

INSTITUTE OF INTERGOVERNMENTAL RELATIONS

**ABORIGINAL SELF-GOVERNMENT
ARRANGEMENTS IN CANADA:
AN OVERVIEW**

Evelyn J. Peters

Institute of
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PREFACE

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

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

Developments in 1985, subsequent to the First Ministers' Conference, may have had a dramatic impact on the constitutional negotiation process. At a meeting of government ministers and aboriginal leaders held in June, 1985, several governments indicated their intention to pursue the negotiation of individual self-government agreements, and then to consider their entrenchment in the constitution (the "bottom-up"

approach). This contrasts with the proposal, which has thus far dominated discussions, to entrench the right to aboriginal self-government in the constitution, and then to negotiate individual agreements (the "principles first" approach). The result was that, in addition to multilateral negotiations at the national level, negotiations proceeded on a bilateral or trilateral basis, at the local, regional and provincial/territorial levels.

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

As the 1987 FMC approached, attention became more concentrated on the multilateral constitutional forum (the FMC). The research agenda in the second year of Phase Two anticipated this shift in preoccupation, with the focus turning to the search for a constitutional accommodation in 1987. It was necessary first to inquire into, and then to resolve or assuage a number of genuine concerns about aboriginal self-government and its implications for federal, provincial and territorial governments. A third Workshop, on "Issues in Entrenching Aboriginal Self-Government", was held in February, 1987.

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

Although there are existing aboriginal self-government arrangements in Canada, they are neither well known nor adequately documented. Evelyn Peters' background paper on *Aboriginal Self-Government Arrangements in Canada: An Overview* brings together both description and analysis of self-government structures and institutions, as well as specific arrangements in three policy fields. The addition of annotated bibliographies and appendices enable the reader to pursue particular arrangements, and make this paper an excellent reference document. Evelyn J. Peters was Research Associate with the Institute's project on

"Aboriginal Peoples and Constitutional Reform" for over the past year. She is now an Assistant Professor of Geography at Queen's University.

David C. Hawkes
Associate Director
Institute of Intergovernmental Relations
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Evelyn J. Peters

ABSTRACT

Existing arrangements for aboriginal self-government in Canada are limited, yet many are not well known. This paper provides an overview of the structures and institutions of aboriginal self-government, including arrangements under the *Indian Act*, the *Sechelt Indian Band Self-Government Act*, the *Cree/Naskapi (of Quebec) Act*, and the *Kativik Act*. It also describes self-government arrangements in three specific policy sectors - education, land and resources, and economic development. An annotated bibliography is provided on each policy sector, as well as on negotiating and implementing aboriginal self-government arrangements. Appendices list existing legislation and examples of ongoing negotiations regarding self-government.

SOMMAIRE

Il existe au Canada un nombre restreint d'ententes touchant au gouvernement autonome pour les autochtones. Toutefois, peu d'entre elles sont connues. Cet ouvrage propose donc un aperçu des structures et des institutions que comprend le concept de gouvernement autonome pour les autochtones, y incluant celles définies par le Indian Act, le Sechelt Indian Band Self-Government Act, le Cree/Naskapi (du Québec) Act, et le Kativik Act. Egalement, il constitue une analyse de ces ententes sur les gouvernements autonomes par rapport à trois secteurs spécifiques - éducation, territoire et ressources; et développement économiques. Une bibliographie annotée est rattachée à chacun de ces secteurs, de même qu'une autre concernant les négociations et la mise en application de ces ententes. En appendice se trouve une liste des actes législatifs et des exemples de négociations en cours sur le gouvernement autonome pour les autochtones.

INTRODUCTION

This paper focuses first on the existing structures and institutions of aboriginal self-government arrangements in Canada. The nature of administrative structures, powers, and financing under the *Indian Act*, the James Bay and Northern Quebec Agreement, and the *Sechelt Indian Band Self-Government Act* are described. However, a summary of legislation cannot indicate day-to-day experiences of negotiating or implementing self-government. For this purpose an annotated bibliography is attached, which summarizes different perspectives and evaluations of existing arrangements.

The second part of the paper presents some arrangements for self-government in selected policy sectors - education, land and resources, and economic development.

The section on education describes the administrative structure, financing, and program of the Gabriel Dumont Institute, the Saskatchewan Federated Indian College, and the Cree School Board. In addressing self-government in lands and resources, the paper examines the *Indian Act*, the James Bay and Northern Quebec Agreement, the Western Arctic Claims Agreement and the Nunavut proposal. Cases are organized in terms of proprietary jurisdiction, access and security of tenure, legislative and advisory powers, and jurisdiction over surrounding lands. The final section on self-government in economic development summarizes the experience and approaches of the Walpole Island Band, the James Bay Cree and the James Bay Inuit. For each policy area a brief annotated bibliography lists works which analyze experiences to date.

Two appendices contain references for existing self-government legislation, and examples of negotiations for self-government ongoing at present. Most references in the appendices and in the bibliographic sections are available at either the Assembly of First Nations Library, or the Department of Indian Affairs Library, both located in Ottawa.

An overview of arrangements for aboriginal self-government in Canada was first prepared for a workshop on "Implementing Aboriginal

Self-Government: Problems and Prospects", sponsored by the Institute of Intergovernmental Relations on May 27-30, 1986, in Kingston, Ontario. The following pages contain some of the materials distributed as background notes for that workshop, with a number of revisions and the addition of an annotated bibliography. Clearly there are other areas in which there have been important developments enabling aboriginal peoples to assume greater control over aspects of their lives - for example in the areas of child welfare and policing. Workshop participants chose, however, to focus on these three policy areas. The particular cases chosen for study were also influenced by participants' suggestions.

**PART I: STRUCTURES AND INSTITUTIONS
OF ABORIGINAL SELF-GOVERNMENT
IN CANADA**

A. SUMMARY OF EXISTING ARRANGEMENTS FOR ABORIGINAL SELF-GOVERNMENT

The material summarized in the following section describes the four existing arrangements for self-government for aboriginal peoples in Canada:

- band government under the *Indian Act*;
- the *Sechelt Indian Band Self-Government Act*;
- the *Cree/Naskapi (of Quebec) Act*; and
- the *Act Concerning Northern Villages and the Kativik Regional Government*.

With the exception of Kativik, self-governing arrangements to date have been focused on Status Indian peoples. The four cases vary on a number of dimensions. Band government under the *Indian Act* is limited in its jurisdiction, and it may be argued that this arrangement does not represent self-government, but rather self-administration or self-management. Both the *Cree/Naskapi Act* and the Act establishing Kativik created regional and village levels of government, but while Kativik is public, Cree government is ethnic in character. The Sechelt legislation provides for a regional governing body.

Cases vary in other ways as well, including legislative powers, areas of jurisdiction, financing, and the application of federal and provincial laws. The following section outlines the content of legislation establishing these four arrangements. However, an outline of structures and powers does not indicate how self-government works in practice. An annotated bibliography makes reference to work describing processes and problems of negotiation and implementation.

1. Band Government Under the Indian Act

The *Indian Act* is a comprehensive piece of legislation that covers activities in all sectors of Indian communities. The first consolidated *Indian Act* was passed in 1876; it has been amended several times since. The main purposes of the *Act* as described by the Department of Indian Affairs and Northern Development are:

to provide for band councils and the management and protection of Indian lands and moneys, to define certain Indian rights, such as exemption from taxation in certain circumstances, and to define entitlements to band membership and to Indian status (Penner Report, 1983:17).

Administrative Structure

Governance under the *Indian Act* takes place through an elected chief and band council. The Minister may declare that a band council, consisting of chief and councillors, shall be elected "for the good government of a band".

In terms of composition, the council has one chief, and one councillor can be elected for every 100 band members, with no fewer than two and no more than twelve councillors on a council. Regulations for elections are laid out in the *Act*. The Governor-in-Council may make additional regulations regarding elections, band meetings and council meetings.

Powers

As outlined in Section 81 of the *Indian Act*, a band council may make by-laws, subject to disallowance by the Minister, to:

- provide for the health of residents on reserves;
- regulate traffic;
- observe law and order;
- prevent disorderly conduct and nuisance;
- regulate domestic animal activities;
- construct and maintain water courses, roads, bridges, ditches, fences and other local works;
- divide reserves into zones and enforce prohibitions for these zones;
- regulate the construction, repair and the use of buildings;
- survey and allot reserve lands among band members;
- destroy and control noxious weeds;
- regulate bee-keeping and poultry raising;
- construct and regulate water works;
- control and prohibit public games, sports and other amusements;
- regulate the conduct and activities of merchants on reserves;
- preserve, protect and manage fur-bearing animals, fish and other game on reserves;
- remove and punish persons trespassing on reserves;
- regulate the residence of band members and other persons on the reserve; and
- provide for entry permits to band lands except for parties entitled to enter the reserve pursuant to federal or applicable provincial authority.

The band may make money by-laws "where the Governor-in-Council declares that a band has reached an advanced stage of development". The money by-law power extends to the taxation of reserve lands occupied by band members, and the licensing of businesses, callings, trades and occupations.

The council of a band may make by-laws regarding the sale, barter, supply, manufacture or possession of intoxicants on the reserve. This power is not subject to disallowance.

The Minister may, without band consent or surrender:

- issue permits for the use of reserve lands for up to one year;
- authorize the use of lands in a reserve for the purpose of Indian schools, the administration of Indian affairs, Indian burial grounds, and Indian health projects;
- authorize surveys of reserves and divide the whole or any portion of a reserve into lots or other subdivisions;
- determine the location and direct construction of roads on a reserve; and
- give instructions that roads, bridges and fences on the reserve be maintained at the expense of the band.

Regional Organization

There is no provision under the *Act* for co-operation between bands or for forms of regional organization. Bartlett (1986:6) writes that: "Federal Government policy has historically looked forward to the day when Indian lands would become municipalities under the jurisdiction of the provinces."

Application of Federal and Provincial Laws

The federal government has exclusive jurisdiction over "Indians and lands reserved for Indians".

Section 88 of the *Indian Act* applies provincial laws of general application to Indians: it is not settled to what extent section 88 applies provincial laws to Indian lands.

With the consent of the Governor-in-Council, provinces, municipalities or corporations can expropriate reserve lands for public use.

With the consent of the council of a band, the Minister may authorize expenditure of the capital moneys of the band:

- to construct and maintain roads, bridges, ditches, boundary fences or other improvements on the reserve;
- to purchase land, livestock or farm equipment for use by the band;
- to make loans to band members;
- to meet expenses necessary to manage band land or property;
- to construct houses for band members; and
- for any other purpose that, in the Minister's opinion, is for the benefit of the band.

Bands receive funds from the Department of Indian Affairs for the administration of government programs. These vary by band and by year. The devolution of the administration of services to bands has, in many cases, generated extensive annual negotiations where the chief and council negotiate every item on the band's operating budget.

2. Sechelt Indian Band Self-Government Act

The Sechelt Indian Band consists of 33 reserves within the Sechelt Peninsula. The community is located on the British Columbia coast approximately 50 kilometres north of Vancouver. Enabling legislation which allows the Sechelt Band to move toward self-government was passed in May of 1986. The principal features of the legislation are summarized below.

Administrative Structure

The Sechelt Band is established as a legal entity. It has the capacity, rights, powers and privileges of a natural person. The band may:

- enter into contracts and agreements;
- acquire and hold property or any interest therein, and sell or otherwise dispose of that property or interest;
- expend or invest moneys;
- borrow money; and
- do such other things as are conducive to the exercise of its rights, powers and privileges.

The Sechelt Indian Band Council is the governing body of the Band, and the Band acts through the Council in exercising its powers.

A written Band Constitution, under this Bill, may contain the ability to:

- establish the composition of the Council, its term of office and tenure of its members;
- establish procedures relating to the election of Council members;
- establish the procedures or processes to be followed by Council in exercising the Band's powers and carrying out its duties;
- provide for a system of financial accountability of the Council to the members of the Band;
- include a membership code for the Band;
- establish rules and procedures relating to the holding of referenda;
- establish rules and procedures to be followed in respect of the disposition of interests in Sechelt lands;
- set out specific legislative powers of the Council selected from among the general classes of matters set out in the Act; and
- provide for any other matters relating to the government of the Band, its members, or Sechelt lands.

The Governor-in-Council, on the advice of the Minister, has the power to declare in force the Constitution or amendments to the Constitution.

Powers

The Council has the power to make laws in relation to matters coming within any of the following classes of matters to the extent that it is authorized by the Constitution of the Band:

- access and residence on Sechelt lands;
- zoning and land use planning in respect of Sechelt lands;
- expropriation, for community purposes, of interests in Sechelt land;
- taxation for local purposes;
- administration and management of property belonging to the Band;
- education of Band members on Sechelt lands;
- social and welfare services including custody and placement of children of Band members;
- health services on Sechelt lands;
- preservation and management of natural resources on Sechelt lands;
- preservation, protection and management of fur-bearing animals, fish and game on Sechelt lands;
- public order and safety on Sechelt lands;

- construction, maintenance and management of roads and the regulation of traffic on Sechelt lands;
- operation of businesses, professions and trades on Sechelt lands; and
- prohibition of the sale, barter, supply, manufacture or possession of intoxicants on Sechelt lands.

Regional Organization

Pending legislation by British Columbia and approval by a Band referendum, the Governor-in-Council may recognize a Sechelt Indian Government District, which may exercise jurisdiction over land outside Sechelt reserve lands. The District will be a legal entity with powers to:

- enter into contracts or agreements;
- acquire and sell property; and
- spend, invest or borrow money.

The Sechelt Indian Government District Council will be the governing body of the District. The members of the District Council will be the members of the Band Council. The powers and duties of the Band Council may be transferred to the District Council by the Governor-in-Council if provincial legislation is in place.

Application of Federal and Provincial Laws

All federal laws of general application in force in Canada are applicable to and in respect of the Band, its members and Sechelt land, except to the extent that those laws are inconsistent with the *Act*.

Laws of general application of British Columbia apply to or in respect of the members of the Band except to the extent that those laws are inconsistent with the terms of any treaty, the Sechelt or any other Act of Parliament, the constitution of the Band or a law of the Band.

Financing

The Band has powers to levy taxes for local purposes. Treasury Board approved the Sechelt Funding Agreement pursuant to Sections 33 and 34 of the *Sechelt Self-Government Act* on August 12, 1986. Under this agreement the Sechelt Band received a single lump-sum payment of moneys held in trust.

With respect to external financing, Section 33 of the *Act* states that the Minister may, with the approval of the Governor-in-Council, enter

into an agreement with the Band under which funding would be provided by the government of Canada to the Band in the form of grants, subject to terms and conditions specified in the agreements.

3. The Cree/Naskapi (of Quebec) Act

The James Bay and Northern Quebec Agreement obligated the federal government to recommend to Parliament special legislation respecting local government and land administration for the Cree Indians of the James Bay Territory. This legislation, the *Cree/Naskapi Act* was passed on June 8, 1984. The nature and scope of the *Act* was pre-determined in many respects by the Agreements from which it emerged and as such, the *Act* operates in conjunction with the Agreement. The principal features of the legislation are as follows.

Administration Structures

Each of the nine Cree and Naskapi Bands were incorporated and have the "capacity, rights, powers and privileges of a natural person", subject to the limits declared by the Agreement. Each corporation and its Category IA and IA-N lands constitute a municipality or a village under the *Quebec Cities and Towns Act*. The objects of band corporations are:

- to act as the local government authority on Band lands;
- to use, administer and regulate Band lands and natural resources thereof;
- to control the disposition of rights and interests in Band lands;
- to regulate the use of buildings on Band lands;
- to use, manage and administer Band moneys and other assets;
- to promote the general welfare of members of the Band;
- to establish and administer services, programs and projects for members of the Band; and
- to promote and preserve the culture, values and traditions of the Crees or Naskapis.

A Band Corporation acts through its Council in exercising its powers and carrying out its duties under the *Act*. The *Act* establishes guidelines for Council meetings, procedures for passing and enforcing by-laws, and procedures for holding referenda.

Each Band Corporation has established its own election by-law. The election by-law must be approved by the electors of the Band, and by the Minister. Under the terms of the *Act*, the election by-law covers the way

in which an election is called, notices for elections, and the means by which the chief and councillors are chosen.

Bands are responsible to their membership for their own financial affairs. In the *Act*, guidelines are set out in respect of financial administration which ensure that records are kept, and funds, both federal and non-federal, are accounted for. The Minister's financial accountability under the *Act* is in terms of accounting for the general well-being of the Corporations, rather than in determining specific terms for funding local government objectives. However the Minister may inspect the financial records of a Band and may appoint an auditor if the Band fails to do so. Where the Minister is of the opinion that the financial affairs of the Band are in serious disorder, he/she may temporarily appoint an administrator.

A Band may, with the approval of the Attorney General of Quebec and the Provincial Minister responsible for municipal affairs, enter into an agreement with bodies empowered to provide policing services, for policing on Band land.

Powers

In general, band corporations have by-law powers similar to those possessed by a local government under provincial legislation. Corporations have powers to make by-laws concerning:

- access and residence on Band lands;
- zoning and land use planning, subject to electoral approval;
- expropriation for community purposes, of interests in Band lands in accordance with regulations made by the Governor-in-Council;
- taxation for local purposes subject to Governor-in-Council regulations;
- regulation of buildings and other structures;
- administration of band affairs and internal management of the Band;
- public health and hygiene;
- parks and recreation;
- protection of the environment including natural resources;
- regulation of hunting, fishing and trapping;
- prevention of pollution;
- public order and safety on Band lands;
- regulation of roads, traffic and transportation;
- operation of business and carrying on of trade; and
- prohibition of the sale, possession or consumption of alcohol.

The bands are required to forward to the Minister copies of all by-laws enacted. The Minister is not empowered with authority to approve band by-laws except in relation to election, and hunting, fishing and trapping by-laws.

Justices of the peace appointed pursuant to the Agreement have jurisdiction under the *Act* in respect of the contravention of Band by-laws.

Regional Organization

The Grand Council of the Crees of Quebec is the political body of the region. Formed by the Cree in 1974, it is composed of the elected chiefs and one other elected member from each band. The Grand Council provides the forum for inter-village discussion of policies affecting all Cree.

The Cree Regional Authority is a corporation: its corporate seat is the Category I lands allocated to the James Bay Cree. The powers of the Cree Regional Authority are exercised by a council which consists of the chief and one other member of each Band corporation.

The Cree Regional Authority is the chief administrative body of the area. In terms of administration its powers and responsibilities are:

- to appoint Cree representatives on the James Bay Regional Zone Council;
- to appoint representatives of the Cree on all other structures, bodies and entities established pursuant to the agreement;
- to give valid consent, when required under the Agreement, on behalf of the James Bay Cree; and
- to co-ordinate and administer all programs of the Band Corporations, with their consent.

Services are provided throughout the Cree region either by Cree Boards to which the Cree Regional Authority appoints members, or by offshoot organizations affiliated with the Cree Regional Authority.

Application of Federal and Provincial Laws

Under the *Act* federal laws apply to the Crees, the Naskapis, and to their lands to the extent that they are not incompatible with the provisions of the *Cree/Naskapi Act* and the James Bay Agreement.

Provincial laws of general application apply to the extent that they are not incompatible with the *Cree/Naskapi Act* or the James Bay Agreement.

Band corporations have powers of taxation for local purposes. The *Statement of Understanding of the Cree/Naskapi Act Implementation Group* set out principles for external funding of Cree and Naskapi local governments. Operating subsidies in the form of unconditional grants are available from the Department of Indian Affairs for the administration, operation and maintenance of local governments. The amount of the subsidy is based on a formula which takes into account estimated expenditures for local operation and regional support, less estimated revenues and other funding.

According to the *Statement*, the level of funding is to be determined for five year periods by an agreed-to Base Year with annual adjustments through a negotiated formula. The formula takes into account population increases, inflation and special circumstances. Special project and capital funding is negotiated on a yearly basis.

The Crees report that agreement was reached on the 1984-1985 Base Year and payments for the 1984-1985 fiscal year were received. The receipt of these funds represented the first implementation of the block funding concept. The following year the Crees received only the Base Year funding and agreement has not yet been reached on negotiating the funding formula.

The Crees and the Department of Indian Affairs also disagree on how negotiations for additional funding will take place. The Crees want direct access to the Treasury Board, while the Department supports a process wherein it makes representations to the Treasury Board based on Cree needs.

The source of financing for the Cree Regional Authority derives, in part, from allocations which it receives for the administration of some federal programs, but most importantly from the funds it receives from the Board of Compensation. The Board of Compensation was set up to manage the monies received by the Cree and Naskapi in compensation for their land.

4. The Kativik Act

The James Bay and Northern Quebec Agreement provided for the enactment by the province of legislation establishing municipal community government and municipal regional government. The *Act Concerning Northern Villages and the Kativik Regional Government* was assented to on 23 June 1978. The *Act* applies to the territory of Quebec situated north of the fifty-fifth parallel. The *Kativik Act* and the institutions created by it are not of an ethnic character. Local and

regional governments represent municipalities in which all residents, aboriginal and non-aboriginal, may vote, be elected and otherwise participate.

Administrative Structure

Part I of the *Act* refers to the local level of government. Inuit settlements became, after receiving letters-patent, "Northern Village Municipalities". The inhabitants and ratepayers of every municipality form a corporation. Northern village municipal corporations may:

- enter into contracts and agreements;
- purchase lands and property for municipal purposes;
- found, maintain, assist, and subsidize bodies for industrial, commercial or tourist promotion; and
- assist in the furtherance of any social welfare enterprise of the population.

Northern village municipal corporations are managed by an elected council. The *Act* outlines qualifications for municipal office, composition of the council, elections and procedures for passing and enforcing by-laws.

General Legislative Powers

Municipalities are empowered to make by-laws to secure the peace, order, good government, health, general welfare and improvement of the municipality. Municipalities have powers to make by-laws concerning:

- zoning and land use planning to the extent that by-laws do not affect the rights of Inuit Landholding Corporations;
- expropriation subject to the regulations of the *Act*;
- taxation for local purposes;
- regulation of buildings and other structures;
- public health and hygiene;
- parks, recreation and culture;
- regulation of roads, traffic and transportation; and
- public works.

By-laws may not be contrary to the laws of Canada or of Quebec, or inconsistent with any special provision of the *Kativik Act*. Municipal council by-laws shall not be contrary to the ordinances of the Regional

Government in matters of joint competence. The Quebec Minister of Municipal Affairs is empowered to disallow any by-law.

Regional Organizations

Part II of the *Kativik Act* creates the Kativik Regional Government. Kativik has the powers of a northern village municipality, described in Part I of the *Act*, over those parts of the territory that are not erected as municipalities; and it exercises regional powers, described in Part II of the *Act*, over the whole Territory including the municipalities. Kativik has the general powers of a corporation under the Civil Code of Quebec and in addition it is competent in matters of:

- local administration and assistance to northern village municipalities;
- transport and communications;
- regional police; and
- advising the provincial government about manpower training and utilization.

Kativik's internal structure, operation and procedures for making by-laws and ordinances are set out in the *Act*. Kativik is governed by a council and an executive committee; the administration of its business is governed by officers (manager, secretary and treasurer) and by department. The council is composed of regional councillors elected by the municipalities.

Certain provisions of the James Bay and Northern Quebec Agreement, not incorporated in the *Kativik Act*, give Kativik additional functions, including:

- administration of the Inuit hunting, fishing and trapping support program;
- acting as a regional health and social service council charged with promoting the advancement of public health; and
- acting in an advisory capacity in matters related to the administration of justice, protection of the environment, the Kativik School Board, and the Kativik Regional Development Council.

Kativik has paramountcy in relation to municipal by-laws. It has the power to establish minimum standards for building and road construction, sanitary conditions, water pollution and sewerage. It may establish radio and television aerials, public transportation services and a regional police force for the enforcement of its ordinances and of other laws.

Subject to the powers of federal and provincial governments, Kativik may make laws governing harvesting activities and hunting and fishing by non-natives.

The Quebec Minister of Municipal Affairs is empowered to disallow any by-law passed by Kativik.

Application of Federal and Provincial Laws

The laws of Quebec apply to the Northern village municipalities and to the Kativik Regional Government insofar as they are applicable thereto and do not derogate from the *Kativik Act*.

Financing

Municipalities have powers to tax business establishments, stock in trade, rent paid by tenants, property owners and to issue business licenses and building permits. Municipal budgets must be transmitted to the Minister and to the Regional Government.

Taxation powers granted to Kativik include the right to municipal-type powers on lands outside Northern village municipal boundaries, and the right to a tax on each municipality equivalent to an aliquot share of a proportion of Kativik's expenses.

With respect to external financing, Kativik must submit budgetary proposals which incorporate provisions for projects and activities to the appropriate provincial ministries. As a result, Kativik negotiates its annual budget with seven Quebec departments. The ministers of these departments retain the final word over funding for proposals submitted.

B. ANNOTATED BIBLIOGRAPHY: EXISTING ARRANGEMENTS FOR ABORIGINAL SELF-GOVERNMENT

1. Negotiating Aboriginal Self-Government

Alberta. Native Affairs Secretariat. *The Metis Betterment Act: History and Current Status*. Background Paper No. 6. Edmonton, Alberta: Policy and Planning Branch, Native Affairs Secretariat; March 1985; 9 p.

This paper provides a brief history to the enactment of Alberta's *Metis Population Betterment Act* passed in 1938, which resulted in the establishment of eight Metis settlements in that province. The paper considers the review of the Act by a joint Metis and Government committee, and gives a brief overview of the settlements at present.

Canada. Department of Indian Affairs and Northern Development. *Indian Self-Government Community Negotiations Information Kit*. Ottawa: Department of Indian Affairs and Northern Development; 1987; 42 p.

This material provides information on the Department of Indian Affairs' current policy on community self-government negotiations. It includes a short description of the community negotiations process, a list of questions and answers on community negotiations, and a policy statement on Indian self-government in Canada.

Cowie, Ian B. *Future Issues of Jurisdiction and Coordination Between Aboriginal and Non-Aboriginal Governments*. Background Paper No. 13. Kingston, Ontario: Institute of Intergovernmental Relations, Queen's University; 1987; viii, 48 p.

This paper focuses on issues relating to jurisdictional interface and policy coordination between aboriginal and non-aboriginal governments. The study identifies jurisdictional sectors which might be discussed in negotiations, and describes a proto-typical negotiation process. A third section outlines current federal and provincial jurisdiction and occupation of the sectors involved. The paper recommends that a planning and review body be established to avoid potential jurisdictional conflicts and to act as a clearing house.

Dyck, Noel. "Representation and Leadership of a Provincial Indian Association". In: Adrian Tanner. *The Politics of Indianess: Case Studies of Native Ethnopolitics in Canada*. Social and Economic Papers No. 12. St. John's, Newfoundland: Institute of Social and

Economic Research, Memorial University of Newfoundland; 1983: 197-305.

Dyck's study examines the activities of the Federation of Saskatchewan Indians between 1969 and 1973, at a time when the leaders were transforming a small voluntary association into a sophisticated organization for representing a united provincial Indian constituency. A major focus of the paper is the leaders' attempts to resolve difficulties posed by the ethnic and linguistic discreteness of bands, highly localized band identities, and the geographical separation of reserves.

Feit, Harvey A. "Legitimation and Autonomy in James Bay Cree Responses to Hydro-electric Development". In: Noel Dyck. *Indigenous Peoples and the Nation-State: "Fourth world" Politics in Canada, Australia and Norway*. Social and Economic Papers No. 14. St. John's, Newfoundland: Institute of Social and Economic Research, Memorial University of Newfoundland; 1985: 27-66.

Feit's essay considers the process by which Cree communities in Northern Quebec organized to oppose the construction of a hydro-electric development on their hunting and trapping territories. Feit rejects the claim that the Cree were manipulated by either their leaders or by non-native advisors, and he also shows how the Cree resolved the dilemma of negotiating mechanisms by choosing one that reconciled pragmatic effectiveness with existing Cree notions of legitimate leadership.

LaRusic, Ignatius E. *Negotiating a Way of Life: Initial Cree Experience with the Administrative Structure Arising from the James Bay Agreement*. Ottawa: Research Division, Policy Research and Evaluation Group, Department of Indian Affairs and Northern Development; 1979; 178 p.

Focusing on the administrative structures emerging in the late 1970s from the James Bay Agreement, this study discusses the effects of the Agreement for the Cree. The first paper examines the way the tone of the negotiations affected present operations. The second reviews the new structure in operation, and the third looks at the effect of the Agreement on local communities.

Metis Association of Alberta. *Metis Self-Government in Alberta: Principles and Parameters*. Edmonton, Alberta: Metis Association of Alberta; October 1986; 35 p.

This paper presents the principles and parameters of Metis self-government in Alberta, distilled from the work of the Metis

Association of Alberta and the Metis National Council in the constitutional process. It establishes a framework identifying critical elements of self-government agreements.

Richardson, Boyce. *Strangers Devour the Land: the Cree Hunters of the James Bay Area versus Premier Bourassa and the James Bay Development Corporation*. Toronto: MacMillan of Canada; 1975; xvii, 355 p.

Richardson, a journalist with the *Montreal Star*, documented the negotiating process entered into by the James Bay Cree between 1971, when the James Bay Development Corporation announced that it would build a series of dams and reservoirs in the area, and 1974, when the Agreement in Principle was signed and ratified by the Cree communities. The book describes the sequence of events, the process of organization of the Cree, and the views of hunters and negotiators.

Sanderson, Sol. "Preparations for Indian Government in Saskatchewan". In: Leroy Little Bear, Menno Boldt and J. Anthony Long. *Pathways to Self-Determination: Canadian Indians and the Canadian State*. Toronto: University of Toronto Press; 1984: 152-158.

In this article Sanderson describes how the Federation of Saskatchewan Indians (now the Federation of Saskatchewan Indian Nations) established the organizational structure to exercise its jurisdictional authority in Saskatchewan. At the same time, they worked to strengthen the internal authority of bands by reasserting traditional institutions such as chieftainship.

Taylor, John Leonard. *Indian Band Self-Government in the 1960s: A Case Study of Walpole Island*. Ottawa: Treaties and Historical Research Centre, Department of Indian Affairs and Northern Development; 1984; 153 p.

In 1965, the Walpole Island Band in southwest Ontario embarked on an experiment then unique among Indian bands in Canada, to govern themselves for a trial period of one year through their elected Chief and Council, without the superintendance of an Indian agent. This is a case study of that event. It represents an example of negotiating self-government under the *Indian Act*.

2. Implementing Aboriginal Self-Government

Canada. Department of Indian Affairs and Northern Development. *James Bay and Northern Quebec Agreement Implementation Review*. (Tait Report). Ottawa: Supply and Services; 1982; 126 p.

This is a report on the review of the implementation of the *James Bay and Northern Quebec Agreement*. The review was a response to the allegations of the Cree and the Inuit of James Bay and northern Quebec that Canada and Quebec had not fulfilled their legal and moral responsibilities with respect to the Agreement. The nature of the problems experienced by the Crees and Inuit demonstrate some of the differing implications of alternative structures for aboriginal self-government in economic development.

Delisle, Andrew. "How We Regained Control Over Our Lives and Territories: The Kahnawake Story". In: Leroy Little Bear, Menno Boldt, and J. Anthony Long. *Pathways to Self-Determination: Canadian Indians and the Canadian State*. Toronto: University of Toronto Press; 1984: 141-147.

In this essay Delisle discusses how his people, the Mohawks, have taken steps toward acquiring control over health care, policing and other services on their reserve. He argues that Indians must be innovative and assertive in their interpretation of the *Indian Act* if they want to progress toward self-determination.

Grand Council of Crees (of Quebec), the Cree Regional Authority and Eight Cree Bands of Quebec. *Brief Presented to the Standing Committee of the House of Commons on Indian Affairs and Northern Development*; December 3, 1985; 52 p.

This brief outlines some of the problems the Crees have faced in implementing the *Cree-Naskapi (of Quebec) Act*. Attached are letters documenting areas of disagreement, as well as a copy of the *Statement of Understanding* regarding financing signed by representatives of the Crees and Naskapi and the Minister of Indian Affairs.

Hawkes, David C. and Evelyn J. Peters. *Implementing Aboriginal Self-Government: Problems and Prospects*. Workshop Report. Kingston, Ontario: Institute of Intergovernmental Relations, Queen's University; 1986; 83 p.

This is the report on the Workshop organized by the Institute of Intergovernmental Relations in May 1986, to address practical issues in implementing aboriginal self-government. Workshop sessions were animated by case studies of existing self-government arrangements. The report summarizes recommendations from participants' experiences in negotiating and implementing self-government.

LaRusic, Ignatius E. *Negotiating a Way of Life: Initial Cree Experience with the Administrative Structure Arising from the James Bay*

Agreement. Ottawa: Research Division, Policy Research and Evaluation Group, Department of Indian Affairs and Northern Development; 1979; 178 p. (see abstract, p. 20).

Makivik Corporation. *The James Bay and Northern Quebec Agreement: Ten Years of Disagreement*. Kujjuaq: Makivik Corporation; November 1985; 28 p.

This report outlines a number of issues, particularly in the area of economic development, where the James Bay Agreement has not been fully implemented. The report also demonstrates problems with some of the government structures put in place at the time of the Agreement. Many of these structures have been found to be either inadequate or too complex. A final section outlines the lessons learned after ten years of attempting to implement the James Bay Agreement.

Penner, Keith. *Indian Self-Government*. Report of the Special Committee on Indian Self-Government. (Penner Report). Ottawa: Supply and Services; 1983; 203 p.

The Special Committee on Indian Self-Government was struck in December 1982, and made its final report to the House of Commons in October 1983. The report contains recommendations for the: constitutional provision of Indian self-government; resolution of land claims consistent with the protection of aboriginal and treaty rights in the constitution; and phasing out of the Department of Indian Affairs. The implementation problems which follow from the recommendations are not addressed.

Rostaing, Jean-Pierre. "Native Regional Autonomy: The Initial Experience of the Kativik Regional Government". *Etudes/Inuit/Studies*; 1984; 8(2): 3-39. Rostaing provides a detailed analysis of the Kativik Regional Government in the early 1980s. The introduction places the development of Kativik into an historical context of the political development of the Inuit in northern Quebec. Rostaing then examines the legal nature and powers of Kativik within the government framework of the Province of Quebec, and moves on to describe and analyze Kativik's initial years of operation.

Salisbury, Richard F. *A Homeland for the Cree: Regional Development in James Bay, 1971-1981*. Kingston, Ontario: McGill-Queen's University Press; 1986; xii, 172 p.

The author compares Cree society in 1971 with that society a decade later. Among the most critical changes have been the provision of

modern services in education, health care, communications and justice, and the cooperation of bands to form a Cree Regional Authority. The establishment of the Cree Regional Authority has enabled local people to assume control of the planning and administration of services, in a way not feasible for individual bands.

Van Wyck, Sheila M. *Walpole Island: The Struggle for Self-Sufficiency*. Occasional Paper No. 3. Wallaceburg, Ontario: Walpole Island Research Centre; 1984; 61 p.

This occasional paper comprises the proceedings of a panel presentation by members of the Walpole Island Council and NIN.DA.WAAB.JIG researchers to the Society of Applied Anthropology Annual Meeting in Toronto. The panel papers deal with the socio-political and economic development of the Walpole Island Indian community.

PART II: ABORIGINAL SELF-GOVERNMENT IN SPECIFIC POLICY AREAS

A. SELF-GOVERNMENT IN EDUCATION

1. Summary of Some Existing Arrangements

The cases in this section illustrate a number of strategies adopted by various aboriginal peoples' organizations to deal with issues in education.

- The Gabriel Dumont Institute represents an approach to education for Metis and Non-Status Indian education at the provincial level.
- The Saskatchewan Indian Federated College illustrates some of the issues concerning post-secondary education for Status Indians.
- The Cree School Board, established through the James Bay Agreement, is a school board under provincial jurisdiction, with a special mandate to ensure that educational programs are culturally relevant.

The bibliography following this section includes work which gives a broad overview of the state of aboriginal education in Canada, as well as work which documents problems encountered by groups attempting to take control of the education of their children.

a) Gabriel Dumont Institute of Native Studies and Applied Research

Overview

The Gabriel Dumont Institute is the educational arm of the Association of Metis and Non-Status Indians of Saskatchewan (AMNSIS). The Institute's goal is to promote the renewal and development of Native culture. This is accomplished through appropriate research activities, material development and the collection and distribution of these materials by the Institute. The Institute is also responsible for the design, development and delivery of specific educational and cultural programs and services. Sufficient numbers of Metis and Non-Status Indian people will be trained to make the goal of self-government a reality.

The Gabriel Dumont Institute was established in May 1980. Planning for the Institute began at a 1976 cultural conference organized by AMNSIS. The main conclusion of the conference was that AMNSIS should work to establish a major educational and cultural program, which would take the form of a native studies, cultural and research institute. The Institute's mandate is a "peoples' mandate" and represents a compilation of resolutions passed in 1976 and at three other educational conferences in which the membership was actively involved in planning exercises.

Educational programming of the Institute is based upon three principles:

- all training and professional education must be fully accredited and recognized;
- all activities, whether in the area of research, curriculum development, library service or in the provision of post-secondary education, must be of the highest quality; and
- all of the activities are directed toward the self-determination of the Metis and Non-Status Indian people.

Administrative Structure

The Institute is incorporated under the *Non-Profit Corporations Act* of Saskatchewan. It is governed by a management board composed of 23 members - four representatives from AMNSIS, one from each of the eleven AMNSIS areas, two from the Native Women's Association, one from each university in the province, one from each of the federal and provincial governments, and two student representatives.

This board meets six times yearly to determine policy and to supervise the affairs of the Institute. A four person Executive Committee is entrusted by the board to oversee policy implementation in the Institute in conjunction with the Executive Director.

All persons who are members of AMNSIS are members of the Institute. AMNSIS locals appoint delegates entitled to vote at annual general meetings.

Financing

The Institute is funded by the Government of Saskatchewan's Departments of Education and Advanced Education and Manpower, with supplementary funding for certain of its program offerings from the Secretary of State and from Employment and Immigration Canada.

Educational Program and Responsibilities

Core elements which serve all of the educational initiatives of the Institute include: planning and program development; research; a library and resource network; a curriculum development unit; communication and extension services; and an administration unit. A comprehensive plan for aboriginal language enhancement is currently being developed and future plans include the development of a Metis historical archives.

The Saskatchewan Urban Native Teacher Education Program (SUNTEP) is an off-campus program offered through the Gabriel Dumont Institute in co-operation with the Department of Education, the University of Saskatchewan and the University of Regina.

The Saskatchewan Training for Employment Program (STEP) provides training in several centres throughout Saskatchewan. Programs are accredited and certified through universities and technical schools. Where possible, "competency-based" learning is utilized, so that students can be given credit for existing skills. Courses change as job markets change.

Directions for the Future

The draft paper on education prepared for the 1986 AMNSIS Cultural Conference outlined strategies toward self-government in education for the AMNSIS/Dumont network.

Short-Term (3 years) Plan of Action

- In the Kindergarten to Grade 12 system, measures needed to bring Metis and Non-Status Indian students into the school system include: equal representation of Aboriginal teachers, Aboriginal language instruction, Native Studies in core curricula, Native representation on school boards, Native library materials in all school libraries, Native parent/teacher groups, Native control of Community school programs.
- In community colleges, measures needed are: the establishment of a Native community college with local access and control, and increased community college spaces for Metis and Non-Status Indian students in general.
- New training spaces are needed in technical institutes through federated agreements with all provincial technical institutes, and through a master agreement for direct training allocation among the Institute, the Canadian Employment and Immigration Advisory Council and the Saskatchewan Department of Advanced Education and Manpower.
- In universities, new training places should be created through the expansion of SUNTEP-type programs, and through federated agreements with provincial universities.

Long-Term (post 1990) Plan of Action

- The establishment of a Metis/Non-Status Indian Kindergarten to Grade 12 school system where numbers warrant, with powers similar

to existing separate school systems. Regional high schools may be established where numbers warrant.

Metis/Non-Status Indian Community Colleges, with literacy tutoring, lifeskills, and cultural/community programs, locally-controlled and accessed.

Development will continue toward achievement of a Native-controlled technical institute.

Federated College status with provincial, national and international universities. Two main delivery forms will be used: decentralized, or local program delivery; and reserving a percentage of seats for native students in Canadian universities in all academic areas.

b) The Saskatchewan Indian Federated College

Overview

The Saskatchewan Indian Federated College (SIFC) is a post-secondary institution under Indian jurisdiction, which offers accredited university degree programs designed to meet the needs of Indian people. The College, which is federated with the University of Regina, became a reality in May 1976. Although it is administratively independent of the University, the College is academically integrated.

The objective of the Saskatchewan Indian Federated College is to enhance the quality of life and to preserve, protect and interpret the history, language, culture and artistic heritage of Indian people. The College will acquire and expand its base of knowledge and understanding in the best interests of the Indian people, and for the general benefit of society by providing opportunities for quality bi-lingual, bi-cultural education under the mandate and control of the Indian Nations of Saskatchewan.

Administrative Structure

The College's administration falls under the terms of the SIFC Act enacted in 1986 by the Executive Council of the Indian Governments of Saskatchewan, and the terms for the Federation Agreement of the College and the University of Regina.

The Board of Governors of the College is the instrument of guidance for the College. The Board is comprised of ten elected Chiefs and representatives and two Senators. The two universities in Saskatchewan are also represented on the Board to provide assistance regarding College policies. The Federal and Provincial governments have membership on the Board to provide the necessary background on government policies

as they relate to education. Student representatives from the Regina and Saskatoon campuses sit on the Board.

Financing

In July 1981, the Department of Indian Affairs concluded a five-year agreement with the Federation of Saskatchewan Indians under the terms of which the Department covered the tuition costs of registered Indian students enrolled at the college. Under the terms of a similar agreement with the province of Saskatchewan, the College received further financial support for its operations.

Because the adult education budget of the Department of Indian Affairs lacks any statutory sanction, funding is essentially discretionary in nature. As a result, long term funding is uncertain.

Educational Program and Responsibilities

The College offers a University Entrance Program for students who lack full admission requirements to the University.

Under the pre-professional program, students may register with the College to take their initial year(s) in a number of pre-professional programs. The remainder of the program is taken with the appropriate professional school.

The College offers programs leading to Bachelor degrees in a number of disciplines through the faculties of SIFC-Arts, SIFC-Science, SIFC-Social Work and SIFC-Education. Degrees and certificates obtained are those granted by the University of Regina.

The Department of Indian Management and Administration offers a Certificate in Administration and a two-year Diploma of Associate in Administration.

Through the Department of Continuing Education/Extension, bands or other groups may request single classes on various subjects, or any of the following programs:

- Bachelor of Education - Elementary (Indian)
- Continuing Education
- Indian Career and Guidance Counselling
- Indian Social Work
- Administration
- Data Processing
- Public Relations

The Indian Health Careers Program is a bridging and pre-professional program which prepares individuals for entry to health professional and allied health programs offered by various post-secondary institutions.

Directions for the Future

The College is in the process of enhancing its Indian Management and Administration Program by adding a Business School component. Areas where the College hopes to become involved in the future are Human Services (i.e., Child and Family Services), Graduate Studies, an Indian Justice Program, and programs supporting the traditional livelihoods of hunting, fishing, trapping and agriculture.

c) The Cree School Board

Overview

Signed by Ottawa, Quebec, and representatives of the Cree nation in 1975, the James Bay and Northern Quebec Agreement included provisions (Section 16) for establishing the Cree School Board. The Cree School Board was approved formally by Quebec legislation in June 1978. The *Quebec Education Act* and all other applicable provincial powers apply to the Board except where inconsistent with the *Cree/Naskapi Act*. The Cree School Board, although it comes under Quebec jurisdiction and is essentially similar to other Quebec school boards, is endowed with special powers and a special mandate to ensure that education programs are culturally relevant.

After a transitional two years of operation prior to legislation, the Cree School Board assumed responsibility in August, 1978 for the education of children living in eight Cree communities in the James Bay Territory and, through the Adult Education department, for their parents and other Cree adults. Since that time, the Cree School Board has administered the educational needs of the Cree nation through an administrative and teaching staff which numbers 190 teachers and some 60 administrative, support and professional staff. Slightly fewer than 1000 students attend eight schools in the territory administered by the Cree School Board.

Administrative Structure

The Cree School Board is composed of one school commissioner appointed by or elected from each of the eight Cree communities, and

one commissioner designated by the Grand Council of the Crees from among its members.

According to the James Bay Agreement (Section 16), the Cree School Board shall establish elementary and high school committees which shall be consultative.

There will be one elementary school committee for each community in which there is at least one such school, and one high school committee for each community in which there is a high school.

Each school committee shall be composed of from five to eleven members, including one member of, or appointed by, the band council. The number of parents on the school committee shall be fixed annually by a general assembly of the parents of the students attending the schools concerned.

Financing

Section 16 of the James Bay Agreement identifies the following funding arrangements for the Cree School Board:

- programs and funding by Quebec and Canada shall continue subject to the Agreement with no decrease in educational services presently available. The operational and capital funding necessary to ensure services will be provided by Quebec and Canada;
- funding will be provided according to a formula determined by the Quebec Department of Education, the Department of Indian Affairs, and the Crees. Canada will contribute 75 per cent of the approved budget, Quebec will contribute the remaining 25 per cent;
- the Cree School Board will not be obliged to levy taxes; and
- the budget of the Cree School Board shall take into account the unique characteristics of its geographic location and student population.

The Crees indicate that these principles have not been implemented, especially in the areas of providing sufficient funding, and of Cree participation in negotiations for appropriate levels of funding. As a result, the Cree School Board cannot completely fulfill its mandate.

Educational Programs and Responsibilities

The responsibilities of the Cree School Board are numerous, and appropriate for the eventual development of an education program which will meet the needs of Cree people and their culture. Among other

things, Section 16 identifies the following areas critical to the development of any Indian education program:

- the selection of courses, textbooks and teaching materials appropriate for the Native people and their experimental use, evaluation and eventual approval;
- the development of courses, textbooks and materials designed to preserve and transmit the language and culture of the Native people;
- the making of agreements with universities, colleges, institutions or individuals for the development of the courses, textbooks and materials for the programs and services that it offers;
- the establishment of courses and training programs to qualify Native persons as teachers;
- the establishment of courses and training programs for Non-Native persons who will teach in its schools;
- the making of agreements with universities, colleges, institutions or individuals to provide training for the Cree School Board's teachers and prospective teachers.
- the use of Cree as a language of instruction along with a choice of English or French (although the Cree agreed to the long-term goal of preparing pupils for post-secondary education in French);
- the hiring of Crees as teachers even where they did not have the same qualifications as are required elsewhere in the province; and modifications to the school calendar.

Directions for the Future

Harvey McCue, Director of Education for the Cree School Board recommended that, in order to ensure that Indian self-government will contribute to progress in Indian education, it will be necessary to remove the control and administration of Indian education from the Department of Indian Affairs and place that control and administration in an Agency or Institution whose sole raison d'être is Indian education.

Such an Agency would have some of the following features:

- funding would be based on the historical, legal and moral obligation borne by Ottawa toward Indian education;
- a research component would examine and test a range of educational issues including the search for appropriate pupil-teacher ratios for Indian schools; the integration of Indian values in curricula, pedagogy, and teaching resources; the design of curricula to meet local needs; the learning styles of Indian children, plus many others;

- a development component would be required to develop and prepare a range of education programs related to the research component and the needs of schools as expressed by local representatives. These would include the development of adult and continuing education programs to meet local needs, and the development of secondary and post-secondary programs as they relate to local needs; and
- the Agency would operate independently of any existing government agency or department at either the federal or provincial level.

McCue argues that through the provision of different programs, pedagogies, curricula, and teaching resources, this Agency could provide the choice and the power for Indian communities to set their own education goals and objectives, in full knowledge that the tools would be provided to enable their children to attain them. He indicates this type of agency is necessary because:

- the Department of Indian Affairs, which has exercised the Federal responsibility to Indian education during this century, has proven itself incapable of meeting the educational needs of Indian people; and
- provincial Ministries of Education are not geared to respond positively to the massive and basic needs which must be met before Indian education improves.

2. Annotated Bibliography: Self-Government In Education

Allison, Derek J. "Fourth World Education in Canada and the Faltering Promise of Native Teacher Education Programs". *Journal of Canadian Studies*; 1983; 18(3): 102-118.

The author begins by outlining the current institutional structures underlying the provision of school services for aboriginal students. Recent policy developments are then described and their effect on the development of aboriginal teacher education programs considered. The final section of the paper concentrates on weaknesses in these programs which undermine their initial promise. The conclusion comments on appropriate future initiatives.

Hull, Jeremy. *An Overview of the Educational Characteristics of Registered Indians in Canada*. Report prepared for the Department of Indian Affairs and Northern Development. Winnipeg: The Working Margins Consulting Group; 1986; xxiv, 221 p.

This overview draws on data from 1981 Census customized tabulations and other sources. The study examines on-reserve schooling at the elementary and secondary levels; socio-economic factors which may affect childrens' success in the schools, post-secondary training and education, the educational attainment of adults, and DIAND's educational expenditures.

ing, Richard A. "Role Shock in Local Community Development Dynamics". *Canadian Journal of Education*; 1981; 6(4): 56-76.

This paper describes the experience of a relatively remote, affluent Indian reserve in taking control of their day school which operated to the Grade 8 level. It illustrates how the unanticipated emergence of role shock among teachers and administrators, arising from the difficulty of creating new ways of running a school, inhibited the expected positive results from autonomous local control of schooling.

McCue, Harvey A. *Self-Government in Education: The Case of the Cree School Board*. Notes for a paper presented to the Workshop on "Implementing Self-Government". Kingston, Ontario: Institute of Intergovernmental Relations, Queen's University; May 29, 1986; 27 p.

McCue describes some of the problems emerging from the James Bay Agreement legislation regarding education for the Cree. Problems include lack of recognition by the province of higher costs of providing native education in the north, and lack of provincial expertise in administering native education. As a result the Cree School Board faces funding shortages and inadequate provincial education programs. In light of these problems, McCue argues against transferring responsibility over Indian education from Ottawa to the provinces, and calls for the establishment of an independent agency for the development of Indian education.

National Indian Brotherhood. *Indian Control of Indian Education*. Policy paper presented to the Minister of Indian Affairs and Northern Development. Winnipeg: National Indian Brotherhood; 1972.

This paper argues for Indian control of Indian education on the basis of such points as: the need to incorporate aspects of Indian culture into schools; the need for greater parental involvement; the need for greater local accountability; the need to integrate education with other aspects of local development; and the rights of Indian parents to determine the type of education to be provided for their children.

Paquette, Jerry. *Aboriginal Self-Government and Education in Canada*. Background Paper No. 10. Kingston, Ontario: Institute of Intergovernmental Relations, Queen's University; 1986; xvi, 120 p. Paquette integrates a comprehensive review of the *status quo* in Canadian aboriginal education policy with extensive analysis of critical issues in that educational arena. Considerations of governance arrangements, finance, educational program policy, environmental factors, and the political economy of contemporary Canadian aboriginal education lead to a review of available policy options. These options are measured against the criteria of perceived legitimacy, feasibility and political supportability.

Tanner, Adrian. *Establishing a Native Language Education Policy: A Study Based on the Views of Cree Parents in the James Bay Region of Quebec*. Unpublished report to the Cree School Board of Quebec; 1981; 88 p.

This study outlines some of the issues involved in establishing a native language education policy for Cree schools in the James Bay area, and reports on a survey of parents' wishes regarding Cree language instruction in the schools.

Wyatt, June D. "The Mt. Currie Indian Community School: Innovation and Endurance". *Canadian Journal of Education*; 1985; 10(3): 250-272.

Wyatt describes the transformation of the Mt. Currie school in British Columbia into a locally controlled aboriginal institution. Using interview data to review the changing role relationship of School Board and staff, the analysis reveals concerns in common with community educational ventures across North America. In addition however, the study examines concerns with integrating contemporary non-aboriginal and aboriginal role relationships, unique to aboriginal communities.

B. SELF-GOVERNMENT IN LAND AND RESOURCES

1. Summary of Some Existing Arrangements

The following section summarizes several approaches to jurisdiction over land, resources and the environment for aboriginal people. Existing regimes are represented by *The Indian Act* and acts and regulations in the context of the *Act*, the James Bay and Northern Quebec Agreement, the Western Arctic Claims Agreement, and the *Sechelt Indian Band Self-Government Act*. While no legislation has yet been introduced for the creation of Nunavut, the Nunavut proposal is reviewed here.

- The *Indian Act* demonstrates jurisdiction for Status Indians on most reserves, with differences by province due to different provincial legislation over resources and environmental management.
- The James Bay and Northern Quebec Agreement and the *Sechelt Act* are tripartite agreements. The James Bay Agreement (1975) was the first of the modern land claims agreements; it provided for further legislation regarding self-government. The *Sechelt Act* (1986) is not linked to land claims but focuses on self-government.
- The Western Arctic Claims Agreement (1984) is primarily a land claims settlement, involving negotiations between the Inuvialuit and the federal government. The Inuvialuit proposal for the creation of a Western Arctic Regional Municipality (WARM), which was included in the agreement in principle in 1978, was dropped in the final agreement, in anticipation of development of self-government in the Northwest Territories.
- The *Nunavut* proposal is for a Territorial-type government above the tree-line in the present Northwest Territories. Questions concerning jurisdiction over off-shore resources, have received special emphasis in Nunavut discussions.

a) Jurisdiction of Land, Resources and Environment Under the Indian Act

The Federal Government has exclusive jurisdiction over Indian reserve lands and resources, subject to federal-provincial agreements and other constitutional arrangements. The *Indian Act* vests powers over the management and disposition of Indian lands and resources in the Department of Indian Affairs. The Governor-in-Council may grant bands rights to control band lands.

Section 88 of the *Indian Act* affords a general grant of jurisdiction to provincial governments. Provinces can levy taxes on Indian resources,

authorize access to Indian reserves, and can expropriate reserve lands with federal consent.

Band lands cannot be alienated without surrender: a band has the powers to surrender or not surrender lands. Subject to the approval of the Minister, band councils may make by-laws regarding water supplies, land use and zoning, and taxation of reserve lands.

Within the context of the *Indian Act*, a number of acts and regulations grant jurisdiction with respect to resources and the environment.

The administration of timber is vested in the Department of Indian Affairs under section 57 of the *Indian Act*. No powers of management whatever are conferred on the band or band council.

The *Indian Mining Regulations* (1986) provide for the administration and disposition of minerals by the Chief of the Minerals Division, Department of Indian Affairs. The principal mechanisms of control available to bands are refusing to surrender the minerals and thereby vetoing development, or of imposing conditions upon the surrender. Section 57(4) of the *Indian Act* provides that sand and gravel may be disposed of without a surrender, with the consent of the band council. The Minister may issue temporary permits where consent cannot be obtained without undue difficulty or delay.

The *Indian Oil and Gas Act* confers a general authority upon the Governor-in-Council to make regulations "for the exploitation of oil and gas in Indian lands". Bands must be consulted. Control by bands can arise in the imposition of terms and conditions of surrender.

Paragraph 73(1)(a) of the *Indian Act* provides that the Governor-in-Council may make regulation "for the protection of fur-bearing animals, fish and other game on reserves". A Band Council may make by-laws regarding wildlife on the reserve, subject to the power of disallowance of the Minister.

b) Jurisdiction of Land, Resources and Environment under the James Bay and Northern Quebec Agreement

The Agreement distinguishes several main classes of land with respect to the allocation of title, resources and interest in land. The land regimes for the Cree and Inuit differ marginally. The following focuses on the Cree.

Proprietary Jurisdiction

Category IB Cree lands are under provincial jurisdiction, the title to which is vested in "public corporations of a municipal character".

Minerals and subsurface rights remain with the province, with the exception of materials used for traditional native arts and crafts.

Category IA and IA-N lands are set aside for the "exclusive use and benefit" of the respective James Bay Cree bands. Quebec retains ownership of mineral and subsurface rights. The "administration, management and control" of these lands are vested in Canada. In the event of a disposition of Category IA lands to a non-native for a period in excess of five years, the lands become subject to provincial jurisdiction.

Cree communities must obtain permits to use gravel for "earthworks for personal and community use"; however, such permits cannot be withheld if all the provincial regulations are observed. For commercial forest exploitation, Cree communities must obtain cutting rights or permits from the Quebec Department of Lands and Forests. Grants which comply with the Department's development and marketing plan guidelines cannot be withheld.

Existing mineral interests and the "seashore, beds and shores of the lakes and rivers" were excluded from Category I land.

Access and Security of Tenure

The ownership of minerals and sub-surface rights does not entitle the Province to enter and work, or to authorize such entry. The consent of the interested community must be obtained and compensation agreed upon. However the Agreement declares the right of Quebec to impose servitudes for infrastructure for resource development and for public utilities, pipelines and transmission lines, and to impose temporary servitudes for existing mining interests surrounded by or adjacent to Category I lands. Quebec may expropriate Category I lands where a servitude would not suffice for a desired purpose. The Agreement declares that, subject to the prior consent of the Governor-in-Council, nothing "shall be interpreted in any way as limiting the power of Canada to expropriate for public purposes".

Legislative Powers

The principal powers conferred upon the Cree with respect to surface rights on Category IB lands are powers to grant leases, servitudes, usufructs and other rights of use or occupation. Cree corporations have powers to make by-laws respecting protection of the environment and natural resources with more stringent requirements than those provided by provincial and federal laws and regulations. By-laws must be consistent with applicable legislation and Quebec's ownership of minerals

d subsurface rights. By-laws shall in no way restrict existing development in the municipality or development outside.

The *Cree-Naskapi (of Quebec) Act* of 1984 conferred powers on band councils regarding Category IA and IA-N lands. Under the *Act* each of the nine Cree and Naskapi bands are incorporated with by-law powers similar to a local government under provincial legislation. The objects of band are:

- to act as the local government authority on its Category IA or IA-N land;
- to use, manage, administer and regulate its Category IA or IA-N lands and the natural resources thereof; and
- to control the disposition of rights and interests in its Category IA or IA-N lands and in the natural resources thereof.

A band has powers to make by-laws respecting the protection of the environment, the prevention of pollution and the regulation of hunting, fishing and trapping. A band is empowered to impose "taxation for local purposes" upon interests in its Category IA and IA-N lands and upon Indian and Non-Indian occupiers of the land. Any local tax must be approved by the band electors and must be in accordance with regulations made by the Governor-in-Council. A band may expropriate interests in Category IA and IA-N lands, in accordance with regulations made by the Governor-in-Council.

Advisory Powers

On Category II lands, the federal or provincial government, according to jurisdiction, may make regulations governing the conservation of wildlife including the setting of quotas, after considering of the recommendation of a Co-ordinating Committee, six of whom are appointed by the aboriginal peoples and six by the governments. Subject to such regulations, Cree and Naskapi governments may make regulations, including the allocation of quotas. All such regulations are subject to disallowance by the appropriate government.

Development on all lands is subject to consideration by the James Bay Advisory Committee on the Environment on land south of the 55th parallel. The Cree may appoint four members of the thirteen member Committee. The Agreement also provides for environmental and social impact assessment and review of all developments, and for aboriginal representation upon review panels.

Surrounding Lands

The Cree have the exclusive right of hunting, fishing and trapping in their Category II lands (5,130 sq. mi.). The province has jurisdiction over Category II lands and may expropriate them for development purposes, subject to compensation in land or money. The rights of Cree and Inuit to non-renewable resources are limited, and they have little claim to restrict non-renewable resource development. Category III lands encompass areas within the territory that are not otherwise included as Category I or Category II lands. Restrictions on development and the non-renewable resource rights accruing to the native people are minimal.

c) Jurisdiction Over Land, Resources and Environment Under the Sechelt Indian Band Self-Government Act

Bill C-93 transfers the Sechelt lands in fee simple title, subject to provincial government interest, to the Sechelt Band. The lands are "lands reserved for Indians" within section 91(24) of the *Constitution Act 1867*. The lands are subject to the *Indian Act* to the extent consistent with the *Sechelt Act*, and accordingly subject to expropriation upon the consent of the Governor-in-Council.

The Band "has full power to dispose of any Sechelt lands and rights or interest therein", in accordance with the rules and procedures in the Sechelt constitution, and the recognition of existing interests.

The *Indian Act* and the *Indian Oil and Gas Act* and all federal laws of general application are applicable to the Band, its members and its lands, except to the extent of inconsistency with the *Sechelt Act*. The *Act* expressly declares that provincial laws of general application are applicable to band members, except to the extent of inconsistency with the *Act* or any treaty. The title and powers of the Band to the lands and resources are subject to the interest of the Province in the minerals of the reserve, and the powers of management thereof of the Province recognized in the *British Columbia Indian Reserves Mineral Resources Act*. Further, the conditions attached to the provincial conveyance relating to expropriation, water rights, construction materials and highways are preserved.

The Governor-in-Council may approve the inclusion in the constitution of the power to make by-laws with respect to access, residence, zoning and land use planning, expropriation for community purposes, protection and management of fur bearing animals, fish and game on Sechelt lands, "taxation for local purposes, of interests in Sechelt land, and of occupants and tenants of Sechelt lands", "the preservation and management of natural resources on Sechelt lands" and

matters related to the good government of the Band, its members or Sechelt lands”.

Under the *Act*, the Band may be granted powers outside the Sechelt reserve lands upon federal and provincial concurrence. Bill C-93 provides for the Sechelt Indian Government District “which shall have jurisdiction over all Sechelt lands”. Sechelt lands include those lands declared by the Governor-in-Council and the Lieutenant Governor-in-Council of the Province to be Sechelt lands for the purposes of the *Act*. The powers and duties of the Band may be transferred to the District by the Governor-in-Council, if provincial legislation respecting the District is in force.

d) Jurisdiction Over Land, Resources and Environment Under the Western Arctic Claims Agreement

Proprietary Jurisdiction

Under the Western Arctic Claims Agreement, section 7(1)(b), 30,000 square miles of land are granted to the Inuvialuit people fee simple absolute, excluding all minerals other than building materials, carving stones and valuable clays and earths. Section 7(1)(a) lands (5,000 sq. mi.) are granted in fee simple absolute including all minerals, subject to existing interests. Title to the lands is vested in the Inuvialuit Land Corporation. While settlement lands can be leased, they can only be sold to other Inuvialuit or to the Crown.

The Inuvialuit are granted title in fee simple absolute to the beds of all lakes, rivers and other water bodies found in Inuvialuit lands. All waters are reserved to the Crown.

Ownership of all sand and gravel on all Inuvialuit lands is vested in the Inuvialuit and accordingly is subject to administration and disposition by the Inuvialuit.

Access and Security of Tenure

All lands are subject to a one-hundred-foot right of way along the sea coast and navigable rivers. This right of way may be used by individuals for “travel, recreation or emergency”. On those lands outlined in section 7(1)(b) of the Agreement, this right of way is extended for use for sport and commercial fishing. The Inuvialuit are obliged to guarantee access to any future interests granted on section 7(1)(b) lands. In both instances, the Inuvialuit are entitled to negotiate “participation agreements” with the developer in return for such access.

The Inuvialuit lands are subject to an unfettered power of expropriation by the Governor-in-Council. Further, a government or municipality may seek to expropriate Inuvialuit land for the provision of government services where it “demonstrates a need ... to meet public convenience and necessity, and such lands cannot reasonably be obtained from other sources”. Such expropriation is subject to good faith negotiation and arbitration. Lands may also be expropriated for public road rights of way upon consultation, negotiation and arbitration.

Legislative Powers

Inuvialuit lands are subject to Federal and Territorial laws and ordinances through regulation and control by “laws of general application applicable to private lands”. The Agreement declares that “the Inuvialuit lands shall be considered, accepted and deemed not to be lands reserved for Indians”. In the event of a transfer of full legislative jurisdiction to the Territories, that Government will have exclusive jurisdiction, and will determine the extent and ambit of forms of government allowed to Inuvialuit communities.

The Inuvialuit Regional Corporation is responsible for the administration, management and supervision of Inuvialuit lands. Subject to “laws of general application”, the Agreement recognizes the rights of the Inuvialuit to administer and dispose of its land and resources, and to set its own standards of environmental protection respecting land and resource development.

Existing interests (such as oil and gas interests) on Inuvialuit lands shall continue to be administered by Canada, but the consent of the Inuvialuit is required for all discretionary decisions which affect Inuvialuit rights. The administration of existing rights must be transferred to the Inuvialuit upon agreement between the holder of the rights and the Inuvialuit.

The Inuvialuit have a preferential right to harvest all species of wildlife (except migratory non-game birds) for subsistence usage, and exclusive rights to harvest fur-bearers throughout the Inuvialuit Settlement Region. They have exclusive rights to harvest game on Inuvialuit lands and in the parks to be established on the Yukon North Slope. The rights of the Inuvialuit are subject to the laws of general application respecting public safety and conservation.

Advisory Powers

Inuvialuit are guaranteed representation on an Environmental Impact Screening Committee and Review Board, and on local and regional land

planning bodies. They are guaranteed equal representation with governments on Wildlife Management Advisory Councils for the Yukon North Slope and the Northwest Territories, and on a Fisheries Joint Management Committee. The Inuvialuit Game Council, composed of a chairperson and representatives from Hunters and Trappers Committees established by individual Community Corporations, advises the appropriate government about legislation, regulations, policies and administration involving wildlife.

Surrounding Lands

Inuvialuit may enter into agreements with neighboring aboriginal groups to resolve mutual or overlapping interests or to share rights, privileges and benefits.

e) Jurisdiction Over Lands, Resources and the Environment Under the Nunavut Proposal

Nunavut is a large area of the Northwest Territories lying almost entirely north of the tree-line. Nunavut, "our land" in the Inuit language, refers to an area of land claims settlement now under negotiation, and a political jurisdiction whose establishment has been accepted by the Mulroney and Mulroney governments.

In August 1982, the Nunavut Constitutional Forum was established as a mixed forum of elected Inuit leaders from the main claims negotiating bodies, and of Northwest Territories Legislative Assembly members elected from the Nunavut communities, to shape the consensus of Nunavut into a more detailed proposal. The following is taken from *Building Nunavut: Today and Tomorrow* (Second Edition), by the Nunavut Constitutional Forum. No legislation has yet been introduced regarding the governance of lands and resources in Nunavut.

Basic Principles

The subject of lands, resources and the environment, including the marine environment, is most likely to be disputed by northern residents and southern governments in discussions of the division of powers. The following are the basic principles underlying the Inuit approach.

Any land and resources policies in Nunavut must defer to the prior rights recognised through land claims settlements negotiated by Inuit, whether those settlements are reached before or after the establishment of a Nunavut government. At the same time, other

interests which may have been acquired by third parties must be protected.

- The interest of the people of Nunavut in the lands and waters which are their environment and their economic base must be recognised in any regimes established for the management and use of those lands and waters, and the people of Nunavut must have the right to participate in relevant decisions and benefits.
- It is recognized that a legitimate interdependence of interest exists in respect of lands and resources between Nunavut and national and international society, and that cooperative planning and accommodation of each others' interests is necessary.
- Lands and resources are the main and almost the only major economic base for Nunavut. There can be no real political development in Nunavut unless decisions respecting public revenues and public expenditures are related through the medium of accountable decision-makers.
- A Nunavut government must share in lands and resources revenues as a fundamental element of political responsibility.

Division of Powers

With respect to the division of powers, the document suggests that the federal government could retain title to lands and resources until such time as they might be transferred as part of an eventual northern provincehood arrangement. At the same time, there should be flexibility in developing agreements and sharing formulae by which Nunavut's government could work with Ottawa to provide sound and acceptable Northern development. The document recommends that:

- Ottawa hold title to Nunavut lands and resources but extend beneficial use and enjoyment to a Nunavut government subject to whatever exceptions may be required;
- that responsibility for minerals and mining be transferred over time to a Nunavut government with the federal government acting as trustee in the meantime; and
- that oil and gas remain a federal responsibility but, by federal government-Nunavut agreement, a Nunavut government accept certain responsibilities and share in revenues and other features now contemplated by the *Canada Oil and Gas Act*.

Other area is so totally dependent on and conditioned by the sea as Nunavut. The document insists that the people of Nunavut must have a government which, on their behalf, can ensure that they have: adequate protection from the hazards and impacts of offshore development; related employment support; a revenue share from the offshore for the maintenance of their public services; and a role in the management of the living species which are the mainstay of the traditional Nunavut economy.

While Nunavut seeks a fair share in decision-making and benefits, it is not seeking outright control or ownership. The agreement between the federal government and the Province of Nova Scotia provides an example of the sharing of responsibility in offshore areas.

The Nunavut Constitutional Forum also argues that the concept of ice-free zones be developed as a management and legal tool. This zone is an extension of the land as far as Inuit are concerned. In international disputes, this ice may be important in legal arguments by Canada of traditional use and occupancy of the Arctic.

2. Annotated Bibliography: Self-Government In Lands and Resources

Bankes, Nigel. *Resource Leasing Options and the Settlement of Aboriginal Claims*. Ottawa: Canadian Arctic Resources Committee; 1983; 236 p.

Bankes outlines options, in types of title to land and resources, available to aboriginal groups negotiating land-claims settlements. The author argues that the nature of title obtained affects the scope of subsequent negotiations with prospective developers. The study reviews a number of precedents which may inform the negotiation process, including: natural resource agreements in the Third World; mineral-leasing development on tribal lands in the United States and on Indian lands in the Canadian provinces; and the development of aboriginal land claims in Australia, Alaska and Quebec.

Cartlett, Richard H. *Subjugation, Self-Management and Self-Government of Aboriginal Lands and Resources in Canada*. Discussion Paper No. 11. Kingston: Institute of Intergovernmental Relations, Queen's University; 1986; 102 p.

This paper provides a survey of the law respecting self-government of aboriginal lands and resources in Canada. It concludes that self-government of aboriginal lands and resources has not and does not yet exist in Canada. Past arrangements have subjugated aboriginal lands and resources. Contemporary arrangements provide for

"self-management" and municipal government, not self-government. The paper suggests that a pattern is emerging that may be difficult to break.

Canada. Department of Indian Affairs and Northern Development. "Comprehensive Land Claims Policies". *Information*. Ottawa: Department of Indian Affairs and Northern Development; December 18, 1986; 17 p.

The comprehensive land claims policy announced in December 1986 makes several departures from previous policy, in presenting alternatives to the extinguishment of aboriginal rights through claims settlements, and in providing for the negotiation of a broader range of matters related to economic development and self-government for aboriginal people.

Coolican, Murray, Chair. *Living Treaties: Lasting Agreements*. Report of the Task Force to Review Comprehensive Claims Policy. Ottawa: Department of Indian Affairs and Northern Development; 1985; ix, 132 p.

The five-member task force to review federal comprehensive claims policy, led by Murray Coolican, was appointed by the Minister of Indian Affairs in July 1985. Among other issues, the task force reviewed the scope of negotiations for lands and resources including offshore and sea claims, resource and revenue sharing, and alternatives to extinguishment. The final report provides recommendations to assist in the development of a new federal policy.

Jull, Peter. *Resources, the Environment, and Government in Nunavut*. Notes for the workshop on "Implementing Aboriginal Self-Government". Kingston, Ontario: Institute of Intergovernmental Relations, Queen's University; May 28, 1986; 17 p.

This paper, presented at a Workshop organized by the Institute of Intergovernmental Relations, argues that the public institutions of aboriginal self-government are an essential part of the wise and sustainable development of the living environment of the Inuit in the Northwest Territories.

Malone, S. Marc. *Nunavut: The Division of Power*. Working Paper No. 1. Yellowknife, Northwest Territories: Nunavut Constitutional Forum; March 1985; 56 p.

This consultant's report, commissioned by the Nunavut Constitutional Forum (NCF), explores options for the division of powers between Nunavut and other governments. Aspects of this report were

incorporated in the NCF publication *Building Nunavut*. The report examines some options for government regarding jurisdiction over resources and the environment.

C. SELF-GOVERNMENT IN ECONOMIC DEVELOPMENT

1. Summary of Some Existing Arrangements

This section considers several examples of self-government in economic development:

- the Walpole Island Band;
- the James Bay Cree; and
- the James Bay Inuit.

The Walpole Island band illustrates economic development under the *Indian Act*. For the James Bay Cree and Inuit, economic development has taken place under the self-government arrangements negotiated in the James Bay and Northern Quebec Agreement.

Because of the ethnic and public nature of Cree and Inuit governments respectively, institutions responsible for economic development vary. The Cree Regional Authority, the main administrative body in the Cree region, is also responsible for economic development and receives a large portion of its funding from revenues generated from the investment of its compensation money. For the Inuit, compensation monies are payable to Makivik, a development corporation responsible for the economic well-being of Inuit communities. Kativik, the regional governing body, does not receive an income from compensation monies, but is funded by the Government of Quebec. These approaches have different implications for economic development.

An annotated bibliography references work which describes the advantages and disadvantages of different approaches to economic development, and includes the experiences of other groups and entities concerned with self-government and economic development for aboriginal peoples.

a) The Walpole Island Band

The Walpole Island case demonstrates the nature of self-government which is possible under existing legislation for Indian Bands and Indian Reserves. For Walpole Island, self-government has been an evolving process with the band taking increasing control over programs and activities on the reserve.

In the 1950s and 1960s, under the 1951 *Indian Act*, the Walpole Island Band began to manage increasing numbers of programs on the reserve. In 1959 the Band began administering its revenue funds pursuant to Section 68 of the *Indian Act*. In 1961 the Band assumed responsibility for its own welfare programs under the *Ontario General Welfare Assistance Act*. By-laws were made by the Band Council on a variety of matters and the Band was granted authority to make money by-laws under Section 82 of the *Indian Act*.

In December 1964 the Walpole Island Band Council passed a resolution requesting the transfer of day-to-day administrative responsibility for the Band's affairs from the Agency office to the Council. This was agreed to by the Department of Indian and Northern Affairs on an experimental basis. Indian Agency staff was removed on January 1, 1965.

The Band Council appointed a bonded Band administrator to look after routine administration; engaged other staff including a water commissioner, a clerk-treasurer, and a stenographer; appointed committees from among Council members for roads, sanitation, welfare, education, recreation and so on; and retained legal counsel from a private firm on a continuing basis. The Band Council also took over responsibility for, and successfully operated a \$125,000 revolving band fund; continued the administration of the Band revenue fund budget in the amount of \$80,000; and generally took initiative on matters of concern to the Band.

Band elections after the experimental year demonstrated the Band's support for the direction taken by the Council, and in March 1966 the Council was given Ministerial authority to take over other areas of responsibility. Agency buildings and equipment were turned over, and the Council took on authority to manage and control the leasing of Band land, and to collect, manage and expend revenue from hunting and fishing permits. Administrative responsibilities for housing and related work were transferred, as were responsibilities for recording vital statistics.

Activities

The Band now administers programs in the fields of public works, education, economic development, health, welfare, police and fire protection, recreation, tourism, housing and research.

A Band farm, Tahgahoning Enterprises, initiated in the 1970s, expanded to 4,000 acres and gross sales of \$1.5 million in 1983. The Band

built a \$1.5 million swing bridge to replace an aging cable ferry service, and paved roads to the core area of the Island.

The Band instituted a land claims project on April 1, 1973, to settle outstanding claims. Research for the claims project has resulted in a variety of community research spin-off projects. Nin.da.waab.jig, initiated in 1982, is the largest of these projects. Nin.da.waab.jig is an attempt to collect the information which provides the basis for an active role in environmental, socio-economic and resource management on the reserve. Future directions include an expanded research program in major areas such as education, economic development, employment and social development.

The Council has taken steps to train staff and Councillors to meet the growing demands of planning and development by sponsoring workshops and initiating Community College Training programs on reserve. The Band is expanding school facilities on the reserve, and has a Day Nursery for children.

A modern water treatment plant was built in 1978, water services have been substantially improved, and a major drainage scheme has been initiated.

Walpole Industries, a mould shop for quality tool and dies opened in 1983, employing Band labour. Plans are underway for a Band industrial strategy with a goal of securing up to 150 industrial-related jobs on Walpole Island within five years.

The Band has built a twenty-unit senior citizens' apartment building, and is steadily improving housing quality on the reserve.

The Band has developed social programs including a Parent/Child Support Program, a Native Child Welfare Prevention Program, a Social Development Program, and a Skill Development Workshop.

b) The James Bay Cree

Government employment and hunting represent the two most important sectors of the Cree economy. The following section describes the three entities central to Cree economic development in these sectors.

The Cree Regional Authority

In the field of economic development the Cree Regional Authority has a role in setting up the necessary environment for development projects. In order to do this, the Cree Regional Authority is divided into five agencies: Community Services, Economic Enterprises, Human Development, Traditional Pursuits and Administrative Support Services. The Cree Regional Authority establishes training courses, commissions

feasibility studies, and provides a support system at the regional level when Bands are ready to move on a significant project.

Since the signing of the agreement, many tasks once performed by the white bureaucracy are now provided by Cree boards to which the Cree Regional Authority appoints members, or by affiliated offshot organizations. The most important of these are:

- the Cree School Board;
- the Cree Regional Board of Health and Social Services;
- the Cree Housing Corporation;
- the Cree Construction Company;
- the Cree Arts and Crafts Association (Cree-ations); and
- Air-Creebec.

Income Security Program for James Bay Cree Hunters and Trappers

Subsection 30 of the James Bay Agreement sets out a program guaranteeing Cree hunters and trappers, who pursue subsistence activities as a way of life, a measure of economic security. The program provides payments for subsistence activities to those who meet program eligibility criteria set out in detail in Subsections 2.1 to 2.4.

Those are eligible who:

- spend at least 120 days in harvesting and related activities in a year, 90 days of which must be spent outside the settlement;
- spend more time in harvesting and related activities than in wage employment, excluding certain kinds of work in guiding, outfitting or commercial fishing, and also excluding time spent on UIC, Manpower courses, or Workmen's Compensation; and
- in the year preceding the year of entering the program, earn more from harvesting than from wage labour, excluding guiding, outfitting and commercial fishing, though in succeeding years, time requirements would have to be met to remain eligible.

One who is benefiting from the Program can also benefit from social welfare. Once eligible, a "beneficiary unit" (which can be a family or a single person 18 years of age or over) can expect to receive a payment four times a year. A beneficiary unit gets a sum made up of: (1) the "basic amount"; and (2) a "per diem" payment for each day spent in the harvesting activity. The basic amount is reduced by a tax offset on earned income (including earnings from per diem payments) of 40 per cent. Both the basic amount and the per diem payments are indexed.

The program is managed by the Cree Hunters and Trappers Income Security Board, a special corporation established by the *Act* creating the income security program. It comprises six members, three of them appointed and paid by the government of Quebec, and three by the Cree Regional Authority. The chair and vice-chair alternate annually between the Quebec government and the Cree Regional Authority.

Included in its general supervisory and administrative mandate is a provision that the Board submit its annual budget to the Minister responsible for the *Act*, who arranges to transmit the funds necessary for the operation and administration of the program. Funding is the responsibility of Quebec. The *Act* states that the program shall be at least as generous as any guaranteed annual income program of general application in the Province.

The personnel who administer the program are engaged by the Board. In each of the eight Cree communities there is a Local Administrator who deals with the day-to-day relations with the beneficiaries. These Local Administrators are supervised by an Assistant Director who in turn reports to a Program Director. The Program Director reports to the Board. Quebec and the Cree Regional Authority are responsible for reviewing the projects and may, by mutual consent, make necessary adjustments.

The Board of Compensation

The Board of Compensation is the legal entity responsible for the management of compensation funds. The Board is separate from the Cree Regional Authority. The Cree Regional Authority depends upon the Board for an important part of its finances, and must justify its own internal requirements to that body.

The purposes of the Board of Compensation are:

- the reception, administration, and investment of the Cree compensation monies;
- the relief of poverty, the welfare and the advancement of education of the Crees; and
- the development, the civic and other improvements of the Cree communities within the territory.

According to the Agreement, the Board of Compensation has the power:

- to transfer 25 per cent of the compensation monies to wholly-owned corporations to develop business and industries, create economic

opportunities, or invest in the securities of corporations involved in Cree interests;

- to transfer part of the above 25 per cent to a non-corporate entity for charitable activities of the Crees, and
- to invest the remaining 75 per cent as deemed appropriate and to use revenues to support social, business or other activities of the Cree.

Twenty years after entering into the Agreement, no restrictions concerning investment will apply to the Corporation.

The Board of Compensation has a council with two elected members from each community, and three members appointed by the Cree Regional Authority. For a period of ten years after the Agreement, the Board was also required to have two representatives from Quebec and one representative from Canada.

c) The James Bay Inuit

Like the Cree, the major sources of employment for the James Bay Inuit are found in administration and in hunting, fishing or trapping. The structure and organization of the entities responsible for economic development differ from those of the Cree, however. The following section describes the responsibilities of Kativik and Makivik with respect to economic development.

Kativik Regional Government

The Kativik Regional Government has the general powers of a corporation under the Civil Code of Quebec. With respect to economic development, Kativik's powers are more limited than those of the Cree Regional Authority. Administration activities in the areas of a regional police force, a regional health and social services council, the Inuit hunting, fishing and trapping program, as well as its other administrative responsibilities, provide a considerable number of public service positions. In addition there are a large number of boards and committees in which Kativik sends representatives.

Kativik has the power to receive proposals from the municipalities for vocational training programs and to advise the responsible federal and provincial authorities on manpower questions. It also participates in and coordinates the activities of the Kativik Regional Development Council, which is a consultative body.

Kativik administers a program of income support for hunting, fishing and trapping, which has as its objective encouraging hunting activities through financial incentives, and guaranteeing a supply of fish and meat

to Inuit who cannot obtain them for themselves. The program operates as follows:

- each Inuit community is entitled to one hunter, trapper or fisher supported by the program, plus additional hunters, fishers or trappers to equal one per cent of the population;
- hunters, fishers and trappers in the program are guaranteed a yearly salary based on the equivalent of \$9,000.00 (1975); and
- Kativik regulates qualifications, employment criteria, working hours and conditions, leave of absences, suspensions and dismissals.

Kativik's other responsibilities in the area of hunting, fishing and trapping include:

- establishing hunting, fishing and trapping produce quotas;
- establishing hunter, fisher and trapper training and development programs;
- facilitating exchanges of hunting, fishing and trapping produce among Inuit communities in accordance with existing laws;
- facilitating access to remote hunting, fishing and trapping areas; and
- conducting search and rescue operations for the benefit of Inuit hunters, fishers and trappers.

The funding of these programs is the exclusive responsibility of the Government of Quebec.

Makivik Corporation

On June 23, 1978, Bill 27 was passed by the Quebec National Assembly creating Makivik Corporation as the Inuit Development Corporation contemplated under Section 17 of the James Bay Agreement. Power to amend Makivik's charter is vested in the Province of Quebec. Makivik is an ethnic institution, and its role is to ensure that the Agreement is implemented in such a way that its members, the Inuit beneficiaries of the Agreement, enjoy the cultural, political, social and economic rights and benefits provided for by the Agreement.

The Corporation is a non-profit association without share capital and without pecuniary gain for its members. The objects of the Corporation are:

- to receive and administer the compensation monies payable to the Inuit by virtue of the James Bay and Northern Quebec Agreement;

- to relieve poverty and to promote the welfare and the advancement of education of the Inuit;
- to develop and improve the Inuit communities and to improve their means of action; and
- to foster, promote, protect and assist in preserving the Inuit way of life, values and traditions.

The *Act* stipulated that the Corporation must, during the ten-year period following enactment, invest 75 per cent of the compensation intended for the Inuit in the categories of investment described in the schedule to the Bill. The percentage will be reduced to 50 per cent for the following ten years. At the end of this twenty year period, the Corporation may use the funds it administers according to its own objectives.

The Corporation may invest directly or through its wholly-owned corporations.

The affairs of the Corporations are managed by a board of directors of from 17 to 25 persons. The board consists of at least one representative elected by each Inuit community. The *Act* specified that until 31 October 1985, the board must include two representatives from the Government of Quebec, and one from the Department of Indian Affairs and Northern Development. Procedures for meetings and elections are specified in the *Act*.

The broad mandate of the Makivik Corporation is reflected in its range of activities. The following briefly summarizes some of the items enumerated in the 1985-1986 Annual Report.

During this period Makivik had four subsidiary operations:

- Air Inuit Ltd.
- Kigiak Builders Ltd.
- Sanak Maintenance Ltd.
- Kijaq Travel Agency Inc.

In the area of political development, Makivik was involved at various levels with the Inuit Circumpolar Conference, the Inuit Tapirisat of Canada, and the Inuit Committee on National Issues. Makivik submitted a brief to the Task Force to Review Comprehensive Claims Policy, and continued to press for settlement of Inuit offshore claims. Makivik is involved in the negotiation with Canada, Quebec, the Labrador Inuit, and the Crees and Naskapi concerning the inclusion of the Labrador Inuit in the Hunting, Fishing and Trapping Regime of the James Bay Agreement.

Makivik Corporation continued to press for the implementation of aspects of the James Bay and Northern Quebec Agreement.

- In the area of economic and community development, Makivik provided support for a number of ongoing projects, including assistance to the Inuit Landholding Corporations, allocating sums to various community development projects, working with the Killiniq group to establish a fishery, and participating in discussions on the possibility of commercializing caribou meat. Makivik's Community and Economic Development Department was also involved in a number of initiatives in education and vocational training.
- The Research Department conducted several studies contributing to policy development in wildlife management and renewable resource development. Work was done on the preparation of positions for offshore rights and for the aboriginal rights and interests the Northern Quebec Inuit have in Labrador. Projects collecting baseline information for wildlife management continued.
- The Communications Department continued production of *Taqriluk* magazine and Tusaqvik radio programs, and provided assistance in press relations and technical support to executives of Makivik.

2. Annotated Bibliography: Self-Government In Economic Development

Allen, Don (Chair). *Task Force on Indian Economic Development*. Summary of the Report to the Deputy Minister of Indian and Northern Affairs Canada. Ottawa: Supply and Services; 1986; 46 p. In May 1985, the Deputy Minister of Indian and Northern Affairs Canada established a task force to study Indian economic development. The task force examined the state of Indian economic development and the economic structure of reserves, considered opportunities for future development, and made recommendations on reorganization required for the economic development function within the Department of Indian and Northern Affairs.

Berger, Thomas R. *Village Journey: The Report of the Alaska Native Review Commission*. Toronto: Collins Publishers; 1985; x, 202 p. This book is Thomas Berger's report, based on testimony from sixty-two villages and towns affected by the *Alaska Native Claims Settlement Act* which was passed by Congress in 1971. The book outlines the structure and operation of the Native Corporations established by the *Act* to administer compensation monies, and their implications for native peoples' land and culture. Chapter 7 makes recommendations based on the Alaskan experience.

Blishen, Bernard R., Alexander Lockhart, Prudence Craib, and Elizabeth Lockhart. *Socio-Economic Impact Model for Northern Development*. Vol. I and II. Ottawa: Research Branch, Department of Indian Affairs and Northern Development; 1979; 88 p., 151 p.

This report describes a pilot study undertaken in 1979 to develop a conceptual model for reporting and assessing the social and economic effects of industrial development on northern communities. The model, as constructed, is based on the broadly defined variables of community process, social vitality, economic viability, and political efficacy.

Canada. Department of Indian Affairs and Northern Development. *James Bay and Northern Quebec Agreement Implementation Review*. (Tait Report). Ottawa: Supply and Services; 1982; 126 p. (see abstract, p. 21-22).

Grant, Gail. *The Concrete Reserve: Corporate Programs for Indians in the Urban Work Place*. Montreal, Quebec: The Institute for Research on Public Policy; 1983; xiv, 136 p.

This study describes and analyzes programs in the corporate sector designed to facilitate the entry of Native people into the Canadian labour force. Its objectives were three-fold: to identify corporate policies and employment programs designed specifically for Native people; to examine their characteristics; and to identify emerging trends and changing attitudes relating to the employment of Native people. Recommendations are set out in the conclusion.

Old Person, Chief Earl. "Problems, Prospects and Aspiration of the 'Real People' in America". In: Leroy Little Bear, Menno Boldt, and J. Anthony Long. *Pathways to Self-Determination: Canadian Indians and the Canadian State*. Toronto: University of Toronto Press; 1984: 148-151.

The Chief of the Blackfoot Nation in Montana describes how American Indians have attempted to break out of the political, economic and legal constraints established by the United States government. He focuses on the development of tribal enterprises, such as the successful Blackfoot pencil factory, as examples of how Indians can achieve economic self-sufficiency.

enner, Keith. "Fiscal Arrangements". In: *Indian Self-Government in Canada*. The Report to the Special Committee. Ottawa: Supply and Services; 1983: 81-102.

The report is highly critical of the Department of Indian Affairs' present program of devolution of program administration to bands. Present arrangements deny band councils control of programs they administer, exclude Indian people from policy-making, place impossible accountability burdens on bands, and generate an excessive monitoring superstructure. The report makes a number of recommendations about necessary changes.

Van Wyck, Sheila M. *Walpole Island: The Struggle for Self-Sufficiency*. Occasional Paper No. 3. Wallaceburg, Ontario: Walpole Island Research Centre; 1984; 61 p. (see abstract, p. 24).

Whittington, Michael S. *Native Economic Development Corporations: Political and Economic Change in Canada's North*. CARC Policy Paper 4. Ottawa, Ontario: Canadian Arctic Resources Committee; 1987; 85 p.

Whittington provides an analytical examination of a fairly recent institutional innovation in Canadian political economy the native economic development corporation. The paper outlines the political and economic context within which these corporations operate, and elaborates a general framework for assessing their economic development strategies. The paper then describes the corporations themselves, and assesses them within the framework.

APPENDIX A:

EXISTING SELF-GOVERNMENT LEGISLATION

Alberta. Legislative Assembly. *The Metis Population Betterment Act*. Passed 22 November 1938.

Alberta. Legislative Assembly. *A Resolution Concerning an Amendment to the Alberta Act*. Adopted 3 June 1985; 2 p.

Canada. Department of Indian Affairs and Northern Development. *The Western Arctic Claims: The Inuvialuit Final Agreement*. Ottawa: Supply and Services; 1984; 115 p.

Note: See Committee for the Original Peoples' Entitlement and the Government of Canada. *Inuvialuit Land Rights Settlement: Agreement in Principle*. Sachs Harbour, Northwest Territories: Committee for the Original Peoples' Entitlement; 31 October 1978; 180 p.

Canada. House of Commons. *An Act for Conferring Certain Privileges on the More Advanced Indians of Canada with the View of Training Them for the Exercise of Municipal Affairs*. Ottawa: Brown and Chamberlain; Assented to 19 April 1884.

Note: See Donna Lea Hawley. *The Indian Act Annotated*. Calgary, Alberta: The Carswell Company Ltd.; 1984; 104 p.

Canada. House of Commons. *Bill C-9: The James Bay and Northern Quebec Settlement Act*. Ottawa: Department of Indian Affairs and Northern Development; July 14, 1977.

Canada. House of Commons. *Bill C-46: The Cree-Naskapi (of Quebec) Act*. Ottawa: Supply and Services; Assented to 8 June 1984.

Canada. House of Commons. *Bill C-93: Sechelt Indian Band Self-Government Act*. Ottawa: Supply and Services; Assented to 21 May 1986.

Quebec. Assemblée Nationale du Québec. *An Act to Amend the Public Service Board Act*; Assented to 13 June 1978.

Quebec. Assemblée Nationale du Québec. *Bill 12: An Act Respecting Income Security for Cree Hunters and Trappers Who are Beneficiaries Under the Agreement Concerning James Bay and Northern Quebec*; Assented to June 21 1979.

Quebec. Assemblée Nationale du Québec. *Bill 23: An Act Concerning Northern Villages and the Kativik Regional Government*; Assented to 23 June 1978.

Quebec. Assemblée Nationale du Québec. *Bill 24: The Cree Villages Act*; Assented to 23 June 1978.

Quebec. Assemblée Nationale du Québec. *Bill 25: An Act Respecting the Cree Regional Authority*; Assented to 23 June 1978.

Quebec. Assemblée Nationale du Québec. *Bill 27: An Act to Establish the Makivik Corporation*; Assented to 23 June 1978.

Quebec. Assemblée Nationale du Québec. *Bill 29: An Act Respecting the Land Regime in the James Bay and New Quebec Territories*; Assented to 22 December 1978.

Quebec. Assemblée Nationale du Québec. *Bill 32: An Act Approving the Agreement Concerning James Bay and Northern Quebec*; Assented to 30 June 1976.

APPENDIX B:

EXAMPLES OF ONGOING NEGOTIATIONS

Akwesasne Mohawk Council, Kahnawake Mohawk Council and Tyendinaga Mohawk Council. *Mohawk Government Position Paper on Aboriginal Rights and the Canadian Constitution*. Submitted to the Standing Committee of the House of Commons on Indian Affairs and Northern Development. St. Regis, Ontario: Akwesasne Mohawk Council, Kahnawake Mohawk Council and Tyendinaga Mohawk Council; 1986; 30 p.

Association of Metis and Non-Status Indians of Saskatchewan. *Draft Political Accord*. 2nd draft. Regina, Saskatchewan: Association of Metis and Non-Status Indians of Saskatchewan; May 1985; 6 p.

Gitksan and Wet'suwet'en Tribal Council. *DELGAM UUKW vs. Her Majesty the Queen in right of the province of British Columbia*. Statement of Claim in the Supreme Court of British Columbia. Filed at Smithers B.C. on 23 October 1984.

Note: A summary of this action appeared in *The Canadian Law Reporter*, 1986 (4):111-151.

Nishnawbe-Aski Nation. *Memorandum of Understanding between Canada, Ontario and the Nishnawbe-Aski Nation*. Signed 24 February 1986; 2 p.

Nunavut Constitutional Forum and the Western Constitutional Forum. *Agreement on a Boundary for Division and Related Constitutional Matters*. Iqaluit, Northwest Territories: The Nunavut Constitutional Forum and the Western Constitutional Forum; January 15, 1987.

Nunavut Constitutional Forum. *Building Nunavut: Today and Tomorrow*. Second Edition. Ottawa: Nunavut Constitutional Forum; March 1985; 56 p.

Swampy Cree Tribal Council. *Political Accord BETWEEN: the Swampy Cree Tribal Council AND: the Minister of the Department of Indian Affairs and Northern Development*; Signed 23 January 1986 at Thompson, Manitoba.

Union of Ontario Indians. *Declaration of Political Intent BETWEEN: The Government of Canada AND: The Government of Ontario AND: The Indian First Nations of Ontario*. Signed 20 December 1985.

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