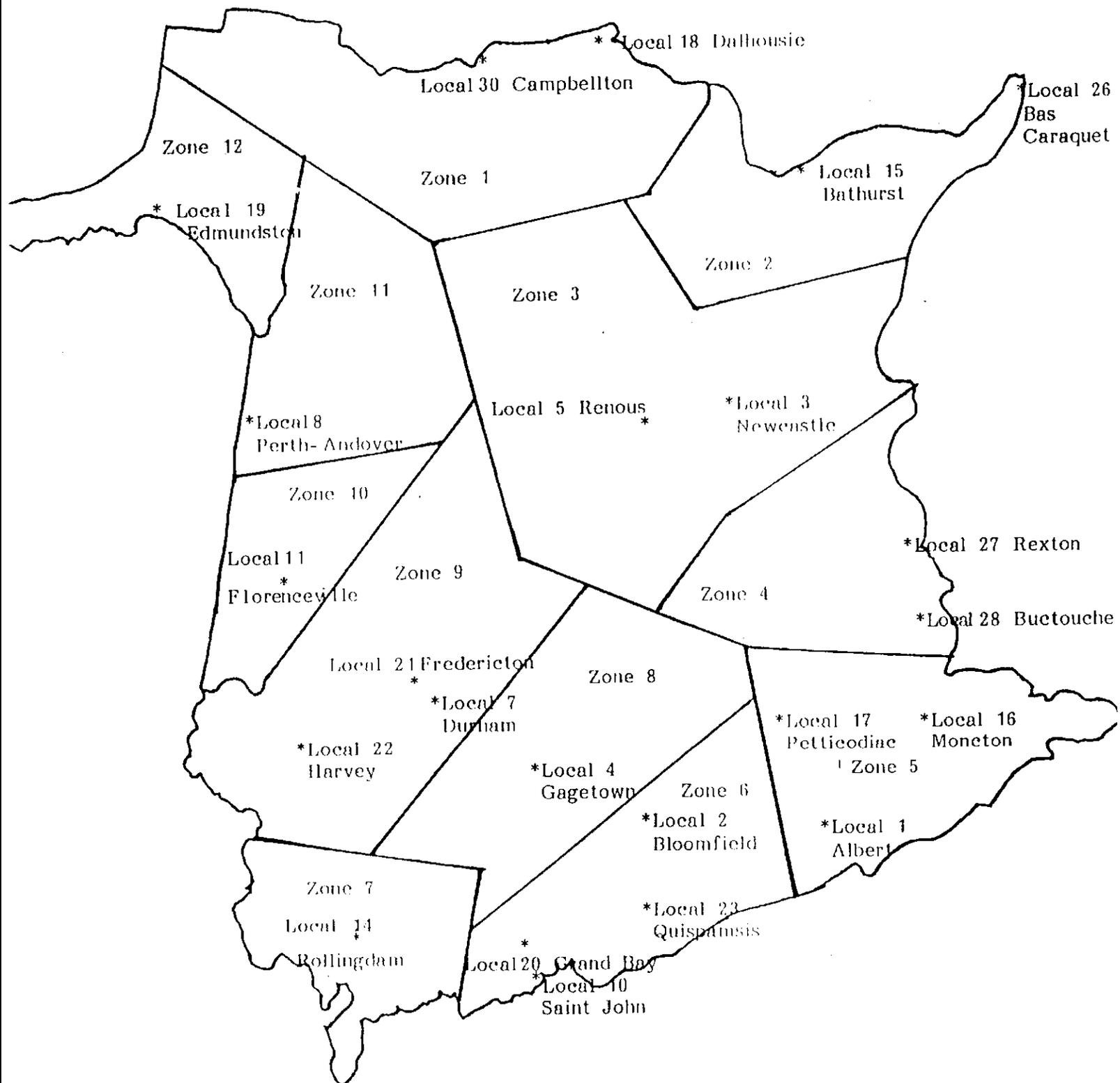
Another aspect of the community decision-making process is the careful consideration given to the voices of elders. Elders are those individuals within the community to whom the people look for personal and community guidance, healing and advice regarding spiritual matters. These individuals gain their status through life experience and their actions, are often healers, and are proclaimed by the community. They are not necessarily seniors, although seniors are also respected for their life knowledge and experience. The Council of Elders, a traditional strength of Aboriginal government, still exists today, although in an altered format. Traditionally the Council of Elders guided the Tribe through their wisdom and knowledge. Today, even though they do not sit as an individual council, the Elders are involved in the Locals, typically as Local Presidents, and as Directors on the Board of Directors. Their voices are still looked to for wisdom and knowledge, and they are still very much respected for their insight and guidance.

The Circles of Women have also traditionally overseen the social directions of the community and elected the Tribal as well as familial Sakoms as leaders of the community. While the Circle of Women has lost much of its form in today's society, more than half of the NBAPC's membership consists of women who are active in all aspects and processes of the decision-making process of the NBAPC. In this way, women have maintained participation in their Circle, and have strengthened the NBAPC with their involvement and wisdom. The NBAPC looks to the women of the community for their wisdom and strength, and depend upon their judgement and experience in the struggle to obtain Aboriginal self-government.

As demonstrated by the history of the Aboriginal peoples of the province of New Brunswick, cultural assimilation has been resisted since the early days of first contact. However, as reflected in the adaptation of certain non-Aboriginal cultural aspects, such as religion, clothing and technology, the Aboriginal people of New Brunswick exist in a form of cultural pluralism. This allows for the preservation of traditional culture, as well as for the

participation in and use of aspects of Euro-Canadian culture and technology that are seen to be of benefit to the Aboriginal community. In line with this pluralism, the NBAPC policy is, and will be managed through a Board of Directors consisting of representatives elected from 12 Zones distributed throughout the province of New Brunswick (See Figure #3).

Figure #3 Zone Map of the New Brunswick Aboriginal Peoples Council:



The Medicine Wheel / Sacred Tree concept of wholeness, protection, growth, and nourishment is the basis of all Aboriginal philosophy and is reflected in all aspects of Aboriginal life and government. These concepts are a cornerstone in the development of a system of self-government based on the family. The Sacred Tree tells us that we are part of the whole, and must manage our affairs with consideration of the whole and in relation to the whole. The medicine wheel teaches us that Aboriginal people are one spoke of the wheel of life, along with the other races of man. Each spoke is important and, without one, the wheel would collapse in upon itself.

As a citizen in the NBAPC and a participant in Aboriginal self-government, each person living off-reserve would have access to certain rights and would be expected to fulfil certain responsibilities. The rights would be guaranteed through the constitutional entrenchment of Aboriginal self-government, the Bill of Human Rights and through the Constitution of the NBAPC. Some of these rights would consist of:

Federal and Provincial acknowledgement of birthright and Treaty rights of Aboriginal people of Maliseet and Micmac descent.

- The right to be of the NBAPC membership if one chooses to be, if self-identified as an Aboriginal person, and with proof of North American Aboriginal ancestry.
- The right to form structures of Self-Government (central administration, school boards, systems of financial control, etc.).
- The member of the NBAPC has right of appeal, through the Constitution of the NBAPC, at the Annual General Meeting if disciplinary action has been taken against the members through the council.
- Alterations to NBAPC Constitutional rights can only occur at the Annual General Meeting through a majority agreement of the membership attending the meeting.
- The right to access programs and services offered through the NBAPC.

These rights would be applicable to the membership of the NBAPC and constitute the majority of those rights currently available through the NBAPC. The only "right" that is not yet a part of the NBAPC is the attainment and practice of true self-government.

While these rights are considered necessary to the off-reserve Aboriginal peoples of New Brunswick in the practice of self-government, it is also recognized that the act of claiming these rights would entail maintaining certain responsibilities within the off-reserve Aboriginal community. These responsibilities would assist in the continued development and maintenance of a self-sufficient off-reserve Aboriginal government within the province of New Brunswick. Self-Government cannot exist without the participation of the people. Individual fulfilment of these responsibilities would ensure a positive and strong foundation

for the process of Aboriginal self-governance within New Brunswick. The responsibilities of citizenship in the NBAPC would consist of:

- Active participation in the NBAPC and within the political sphere of the members local.
- Each individual must be a good role model for Aboriginal people.
- Each individual must choose to be politically represented by the NBAPC and not other Aboriginal Governments, as otherwise a conflict of interest would arise.
- The membership must operate within a defined constitution when dealing with and representing the NBAPC.
- The membership is held responsible for violations of the Constitution of the NBAPC and are subject to discipline as set out within that Constitution.
- Each local must participate in the Annual General Meeting as stated in the Constitution of the NBAPC. Failure to do so would result in the revoking of their rights to send delegates to other meetings of the membership, or the right of their members to access programs and services provided by the organization.
- The membership is responsible for protecting the rights of our children and their descendants.

These responsibilities are consistent with the existing Constitution of the NBAPC, and reflect the memberships' commitment to the continuance and advancement of self-worth and self-sufficiency through the practice of self-government for the off-reserve peoples of New Brunswick.

VIII. PROCESS: THE PATHWAYS OF THE FUTURE

The process of initiating and facilitating political and economic self-sufficiency and self-government for the off-reserve Aboriginal peoples of New Brunswick is a complex and long term task. The NBAPC must focus on the healing of individuals and their communities through a family enhancement program to establish a healthy foundation on which self-government could be built. Such a program would assist people to escape the bonds of poverty, and the low self-esteem that poverty brings. Drug and alcohol abuse, family violence, and overall low education levels would be dealt with in an ongoing process of family counselling and nurturing.

The interconnected facets of the Family Enhancement Program would initially consist of the following:

- a Family Enhancement Centre;
- early intervention programs in the Justice and Education systems;
- prenatal programs;
- spiritual enhancement and awareness program;
- housing programs;
- skills training and developmental programs;
- a seat in the Provincial Legislature;
- promotion of community healing;
- drug and alcohol prevention and intervention;
- a poverty / progress study every 10 years;

Other initiatives could include the promotion of treaty rights within the courts, and the launching of a new comprehensive land claim policy and/or process in order to achieve a viable economic and spiritual land base. In initiating the land claim settlements, the NBAPC could also lobby the federal and provincial governments to protect the last remaining areas of undeveloped wild lands in the province of New Brunswick for future generations.

Some of the above suggested programs are currently in place and working toward the development of Aboriginal people living off-Reserve within the province of New Brunswick. For example, housing programs for those families living in both rural (the Rural and Native Housing Program) and urban (Skigin-Elnoog, a non-profit housing authority) areas, and a Youth Strategy Program designed to assist unemployed Aboriginal youth already exist. These programs have been highly successful in their objectives, and have assisted in the raising of the standards of living for many of those Aboriginal families and individuals living off-reserve. However, they may no longer be possible due to a lack of joint Provincial and Federal funding. It is unfortunate that the funding for these programs is being terminated, as this will once again leave the off-reserve Aboriginal peoples of the province as the most underprivileged and poverty stricken segment of the Canadian population.

Aboriginal based governments currently in place must realize that the off-reserve segment of their population are not being adequately serviced, and they must allow their membership, both on- and off-reserve, to decide where funds designated for the community are to be allocated, and who politically represents them.

Once the process of achieving a healthy bases for Aboriginal Self-Government has been initiated, attention would have to focus on the concept of how to function as a government for off-reserve Aboriginal people.

IX. GOVERNANCE: FORMS AND PRACTICE

Again, Aboriginal government will be based on the premise of Tribal Government, which is powered by the people of the Tribe and does not function behind closed doors where it is difficult to maintain accountability. Tribal Government is based on traditional Aboriginal values, according to which individuals are accountable to the community. This form of government is based on constituent assemblies or general councils, where the leaders are equal to each of the participants. This is unlike the Euro-Canadian system of governance in which everyone looks up to an individual leader. In Aboriginal government, each person is viewed as only one voice in a multiplicity of voices.

Currently, the NBAPC functions through the assembled constituency at the Annual General Meeting (AGM) and Board of Directors' meetings. At the AGM, individual members are heard and their concerns are taken into consideration, and decisions made are based on the view of the majority of the constituency present. The Board of Directors consists of elected representatives from each of 12 Zones within the Province of New Brunswick, who meet on a quarterly basis. The board reviews the operations of the NBAPC and formulates policy if the situation merits such action. These policies are required to be ratified at the Annual General Meeting. Also presented at these meetings are audited financial statements so that the financial activities of the NBAPC are upfront and unconcealed.

To prevent misunderstandings and conflicts, the NBAPC operates under a Constitution and a Policies and Procedures Manual. The Constitution can only be altered and or ratified at an AGM with the consent of the majority. All members of the NBAPC operate within the Constitution, and all employees of the NBAPC operate under the Policies and Procedures Manual. Any violation of either the Constitution or Policies and Procedures Manual can lead to disciplinary action as layed out in either of these two documents.

IX.1 FINANCING: THEM, US, OR PARTNERS

A major concern of any Government is how to finance its workings and programs without going into unmanageable debt. The consequences of unmanageable debt within a government can be seen in the general disorder of the Canadian and world economy. The initial funding for Aboriginal governments would have to come from outside sources (eg. Federal and Provincial Governments), but the established goal is to achieve self-sufficiency in resourcing and program management.

There are several proposed sources of revenue for the institution of Aboriginal government. A primary source of revenue would be management of a land base gained through a comprehensive land claim or the fulfilment of treaty rights. Management of the natural resources situated on and under a land base in a sustainable manner would lead to a constant source of revenue for the NBAPC.

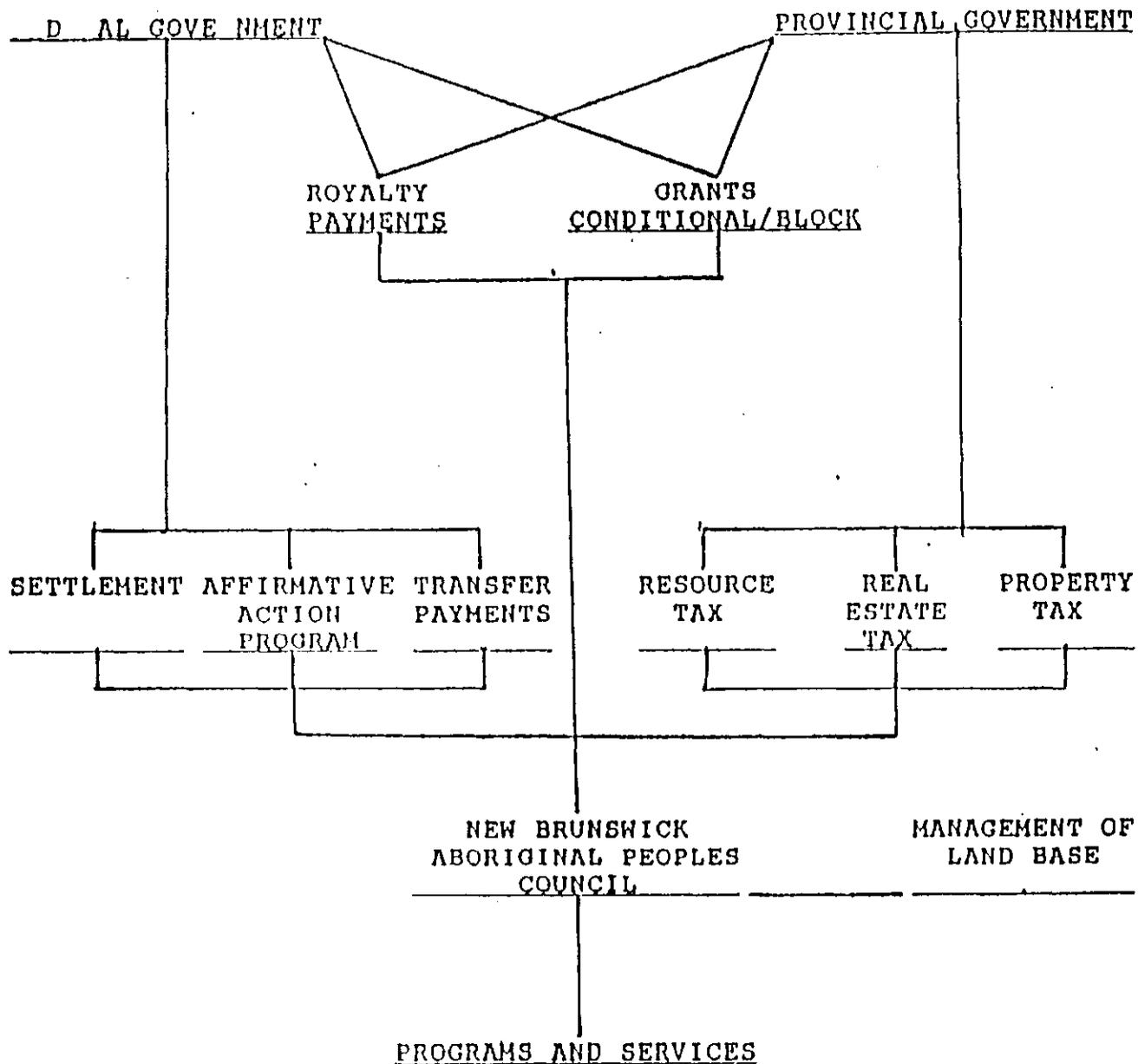
In addition to, or barring the acquisition of a viable land base, it is proposed that a Resource Tax be levied against the resources being removed from the lands of the Province of New Brunswick, and/or a Real Estate Tax to be levied against any real estate exchange within the Province of New Brunswick, and/or a Property Tax to be levied yearly as a segment of current Property Taxes. These taxes would constitute a small percentage of those currently levied in these situations, and would represent no significant tax increase to the public. The taxes would decrease the amount of revenue that the provincial and federal governments currently receive from the people of New Brunswick, but would represent a financial savings in the long term in the context of the need to make restitution for negligence of treaty rights. These taxes also represent a possible solution to the "extinguishment" problem.

Considering the size of the housing portfolio that the NBAPC currently maintains, it would be beneficial to attain full time management of these properties on a long term basis, and also to set up lending agencies and a Mortgage Company to operate through the NBAPC. These agencies would dispense business loans and start-up capital to Aboriginal companies to allow them to self-finance and own properties. Initial capital for this initiative could come from the Federal and/or Provincial Governments. Loans would be repayable and accumulate interest (Wabanaki and First Peoples currently operate as examples of these type of lending agencies).

Another possible source of revenue would be restitution and compensation for the past neglect of the Federal and Provincial governments' fiduciary responsibilities that has been practiced through the policies of the Federal *Indian Act* and the refusal of Provincial governments to act on their responsibilities as a branch of the Crown Government. The settlement could be put in the bank, and the interest generated could be used as financing for Aboriginal government activities and programs.

Also possible is the instigation of Royalty payments for the use of Aboriginal lands. Sources of revenue could also include Provincial and Federal conditional and/or block grants, and these grants could be in line with existing judicial, educational, social and health care programs. The NBAPC further believes that the provincial and federal governments should assist with the initiation of self-government, and should share in the initial financing. Funding for this could include transfer payments. Not to be ignored is the possibility of participation in federal government programs as a segment of the population through the Affirmative Action Provision in the Canadian Constitution. See Figure #4 for a suggested funding chart.

FIGURE #4 Suggested Funding Chart



IX.2

LAND

A great concern associated with the questions posed by self-government for off-reserve peoples is the lack of a specific land base. Clearly, a specific land base would not be a panacea to the problems facing off-reserve Aboriginal peoples in the province of New Brunswick, but it would be a tool in the maintenance of self-sufficiency and self-government.

As mentioned, the ties of Aboriginal peoples to the land are very intense, and in fact define their very culture and spirituality. The NBAPC fully believes in, and is committed to, affirmative action in regard to the environment and our natural resources, and believes that they must be preserved for our children for their future use, and for their children's children. The NBAPC therefore demands to be involved in the control and planning processes of these resources even if self-government is not implemented. Although the off-reserve Aboriginal peoples of New Brunswick have no recognized specific land base or reserve, the lands of the Province of New Brunswick are seen as traditional lands and are used as such for the purposes of harvesting and spirituality whenever possible, despite harassment from Crown authorities. The New Brunswick courts have recently upheld the right to harvest on Crown lands by non-registered off-reserve Aboriginal people in the R. Fowler case. The Court of New Brunswick stated "... that non-registration is not to be equated with non-entitlement" (J.L. Glendening, Judge of the New Brunswick Court, February 19, 1993).

The Aboriginal people of New Brunswick have an extensive and intimate knowledge of the land, waters and natural resources of the Province of New Brunswick. This knowledge and experience with the natural environment and resources would be a great asset to the Province of New Brunswick and the government of Canada in the development of natural resource conservation programs. Through the placement of Aboriginal peoples in appropriate Government agencies and as environmental watchdogs, the NBAPC could assist the Province of New Brunswick and Canada in their efforts to create and design a proactive process in the development of a natural resource conservation plan, and it could participate in its implementation and operation throughout the Province. Given that the constituency of the NBAPC is spread over a wide geographic area of the Province, it would be easy to establish these proposed operations anywhere in the Province.

If the NBAPC does achieve a viable land base, it would continue to maintain its present view that the management of natural resources is a priority. If it were, however, to acquire a viable land base, the NBAPC would form a Resource Development Committee to develop and manage the resources, both above and below the surface of a land base, and to fulfil the responsibilities that come with a land base. This management would occur in cooperation with other governments and organizations.

IX.3 MEMBERS OF NBAPC: TODAY'S REALITY

In order to discuss the effect that self-government would have on youth, women and seniors, it is first important to consider the profile of the off-reserve Aboriginal people who make up the constituency of the NBAPC. Currently, the Aboriginal community in the Province of New Brunswick exists under a dichotomy; nearly 60% of the Aboriginal population in New Brunswick is younger than 25 years of age, while our seniors (older than 65 years) make up only 2% of the population. Unfortunately, due to the effects of poverty, many Aboriginal peoples suffer a short life span, and physical and mental hardships, alcohol and drug abuse, suicide, and the growing threat of AIDS are additional problems for Aboriginal communities. The statistics regarding these social conditions are appalling in comparison to relevant Canadian statistics, according to which the under 25 age group makes up only 35% of the population and seniors make up over 12% (a growing figure) of the population. While the population of Aboriginal men and women is roughly the same, it must be noted that just under 50% of families are single parent households headed by women. These families often live in such poverty that it is difficult to make a day to day living.

Currently, a large percentage of the NBAPC membership consists of women, who are encouraged to and who do participate in the operations and functions of the council. The NBAPC is committed to the involvement of women in the exercise of self-government, and welcomes their voices in the creation of policies in the NBAPC and Aboriginal self-government for the off reserve Aboriginal peoples of New Brunswick.

Youth are also viewed as great assets of the Aboriginal community, and are always encouraged to speak up and participate in the government of the council. The youth of the membership are currently reorganizing a Youth Council segment of the NBAPC, from which a representative will sit as a member of the Board of Directors.

While the Youth are organizing, it is important to note that a certain amount of funding is required to assist them in their efforts. The youth of today are learning to lead from today's leaders, and from among them will be those leaders who will train the youth of their day. Such is the Circle of Life. Strong leadership and awareness of the current issues are important aspects in the initiation and continuance of Aboriginal self-government. The youth of the NBAPC have and continually demonstrating excellent leadership potential and an intense awareness of today's issues. If the youth of the NBAPC are any indication, the NBAPC has a strong future ahead of it.

Seniors are a respected segment of the community whose voices, usually as Elders, are always listened to with respect and consideration. Seniors form approximately 25% of the Board of Directors and have a strong voice within the NBAPC. Seniors carry our history and traditions within their hearts, and are looked on to provide direction and wisdom in the governance of the NBAPC. The NBAPC holds its seniors with high regard and is committed to maintaining as well as increasing their role in the community and in Self-Government.

The NBAPC, as it currently operates, is open to the needs and problems of women, youth and seniors, and will continue to respond to and consider their needs and aspirations in the operations of self-government as they are all extremely important segments of the Aboriginal community, without which the community would cease to exist. The NBAPC believes in and will continue to express its commitment to these people as we move towards to 21st Century.

IX.4 PROGRAMS

As Aboriginal self-government becomes a reality, it will be the responsibility of the government to formulate, initiate and maintain programs and services for its constituency. The NBAPC, as such a government, would design programs to meet the needs of the membership and conduct objective research. Program design and delivery would involve contemporary management methods coupled with traditional techniques which will be utilized as guidelines for all programs. Management and program design will always be carried out in a fair and consistent manner, and will evolve with the changing needs of Aboriginal society in order to remain relevant and proactive in their approach.

The NBAPC will require participation from both the Federal and Provincial Governments in a tripartite process to initially implement and maintain these programs. A type of tripartite process currently operates, but its operations and procedures must be increased if it is to be successful. Experience to date has shown that a tripartite process will not work without political will from all levels of Government. The level of commitment will be tested this year, when the issue of funding for the Family Enhancement and the Rural and Native Housing programs are dealt with.

The NBAPC already has two programs in operation that provide housing to both our constituency and to non-Aboriginal people. The NBAPC's philosophy includes a commitment to assisting poverty stricken families in need, regardless of their status. This philosophy has arisen as a result of a relatively small Aboriginal population in New Brunswick, of the realities of economies of scale, and a desire to ensure the prevention of a backlash from Non-Aboriginal peoples who may also be living under conditions of poverty.

The NBAPC has considerable experience in the design and delivery of programs and services for its constituency, as it has been offering programs since its inception. While the NBAPC is striving to be self-sufficient, initial specific programs and services will be required from the municipal, provincial and federal governments to initiate the process towards self-sufficiency, as well as programs and services supplied to the community on an ongoing basis, recognizing it as a segment of Canadian society. These programs would consist of education, community and economic development, family enhancement, etc. Support for these programs could come through federal transfer payments as specified within the Affirmative Action Provision in the Canadian Constitution. Programs and services could also be supported through a process by which a portion of income tax taken from Aboriginal

peoples would be assigned specifically to Aboriginal governments. Again, however, while some programs and services, such as health care and education, are initially expected to be supplied by the Province, as the Aboriginal peoples of the Province gain self-sufficiency these programs will increasingly be operated and financed by Aboriginal peoples themselves.

In terms of the programs and services now offered, there needs to be greater sensitivity of the experiences of Aboriginal peoples. For example, the province should recognize the presence of Aboriginal peoples in the school system and make specific scholastic provisions to reflect and accommodate the cultural heritage of these people. This would also necessitate the acceptance of more Aboriginal peoples into the system as educators. In the provincial judicial system, the province should train justice personnel in intercultural sensitivity to reflect the needs of and be aware of the Aboriginal peoples that go through the justice system. The province should also accept the presence of Aboriginal peoples and culture in terms of the existing health care system, and it should recognize that Aboriginal medicine and practices are an important aspect in our healing and give these a place in the existing system when dealing with Aboriginal people. Such measures would assist Aboriginal peoples while the transition to self-government is made.

Within the context of municipalities, Aboriginal representatives should sit in council and represent Aboriginal needs and concerns when decisions are being made affecting Aboriginal peoples directly (eg. school boards, boards of trade, police, etc.). If Aboriginal peoples achieve self-government as a third level of Government within the Constitution of Canada, then the municipal governments would need to recognize this form of autonomy. The municipal governments would also be required to transfer a portion of property taxes taken from Aboriginal peoples to the local Aboriginal governments. Local heritage and cultural enhancement programs would facilitate cooperation and mutual benefit amongst the Aboriginal and municipal governments.

IX.5 DISPUTES AND RESOLUTIONS

One of the functions of any government is to attempt to resolve disputes with other governments. An Aboriginal government would be no different in that regard. It is expected that disputes between Aboriginal based governments and federal, provincial, municipal and other Aboriginal governments might occur. The NBAPC feels that the formation of a dispute mechanism would go a long way towards avoiding escalation of potential disputes with other governments and would expedite likely solutions to problems between such governments.

The dispute mechanism which the Aboriginal community would recommend to deal with other governments would be through the formation of a Tribunal. This Tribunal would involve participants from each of the federal, provincial and Aboriginal governments. In dispute deliberations, the Tribunal would be given a reasonable deadline to resolve a problem. If a solution has not been arrived at within the time limit, then the problem would

be handed over to an arbitrator on whom all three parties had agreed. If this procedure fails, then the Tribunal would reside under binding arbitration in the court system, as in labour disputes. It is conceivable that the Tribunal could be an extension of the Tripartite Management Process. In the event of disputes with the individual governments, the Tribunal could create branches of provincial and federal dispute committees.

The mechanism for resolving disputes within the community would involve the participation of Elders to resolve issues of private and public concern without resorting to the existing criminal justice system. Traditionally, Aboriginal communities have relied on Elders and a nonjudgemental, holistic view of individual and community healing to resolve acts of harm. This view creates difficulties when acts of harm are brought before the Canadian and Provincial legal systems, which are extremely antagonistic and judgemental in approach. The incarceration of guilty (a word that has no equivalent translation in Aboriginal languages) individuals away from their communities where healing cannot occur also decreases the possibilities of understanding and healing.³ It is important that individuals of the Aboriginal community who are incarcerated have access to Spiritual Elders and sweat lodges so that they have a greater possibility of healing, and so that their chances of becoming productive members of their community upon their release are increased. If acts of harm were committed that could not be resolved through the Elders and the community, then a resort to the existing justice and penal system would be warranted.

In the event of a dispute within the community, it would also be possible to resort to the Board of Directors at the Annual General Meeting. Disputes over the mandate and Constitution or with Aboriginal government policies and procedures could be handled at this meeting, as well. In the event that an individual under disciplinary action by the NBAPC felt that he or she had been treated unfairly, they would have the right to come before the Board of Directors in a personal hearing. The individual may not be represented by a lawyer, but may be represented by an Elder.

It is important to note that there can be no perfect dispute mechanism. Any mechanism formed or utilized must allow all participants, be they individuals, groups or communities, to have a voice and to be heard. Only in this way can solutions to problems be arrived at that involves all concerned and that takes into consideration all concerns presented.

³ Through experience with a program Toronto, it was found that when Aboriginal peoples who had committed an offense were required to do public service to make up for their acts of harm, it resulted in a healthier Aboriginal community and a great savings for the criminal system. The cost of this program equalled the amount saved by the criminal system if only three individuals were prevented from being incarcerated. This program has been extremely successful in its operations and approach. Also worthy of note is the Maine model where jail space is rented for the use of individuals who have committed an act of harm, and who feel that a period of incarceration would assist them in their personal healing.

IX.6 INTERGOVERNMENTAL PITFALLS

In the process of facilitating Aboriginal self-government, the federal and provincial governments have concerns and disagreements on how, and even if, Aboriginal based governments should be allowed to function. Provincial and federal governments must better define their responsibilities towards Aboriginal peoples within the provinces and Canada and accept their joint fiduciary responsibilities. The federal government must recognize off-reserve Aboriginal peoples and end the artificial identification of Aboriginal peoples as defined within the *Indian Act*. Cessation of the *Indian Act* and its bureaucratic system of band governments and the initiation of Tribal governments is crucial. The *Indian Act* is seen to be used to limit federal responsibility for financing and to keep the Aboriginal population divided, thus limiting the effectiveness of entitlement actions.

The provincial government must also acknowledge its fiduciary responsibilities as a segment of crown authority. This may be problematic, however, as traditionally the provincial government has stated that the federal government has fiduciary responsibilities for the Aboriginal peoples of the province. In reality, the provincial governments have been unintentionally shouldering some of the burden of fiscal responsibility as the federal government cuts programs and program funding and the provincial governments are increasingly required to supply health and educational funding for the off-reserve Aboriginal peoples of New Brunswick. It is not the purpose of this paper to suggest who should be responsible for individual program and service supply and funding. These items are to be negotiated as the systems of Aboriginal self-government develop and evolve within the Canadian system and society.

Although the provincial governments have traditionally avoided the issues of Aboriginal peoples, the talks behind the Charlottetown Accord appear to have convinced the provincial governments to side with Aboriginal peoples in their struggle for self-government. This was never more apparent than at the recent Premier's Conference at Baddeck, during which the Premiers affirmed their acceptance of the "inherent right to Aboriginal self-government" and during which Ontario Premier Bob Rae expressed his concerns about the pressure that the Ontario Government was under to act on Aboriginal concerns such as health care, housing and social services. According to Rae:

We're having to do this. In a better world, the Federal Government would be doing this ... but we don't live in that world, and they're not doing it... We're not going to let these problems fester (Ontario Premier Bob Rae, quoted from the *Ottawa Citizen*, August 28, 1993).

Other problems that exist are the ongoing constitutional wranglings between the federal and provincial governments and the Aboriginal peoples of Canada. Discussions have ranged from entrenchment of the "consent clause" discussed at the First Ministers Conference of 1987, to the proposed constitutional amendments presented in the Charlottetown Accord of 1992. Neither of these agreements, or any other agreements, have

been acted upon by the federal and provincial governments, whose actions are seen to be stonewalling self-government and an attempt to further stall and diminish the rights of the Aboriginal peoples of Canada. So while progress was made at the Premiers' Conference at Baddeck, Premier John Savage of Nova Scotia noted that:

The Federal Government must be the main player in our dealings with the Aboriginal People... (Nova Scotia Premier John Savage, Quoted from the *Montreal Gazette*, August 28, 1993).

Ovide Mercredi, leader of the Assembly of First Nations praised the co-operation of the provincial leaders, but also noted that:

The Prime Minister has been very silent on Aboriginal issues. Even when she was campaigning to be Prime Minister, she was very vague... (Ovide Mercredi, of the Assembly of First Nations, quoted from the *Montreal Gazette*, August 28, 1993).

Aboriginal peoples have also suggested that the problem of self-government be dealt with through new treaties. This proposed method of problem solving has not been fully explored as a possible solution to the current problems, and it should be further explored.

Amongst the Aboriginal population itself, there is a conflict between on and off reserve peoples. These conflicts have arisen as a result of the implementation of the *Indian Act* and the initial arbitrary definition of "status Indians," as well as further federal "definitions" that have reduced the numbers of "status" people. Also implemented through the *Indian Act*, and ultimately a cause of significant conflict amongst Aboriginal peoples, is the Chief and Council government within the band system. The systems of governance imposed by the *Indian Act* and DIAND has eliminated traditional forms of governance, and has led to tremendous opportunities for the misuse of power to the detriment and dissatisfaction of the people of the Aboriginal communities. This has led to internal conflict. A return to Tribal government systems and their traditional form of consensus decision making would go a long way towards rectifying the current conflicts and creating stronger Aboriginal communities.

Other problems that are inhibiting a transition to Aboriginal self-government is the ability of the federal and provincial governments to "put off" troublesome issues, Aboriginal issues included. It is recognized that the current system of Canadian Government is based on short term decision making where each government in power strives to maintain its popularity at the polls. Popularity may be damaged by unpopular and difficult decisions, which tend to be long term in nature, and political parties appear to avoid implementing policies where other future parties may possibly claim success for themselves. The issue of Aboriginal self-government definitely meets the criteria of a difficult long term based decision which may not be proclaimed as a success within the incumbency of the ruling political party which implements it. The Government of Canada also appears to be unable to

keep up with the current pace being set by the court system in their judgements, as exemplified in the Sparrow and Fowler cases. The government is perceived as thinking that the Canadian public is not currently ready to accept Aboriginal self-government. It is up to the federal and provincial governments and Aboriginal organizations to inform and educate the Canadian public about Aboriginal concerns and requirements, so that Aboriginal self-government can become a reality.

It should be recognized by the Canadian government, as well as by the Canadian and Aboriginal people who are looking towards the Royal Commission on Aboriginal Peoples for definitive answers to the current pressing questions and problems, that today's situation took over 400 years to evolve to its present form. It is not likely that a solution will be arrived at overnight. The process of Aboriginal self-government will take some time to develop and evolve, as both Aboriginal and non-Aboriginal people must learn to co-exist. The process of achieving and maintaining Aboriginal self-government will necessitate an arduous journey for the NBAPC, as it learns how to govern and to develop the instruments of government necessary to be self sufficient in this present age. The NBAPC believes that systems for self-government exist now in their infancy, and will require constant care to grow to maturity and wholeness. The NBAPC has learned to stand on its own feet over the last 20 years, and is dedicated to fulfilling the requirements of care and growth in its struggle to achieve self-government and self-sufficiency. The organization looks forward to the challenges to come as it strives to achieve its objectives.

X.

CONCLUSIONS

The New Brunswick Aboriginal Peoples Council, as a current base of self-government for off-reserve Aboriginal peoples in the Province of New Brunswick, although in a limited form, feels that it is in an ideal position and has the foundation required to act as a fully powered seat of Aboriginal self-government. The NBAPC, with an expansion of its current powers and finances, would be able to fully represent the off-reserve Aboriginal peoples of New Brunswick in the process of self-government. Funding would initially be required from the federal and provincial governments, but the ultimate goal would be a self-sufficient situation in which funding would no longer be required from these governments.

In order to achieve self-sufficiency, the NBAPC would need the establishment of a viable specific land base whose resources, both above and below the ground, could be managed in a sustainable way to produce continued financial resources. Financing could also take the form of special taxes collected from the province for use of land and resources. With its own financing, the NBAPC would be able to design, manage and maintain programs and services for its constituency in a consistent manner. While initial set of programs and services would require the assistance of both the federal and provincial governments, the final goal of self-sufficiency would ideally not require further assistance.

Aboriginal self-government for the off-reserve peoples of the Province of New Brunswick is not only possible, but is a necessity for the well being and growth of these people. The time is ripe for action from the federal and provincial governments, and indeed the provincial governments have indicated a willingness to assist in the initiation of Aboriginal self-government. All that is required to further the process is the willingness of the federal government to negotiate and to act on the Aboriginal self-government issue.

To reiterate the point made at the beginning of this report, while the presence and operations of the Royal Commission on Aboriginal Peoples (RCAP) is seen as a positive step towards the actualization of Aboriginal self-government, it is not expected that a definitive answer to the problems of Aboriginal peoples and the rest of the nation will be arrived at through the RCAP. Ultimately, while the RCAP will point the way to solutions of these problems, what is needed is a commitment from the federal government to work toward a resolution of these problems. Only then can the ongoing process of initiating and managing Aboriginal self-government be achieved.

"APPENDIX A"

CONSTITUTION

OF THE

NEW BRUNSWICK

ABORIGINAL PEOPLES COUNCIL

CONSTITUTION AND BY-LAWS

REVISED DATE: September 6, 1994

1. The name of the society is: **THE NEW BRUNSWICK ABORIGINAL PEOPLES COUNCIL** (herein after called: The Council).
2. The aims, goals and objectives of the society are:
 - A. To aid and assist people of Aboriginal Ancestry (Indigenous people of North America) in New Brunswick to form a local organization for the purpose of advancing their general living conditions.
 - B. To work with all levels of government, public, and private agencies and private industry to improve social, educational and employment opportunities for people of Aboriginal Ancestry of New Brunswick.
 - C. To foster and strengthen cultural identity and pride among people of Aboriginal Ancestry of New Brunswick.
 - D. To inform the general public of the special needs of the people of Aboriginal Ancestry of New Brunswick and their efforts to achieve full participation in economic, social and political life of the Province.
 - E. To co-operate with all other Aboriginal Organizations whose aims are similar to those of this society.
 - F. Above all to work together toward reaffirmation of our Aboriginal Rights as Aboriginal People of New Brunswick.

BY-LAWS

1. MEMBERSHIP:

- A. **FULL MEMBERSHIP:** shall be open to all people of Aboriginal Ancestry (Indigenous People of North America) 16 years of age and older and husbands and wives who do not reside on a Reserve and who express an interest in joining our Council. Only a Full Member of Aboriginal Ancestry will be eligible to vote at assemblies or special meetings or to hold elective office at the Board of Director level of the Council.

i) To be eligible for Full Membership people must live off the reserve in the province of New Brunswick for six (6) months prior to becoming a member.

ii) Any person wishing to join our Council as a Full Member shall meet the requirements of Full Membership and be required to fill out and have approved a form prescribed for such purpose which shall be attached to these by-laws.

- B. **MEMBERSHIP IN GOOD STANDING:** To be a member in good standing, a person must be eligible for full membership in the Council, either Member at Large or Local Member, and subscribe to the aims, objectives and goals of the membership and have paid the required membership fee to a Local, as a Local Member or to pay the required \$25.00 membership fee as a Member at Large to the Council. Each member in good standing shall be entitled to a membership card and one vote at any meeting of the membership of the Council.
- C. **ASSOCIATE MEMBERSHIP:** Shall be open to those persons who wish to support the Council but who are not eligible for full membership. Associate Members shall not be entitled to vote and hold elective office at the Executive Committee or Local Level of the Council or on the Board of Directors. Associate Members shall not be entitled to vote at the Annual Assembly.
- D. **HONOURARY MEMBERSHIP:** May, at the discretion of the Council, be granted to any persons whose efforts on behalf of the People of Aboriginal Ancestry warrant such recognition.
- E. **SUPPORTING MEMBERSHIP:** Individual people, churches, businesses and other organizations who wish to support our work may obtain a Supporting membership upon payment of an Annual Fee of \$25.00 but such members will have no voting rights. It is a direct membership in the Council rather than in our Locals.
- F. Each Chartered Local is required to pay an Annual Charter Fee on or before April 1 of each year to the Head Office of the New Brunswick Aboriginal People's Council, 320 St. Mary's Street, Fredericton, N.B. Charter Fee shall be \$25.00.

2. **DISCIPLINE OR PROHIBITED ACTS:**

Every member of the Council is guilty of an offence against the Constitution and By-Laws of the Council who:

- a) Makes allegations and accusations against the Council which are found not to be true.
- b) Requests or solicits Government agencies to withdraw financial support to the Council.
- c) Fails to account for any funds in his or her care or commits theft or fraud against the Council.
- d) Does anything to harm the Council.
- e) Behaves in a way harmful to the interest of his or her fellow members.
- f) Fails to uphold the Constitution and By-Laws of the Council.

3. OBLIGATIONS, SUSPENSIONS AND EXPULSION OF MEMBERS:

Acceptance of membership in the Council shall bind the member to accept and abide by the provisions of the Constitution and By-Laws of the Council.

A member of the Council may be charged with any violation of the Constitution and By-Laws of the Council. Charges shall be made in writing and delivered to the Chairman of the Membership Committee.

The Executive Officers shall investigate each charge and in the cases of minor offenses may take disciplinary action by reprimand or caution. In cases which might warrant suspension or expulsion from the Council, the Executive Officers shall submit their findings and recommendations to the Board of Directors.

The Vice-President shall give immediate notice in writing to any member against whom a charge has been preferred, of the particulars of such charge and also shall give reasonable notice to the member concerned of the date, time and place at which the hearing of the charge shall take place, together with such further notices as may be necessary to dispose of the charge completely.

If a member against whom a charge has been laid does not attend the hearing as required, the hearing may proceed in his absence.

The Board of Directors may by a majority vote of those present suspend the member for a stated period or indefinitely. The Board of Directors may by a two-third (2/3) vote of those present expel a member.

The member so charged shall forthwith be notified by registered mail of the decision of the Board of Directors.

The member suspended or expelled shall have the right to appeal the decision of the Board of Directors to the membership at an Annual Assembly by giving 30 days notice in writing of such appeal prior to the Annual Meeting of the Membership.

The general membership may by a two-third (2/3) vote of those members present reinstate the member.

4. REINSTATEMENT OF MEMBER:

The Board of Directors may by a majority vote of those present reinstate a member who has been suspended on the following terms and conditions:

- i) The member gives a formal public apology to the membership at an Annual Assembly; and
- ii) If applicable give a written apology to any affected private and or government agencies.

5. LOCAL ASSOCIATION:

- A. Any five or more persons residing in the same locality, who are eligible for Full Membership in the Council may form a local association.
- B. Every Local Association shall have the right to levy an Annual Membership Fee.
- C. Every Local Association shall have the right to send up to 10 delegates to Annual Meetings and Special Meetings of the Council.
- D. Every Chartered Local Association shall maintain accurate lists of its members and shall make such information available to the Head Office.
- E. All Chartered Local Associations are required to hold an Annual Local Meeting in the First Quarter (January, February or March) of each calendar year to elect its Officers. Minutes and attendance of this Annual Meeting shall be sent to the Head Office by June 15th of each year. Any Local that does not comply with this By-Law will have revoked their right to send delegates to the Council's Annual Assembly or Special Meetings.
- F. No Member shall belong to more than one Local.
- G. A new Local cannot be formed within a ten (10) mile radius of an existing local and members **should belong to**

the Local in the area of their residence. Note: Should never be interpreted as must.

6. OFFICERS OF THE COUNCIL:

- A. The Executive Officers of the Council shall consist of the President and Vice-President who will be elected by the members of the Council at the Annual Assembly. These Officers will constitute the Executive Committee of the Council. These positions will be full-time, paid positions. **NOTE:** For 1994 the position of President would be for a two year term, while that of the Vice-President would be for a one year term. This will maintain the intent of 6B of the Constitution.
- B. The term of office of the President and Vice-President shall be for a period of two years with the President being elected in even numbered years and the Vice-President being elected in odd numbered years.
- C. The election of the Executive Officers shall be carried out by secret ballot at an Annual Assembly and no person shall be elected without obtaining 50% + 1 of the votes cast by delegates at the Annual Assembly.
- D. All nominees must be present at the Annual Assembly.
- E. A Notice of Intention shall be filed by anyone intending to run for Elective Office 60 days prior to the Annual Assembly, so that Locals will be aware of the people running for office and will have time to campaign.

7. BOARD OF DIRECTORS:

- A. The Board of Directors shall consist of:
 - 1. The President and Vice-President of the Council.
 - 2. A position on the Board of Directors of the New Brunswick Aboriginal People's Council shall be set aside for the participation of a youth member. This position shall be a non-voting observer position and each Local shall appoint the name of a Local youth member who shall be eligible to set on the Board of Directors. The Board shall establish a list of youth members who shall alternate on the Board.
 - 3. 12 Zone Directors: for this purpose the Province shall be divided into twelve (12) Zones, and each

Zone shall choose one Director to represent that area of the board.

- B. The term of office of the Board of Directors shall be for a period of one year.

NOTE: The term of office for newly elected Directors is to take effect at the conclusion of the first (1st) Annual Assembly following their election.

- C. Outgoing Directors are to submit written reports to the Annual Assembly.
- D. For purposes of transacting business a quorum of the Board of Directors shall be 50% + 1 of the members of the Board.
- E. The Executive Officers will notify all Local presidents by registered mail of any major decision that will be taken to the Board that will affect the Local.
- F. All elections for Board of Directors shall be completed no later than 30 days prior to the Annual Assembly
- G. The Council shall be responsible for the setting up of Zone Meetings, once a year, for the purpose of electing a Zone Director in each Zone and that all such Zone Meetings for such purposes shall be held only after a 14-day notice, in writing, has been given to all Chartered Local Executive Officers. Written notice of such Zone Meetings shall be posted in the Mal-I-Mic News stating date, time, and place of each Zone Meeting.

8. DUTIES OF OFFICERS AND BOARD OF DIRECTORS:

- A. The Board of Directors shall be responsible for determining the overall policy of the Council and for such purpose shall meet at least twice a year at such time and such place as a majority of its members determine. The Board shall review all major decisions of the Executive Committee and shall have final authority on all matters affecting the Council between Annual Meetings. The Board shall appoint legal counsel, auditors and make all other arrangements for conducting the financial transactions of the Council.
- B. The Zone Directors are to attend meetings, on request, in their respective Zones. Each Zone Director shall reside in the area which he or she is located throughout his/her

term of office. Zone Directors must call a Zone Meeting 30 days prior to a Board of Directors Meeting.

- C. **President:** The President of the council shall be the Chief Executive Officer and as such is responsible for the day to day management of the affairs and operations of the Council. He or she shall preside as Chairman at the Board of Directors, Executive Committee and any other meetings of the Council. The President shall be ex-officio on all Committees or Board of the Council. The President shall be responsible to the Council through the Annual Assembly and between Assemblies to the Board of Directors.
- D. **Vice-President:** The Vice President of the Council shall be available and authorized to perform all the duties and functions of the President whenever the President is out of the Province, is on vacation or leave, or is incapacitated and shall do so until such time as the President returns or is capable of assuming his/her responsibilities again. The Vice-President shall serve as the main communication link with the Locals, Zones and Membership of the NBAPC and will be responsible for attending Local and Zone Meetings, for publication of the Mal-I-Mic News, for maintaining and monitoring the membership process of the Planning Committee for the Annual Assembly and for the Annual Children's Summer Camp. As well, the Vice-President shall be responsible for the day to day management of the office and will be responsible for administering NBAPC's Education Program. The Vice-President, along with the President, shall be one of the signing officers for the Council. The Vice-President shall be responsible to the President and Board of Directors of the Council.
- E. No Director or Officer of the Council shall be liable for the acts, receipts, neglects or defaults of any other Directors or Officers, or for joining in any receipts or other act for conformity, or for any loss or expense happening to the Council through the insufficiency or deficiency of title to any property required by order of the Board for or on behalf of the Council, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Council shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person whom any of the monies, securities or effects of the Council shall be deposited, or for any loss occasioned by error or judgement or oversight on his part, or for any other loss, damage or misfortune what ever which shall happen

in the execution of the duties of his office or in relation thereto unless the same shall happen through his own dishonesty.

9. ANNUAL ASSEMBLY:

- A. An Annual Assembly shall be held every year, at such time and such place as the Board of Directors may determine. Sufficient notice of the Annual Meeting shall be given to all members in good standing. For the purpose of transacting business at an Annual Assembly, a quorum shall be 50% + 1 of the Delegates registered at the Assembly.
- B. All locals entitled to send delegates to each Annual Assembly or Special Assembly shall submit to the Council a list of its delegates and alternates 30 days prior to each Annual or Special Meeting of the Membership on such forms as may be required from time to time. Any local failing to submit its list of delegates and alternates shall have their right send delegates to the Councils Annual or Special Meeting of the Membership revoked.
- C. All delegates to the Annual Assembly or Special Meeting of the Membership must be a card carrying member of the Council 30 days prior to such meetings.
- D. All Lifetime Members of the Council shall be voting delegates to each Annual Assembly or Special Meeting of the Membership.

10. AMENDMENTS:

- A. Any amendments of the Constitution and By-Laws of the Council can only be made at an Annual Assembly and only after a 30-day written notice has been given to all Chartered Locals.
- B. The Directors may from time to time by instrument under seal make By-laws in relation to the Council and may at any time in like manner annual or vary any By-Laws so made; provided, however that no such By-Laws be binding on the members of the Council unless approved by a majority of the Directors and ratified, sanctioned and confirmed by the majority of the Membership present at either the Annual Meeting or at a Special Meeting of the Membership called for such purpose.

11. NON-PROFIT CHARITABLE COUNCIL:

- A. The Council shall be a non-profit charitable organization.
 - B. In the event that the affairs of the Council are terminated, all remaining assets after dissolution and after paying all liabilities shall be distributed to one or more recognized charitable organizations in Canada with objects and purposes similar to the Council.
 - C. The affairs of the Council shall only be terminated with the approval of the membership at a meeting called for such purpose.
12. The fiscal year of the Council shall be April 1 to March 31 of the following year.
13. The Council may borrow for purposes of carrying out its operations but only upon a special resolution authorizing same approved by the Board of Directors.
14. The head Office of the Council shall be in the City of Fredericton in the Province of New Brunswick.

"APPENDIX B"

**MISSION STATEMENT
OF THE
NEW BRUNSWICK
ABORIGINAL PEOPLES COUNCIL**

NBAPC

MISSION STATEMENT

To the New Brunswick Aboriginal Peoples Council, self-government begins - but does not end - with control over our land. Government means jurisdiction over our renewable and non-renewable resources, education, health and social services, public order and the shape and composition of our political institutions. While some of our plans may sound far reaching to some people, they should not be regarded as a threat. We do not want to recreate a world that has vanished. We do not want to turn back the clock. Far from it. We welcome the challenge to see our culture grow and change in directions that we have chosen for ourselves. We do not want to become the objects of sentimentality. Nor do we want our culture to be preserved in amber for the amusement or even the edification of others. What we do want, what we demand, is nothing more than control over our own lives and destiny. That control is called SELF-GOVERNMENT.

"APPENDIX C"

ABORIGINAL SECTION

OF THE

1992

CHARLOTTETOWN ACCORD

**CONSENSUS REPORT
ON THE CONSTITUTION**

Charlottetown

August 28, 1992

FINAL TEXT

A. **THE INHERENT RIGHT TO SELF-GOVERNMENT**

41. The Inherent Right to Self-Government

The Constitution should be amended to recognize that the Aboriginal peoples of Canada have the inherent right to self-government within Canada. This right should be placed in a new section of the Constitution act, 1982, Section 35.1 (1).

The recognition of the inherent right to self-government should be interpreted in light of the recognition of Aboriginal governments as one of three orders of government in Canada.

A contextual statement should be inserted in the Constitution, as follows:

"The exercise of the right of self-government includes the authority of the duly constituted legislative bodies of Aboriginal peoples, each within its own jurisdiction:

- a. to safeguard and develop their languages, cultures, economies, identities, institutions and traditions, and;
- b. to develop, maintain and strengthen their relationship with their lands, waters and environment.

so as to determine and control their development as peoples according to their own values and priorities and ensure the integrity of their societies."

Before making any final determination of an issue arising from the inherent right to self-government, a court or tribunal should take into account the contextual statement referred to above, should enquire into the efforts that have been made to resolve the issue through negotiations and should be empowered to order the parties to take such steps as are appropriate in the circumstances to effect a negotiated resolution.

42. Delayed Justiciability

The inherent right to self-government should be entrenched in the Constitution. However, its justiciability should be delayed for a five year period through constitutional language and a political accord. (*)

Delaying the justiciability of the right should be coupled with a constitutional provision which would shield Aboriginal rights.

Delaying the justiciability of the right will not make the right contingent and will not affect existing Aboriginal and Treaty Rights.

The issue of special courts or tribunals should be on the agenda of the first, First

Ministers' Conference on Aboriginal Constitutional matters referred to in item 53.

43. Charter Issues

The Canadian Charter of Rights and Freedoms should apply immediately to governments of Aboriginal peoples.

A technical change should be made to the English text of Sections 3, 4, and 5 of the Canadian Charter of Rights and Freedoms to ensure that it corresponds to the French text.

The legislative bodies of Aboriginal peoples should have access to Section 33 of the Constitution Act, 1982 (the notwithstanding clause) under conditions that are similar to those applying to Parliament and the provincial legislatures but which are appropriate to the circumstances of Aboriginal peoples and their legislative bodies.

44. Land

The specific constitutional provision on the inherent right and the specific constitutional provision on the commitment to negotiate land should not create new Aboriginal rights to land or derogate from existing Aboriginal or Treaty Rights to land, except as provided for in self-government agreements.

B. METHOD OF EXERCISE OF THE RIGHT

45. Commitment to Negotiate

There should be a constitutional commitment by the Federal and Provincial Governments and the Indian, Inuit and Metis peoples in the various regions and communities of Canada to negotiate in good faith with the objective of concluding agreements elaborating the relationship between Aboriginal governments and the other orders of Government. The negotiations would focus on the implementation of the right of self-government including issues of jurisdiction, lands and resources, and economic and fiscal arrangements.

46. The Process of Negotiation

Political Accord on Negotiation and Implementation

- A political accord should be developed to guide the process of self-government negotiations. (*)

Equity of Access

- All Aboriginal peoples of Canada should have equitable access to the process of negotiation.

Trigger for Negotiations

- Self-government negotiations should be installed by the representatives of Aboriginal peoples when they are prepared to do so.

Provision for Non-Ethnic Governments

- Self-government agreements may provide for self-government institutions which are open to the participation of all residents in a region covered by the agreement.

Provision for Different Circumstances

- Self-government negotiations should take into consideration the different circumstances of the various Aboriginal peoples.

Provision for Agreements

- Self-government agreements should be set out in future treaties, including land claims agreements or amendments to existing treaties, including land claims agreements. In addition, self-government agreements could be set out in other agreements which may contain a declaration that the rights of the Aboriginal peoples are treaty rights, within the meaning of Section 35(1) of the Constitution Act, 1982.

Ratification of Agreements

- There should be an approval process for governments and Aboriginal peoples for self-government agreements, involving Parliament, the legislative assemblies of the relevant provinces and/or territories and the legislative bodies of the Aboriginal peoples. This principle should be expressed in the ratification procedures set out in the specific self-government agreements.

Non-Derogation Clause

- There should be an explicit statement in the Constitution that the commitment to negotiate does not make the right of self-government contingent on negotiations or in any way affect the justiciability of the right to self-government.

Dispute Resolution Mechanism

- To assist the negotiation process, a dispute resolution mechanism involving mediation and arbitration should be established. Details of this mechanism should be set out in a political accord. (*)

47. Legal Transition and Consistency of Laws

A constitutional provision should ensure that federal and provincial laws will continue to apply until they are displaced by laws passed by governments of Aboriginal peoples pursuant to their authority.

A constitutional provision to ensure that a law passed by a government of Aboriginal peoples, or an assertion of its authority based on the inherent right provision may not be inconsistent with those laws which are essential to the preservation of peace, order and good government in Canada. However, this provision would not extend the legislative authority of Parliament or of the legislatures of the provinces.

48. Treaties

With respect to treaties with Aboriginal peoples, the Constitution should be amended as follows:

- treaty rights should be interpreted in a just, broad and liberal manner, taking into account the spirit and intent of the treaties and the context in which the specific treaties are negotiated;
- the Government of Canada should be committed to establishing and participating in good faith in a joint process to clarify or implement treaty rights, or to rectify terms of treaties when agreed to by the parties. The governments of the provinces should also be committed, to the extent that they have jurisdiction, to participation in the above treaty process when invited by the government of Canada and the Aboriginal peoples concerned or where specified in a treaty;
- participants in this process should have regard, among other things and where appropriate, to the spirit and intent of the treaties as understood by Aboriginal peoples. It should be confirmed that all Aboriginal peoples that possess treaty rights shall have equitable access to this treaty process;
- it should be provided that these treaty amendments shall not extend the authority of any government or legislature, or affect the rights of Aboriginal peoples not party to the treaty concerned.

C. ISSUES RELATED TO THE EXERCISE OF THE RIGHT

49. Equity of Access to Section 35 Rights

The constitution should provide that all of the Aboriginal peoples of Canada have access to those Aboriginal and treaty rights recognized and affirmed in Section 35 of the Constitution Act, 1982 that pertain to them.

50. Financing

Matters relating to the financing of governments of Aboriginal peoples should be dealt with, with a political accord. The accord would commit the governments of Aboriginal peoples to:

- promoting equal opportunities for the well-being of all Aboriginal peoples;
- furthering economic, social and cultural development and employment opportunities to reduce disparities in opportunities among Aboriginal peoples and between Aboriginal peoples and other Canadians; and
- providing essential public services at levels reasonably comparable to those available to other Canadians in the vicinity.

It would also commit federal and provincial governments to the principle of providing the governments of Aboriginal peoples with fiscal or other resources, such as land, to assist those governments to govern their own affairs and to meet the commitments listed above, taking into account the levels of services provided to other Canadians in the vicinity and the fiscal capacity of governments of Aboriginal peoples to raise revenues from their own sources.

The issues of financing and its possible inclusion in the Constitution should be on the agenda of the first, First Ministers' Conference on Aboriginal Constitutional matters referred to in item 53. (*)

51. Affirmative Action Programs

The Constitution should include a provision which authorizes governments of Aboriginal peoples to undertake affirmative action programs for socially and economically disadvantaged individuals or groups and programs for the advancement of Aboriginal languages and cultures.

52. Gender Equality

Section 35(4) of the Constitution Act, 1982 which guarantees existing Aboriginal and treaty rights equally to male and female persons, should be retained. The issue of gender equality should be on the agenda for the first, First Ministers' Conference on Aboriginal Constitutional matters referred to under item 53. (*)

53. Future Aboriginal Constitutional Process

The Constitution should be amended to provide for four future First Ministers' Conferences on Aboriginal constitutional matters beginning no later than 1996, and following every two years thereafter. These conferences would be in addition to any other First Ministers' Conferences required by the Constitution. The agendas of these

conferences would include items identified in this report and items requested by Aboriginal peoples.

54. Section 91(24)

For greater certainty, a new provision should be added to the Constitution Act, 1867 to ensure that Section 91(24) applies to all Aboriginal peoples.

The new provision would not result in a reduction of existing expenditures by governments on Indians and Inuit or after the fiduciary and treaty obligations of the federal government for Aboriginal peoples. This would be reflected in a political accord. (*)

55. Metis in Alberta/Section 91(24)

The Constitution should be amended to safeguard the legislative authority of the Government of Alberta for Metis and Metis Settlements lands. There was agreement to a proposed amendment to the Alberta Act that would constitutionally protect the status of the land held in fee simply by the Metis Settlements General Council under letters patent from Alberta

56. Metis Nation Accord (*)

The Federal Government, the Provinces of Ontario, Manitoba, Saskatchewan, Alberta, British Columbia and the Metis National Council have agreed to enter into a legally binding, justiciable and enforceable accord on Metis Nation issues. Technical drafting of the Accord is being completed. The Accord sets out the obligations of the Federal and Provincial Governments and the Metis Nation.

The Accord commits governments to negotiate: self-government agreements; lands and resources; the transfer of the portion of Aboriginal programs and services available to Metis; and cost-sharing arrangements relating to Metis institutions, programs and services.

Provinces and the Federal Government agree not to reduce existing expenditures on Metis and other Aboriginal people as a result of the Accord or as a result of an amendment to Section 91(24). The Accord defines the Metis for the purposes of the Metis Nation Accord and commits governments to enumerate and register the Metis Nation.

"APPENDIX D"

LOCAL LIST

OF THE

NBAPC

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"APPENDIX E"

RESEARCH MATERIALS

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