

**FINANCING ABORIGINAL SELF-GOVERNMENT
IN CANADA**

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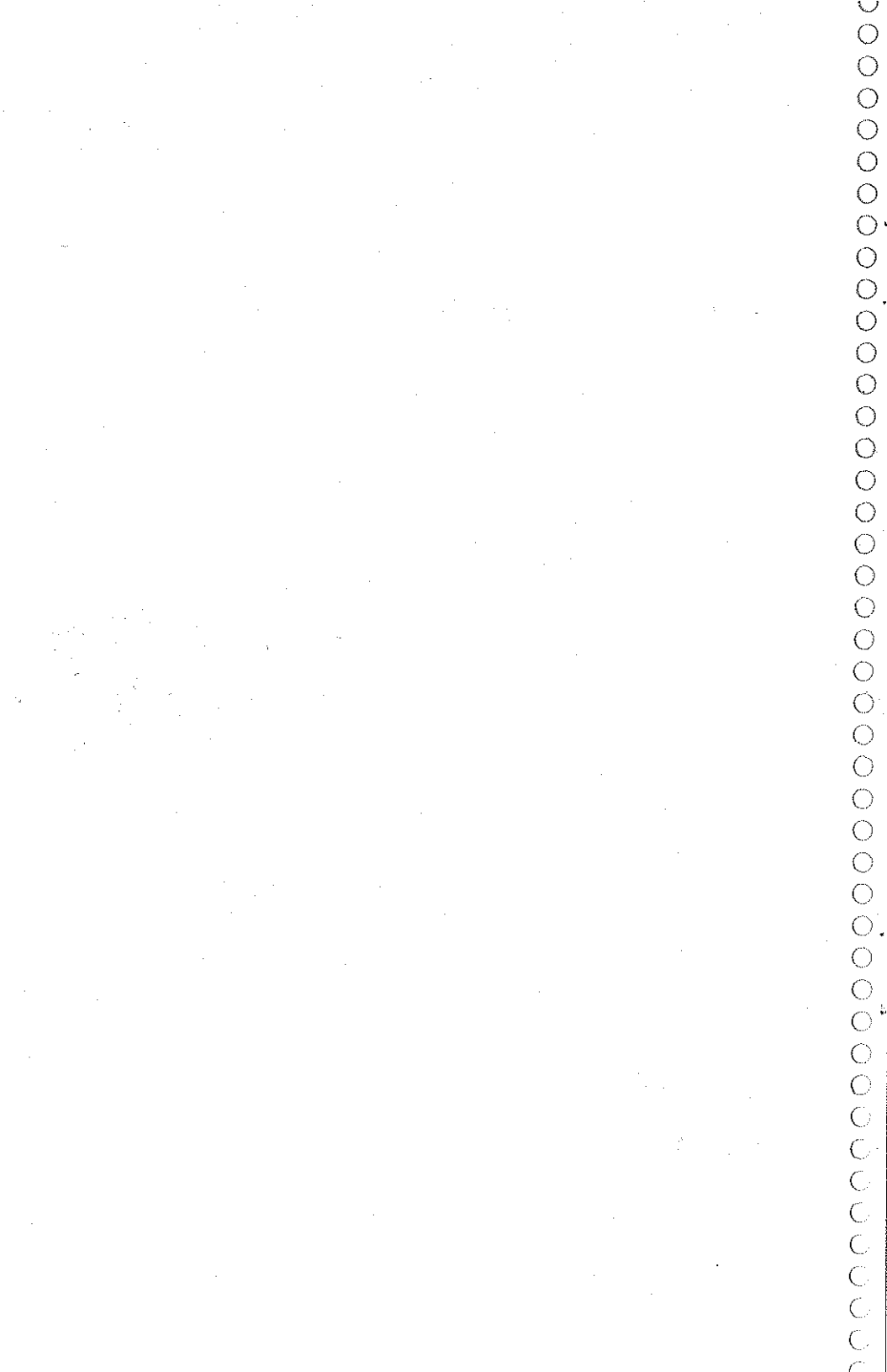
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PREFACE

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

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

Developments in 1985, subsequent to the First Ministers' Conference, may have a dramatic impact on the constitutional negotiation process. At a meeting of government ministers and aboriginal leaders held in June, 1985, several governments indicated their intention to pursue the negotiation of individual self-government agreements, and then to consider their entrenchment in the constitution (the "bottom-up" approach). This contrasts with the proposal, which has thus far dominated discussions, to entrench the right to aboriginal self-government in the constitution, and then to negotiate individual agreements (the "principles first" approach). The result is that, in addition to multilateral negotiations at the national level, negotiations will now proceed on a bilateral or trilateral basis, at the local, regional and provincial/territorial levels.

Phase Two of the project is entitled "Aboriginal Self-Government: Can It Be Implemented?", and responds to concerns now emerging in the negotiations. This phase of the Institute's project therefore will focus initially on arrangements for the design and administration of public services by and to aboriginal peoples. The research will examine the practical problems in designing mechanisms and making arrangements for implementing self-government agreements. Clearly, the "bottom-up" approach could have a major effect on the process of constitutional reform as it relates to aboriginal peoples in Canada.

As the 1987 FMC approaches, attention will become more concentrated on the multilateral constitutional forum (the FMC). The 1987 FMC may consider the constitutional entrenchment of individual agreements previously negotiated, or it may attempt to reach agreement on a "principles first" approach for defining and entrenching aboriginal rights in the constitution, especially those relating to aboriginal self-government. The research agenda in the second year of Phase Two anticipates this shift in preoccupation, with the focus turning to the search for a constitutional accommodation in 1987. If this search is to be successful, it will be necessary first to inquire into, and then to resolve or assuage a number of genuine concerns about aboriginal

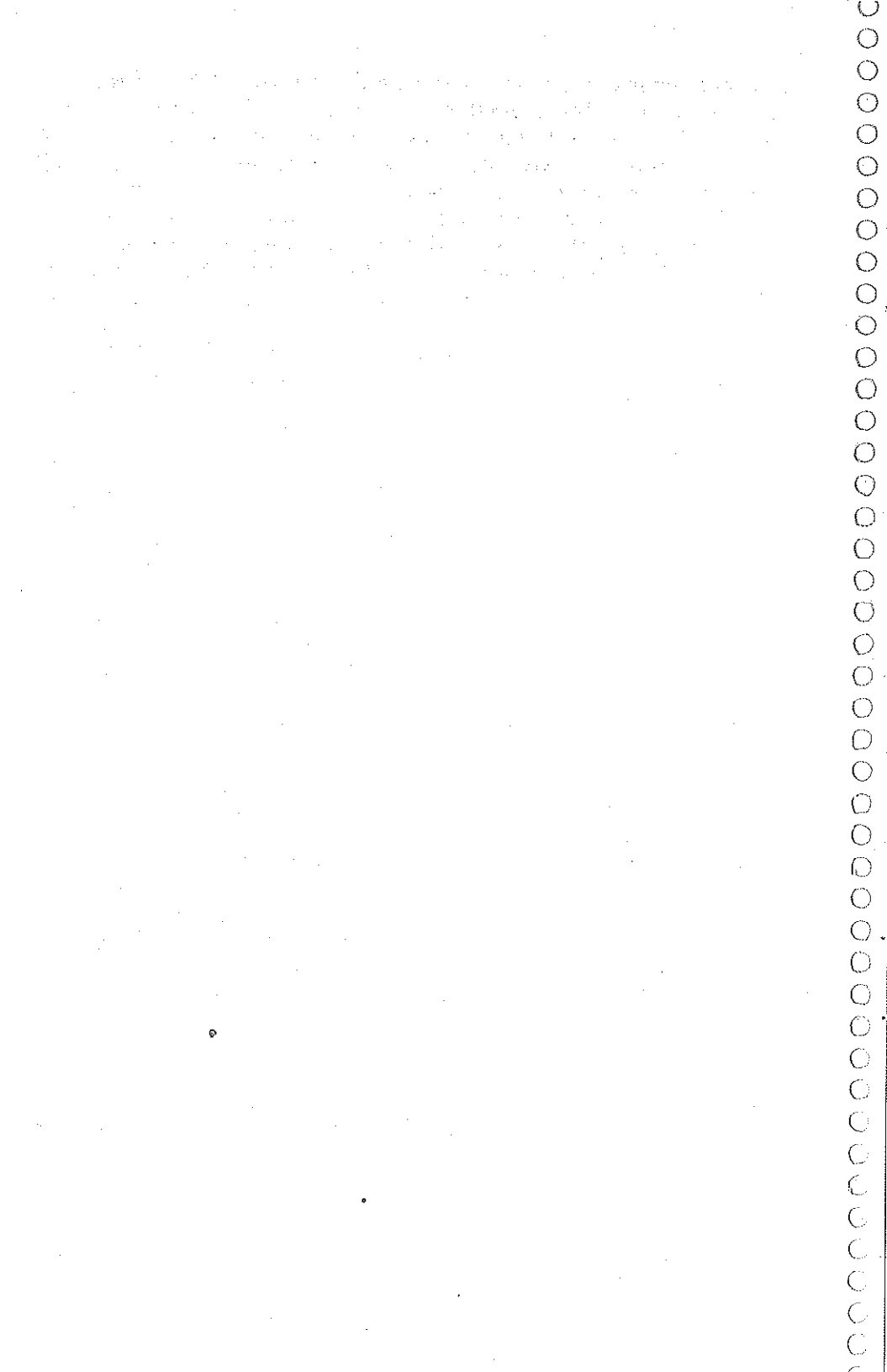
self-government and its implications for federal, provincial and territorial governments. Research in this part of the project will explore these concerns.

The Insitute 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 Alberta, the Government of Manitoba, the Government of New Brunswick, the Government of Yukon, the Assembly of First Nations, the Inuit Committee on National Issues, the Metis National Council and the Native Council of Canada.

The question of how aboriginal self-governments are to be financed has been studiously avoided, for the most part, by parties to the negotiations on aboriginal constitutional matters. Marc Malone's paper on *Financing Aboriginal Self-Government in Canada* addresses this question head on. Based on an analysis of existing financial arrangements for aboriginal institutions, he identifies such problems as the narrow tax base, uneven rights to resource revenue-sharing, and the uncertainty of conditional transfers. He then examines current practices in financing federal, provincial, regional and local governments, and their strengths and weaknesses in an aboriginal setting. Four criteria - effectiveness, efficiency, equity and autonomy - are then developed and applied to various optional arrangements for financing aboriginal self-government.

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May 1986



ABSTRACT

Financing aboriginal self-government is a subject which has infrequently surfaced in aboriginal constitutional negotiations. This paper reviews existing financial arrangements facing aboriginal institutions, as well as current practice in financing Canadian governments – federal, provincial, regional and local. Several criteria are developed with which to analyze options for financing aboriginal self-government, and subsequently applied. The analysis concludes that block funding is the key, and that constitutional change is required.

SOMMAIRE

Le financement de l'autonomie politique des autochtones est un sujet rarement à l'ordre du jour des conférences constitutionnelles. Cette étude fait l'examen des mesures financières actuelles auxquelles font face les institutions autochtones, aussi bien que de la pratique courante de financement des gouvernements canadiens – fédéral, provinciaux, régionaux et locaux. Plusieurs critères sont développés à l'aide desquels des options quant au financement de l'autonomie politique des autochtones sont analysées et par la suite appliquées. L'analyse mène à la conclusion que les placements en bloc sont la clé et qu'un changement constitutionnel est nécessaire.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data. The second part of the document provides a detailed breakdown of the financial data for the quarter. It includes a table showing the revenue generated from various sources, as well as the associated costs and expenses. The final part of the document concludes with a summary of the overall financial performance and a recommendation for future actions.



INTRODUCTION

Clichés such as "money is power", like myths, are firmly rooted in truth. A province such as Ontario or Alberta has more resources and influence than most members of the U.N. This is to say the financing of aboriginal self-government will determine, in good part, the future viability of self-governing aboriginal institutions.

If central, this issue is *complex*.

Taxation and revenue matters are highly technical, especially in pluralistic political systems and federations. To paraphrase a British Foreign Secretary on Schleswig-Holstein, only three people can master Canada's equalization formula: one is dead, one is mad, and the third is forgotten. As Richard Simeon, in his excellent review of federal provincial diplomacy, recalled a comment made by a journalist following a finance conference: "The holy spirit seems to have a marked horror for those moral men who occupy themselves with the tax system".¹

Parties to constitutional and related talks on aboriginal self-government would be well advised to recognize that related financial problems make, in comparison, federal-provincial questions look limpid.

Despite common aspirations, marked differences separate Indians, Metis and Inuit. They live in different parts of the country and their influence varies in relation to demographic weight: native peoples (mainly Inuit in the Arctic) account for 58 per cent of the Northwest Territories population; figures for Saskatchewan and Quebec are 6.2 per cent and 0.8 per cent respectively.² Contrast prevails as to their legal status: according to the federal government, "there is, as yet, no universally accepted definition of the term Metis..."³

Most Indians, about 70 per cent live on reserves – well over a thousand⁴ – while Inuit live in communities subject to provincial and territorial regulation. The financial implications of growing segments of the native population with residence off a land base, while not overly abstruse, are, nevertheless, not inconsiderable.

Fragile economic circumstances further complicate the examination of financing aboriginal self-government. The average 1980 income of native people was reported to amount to 50 per cent of the national average. These federal figures should be analysed with caution as Census reporting on aboriginal conditions is notoriously fragmentary: in 1985, a Makivik Corporation study estimated that the Northern Quebec Inuit enjoyed, taking cost of living into account, a regional purchasing power 75 per cent below the Montreal mean.⁵ In addition, aboriginal communities *per se* are small: as noted by the Royal Commission on the Economic Union and Development Prospects, Canada's 579 Indian bands counted only 516 members on the average. Only three per cent of these bands have a population more than 2000.⁶

Finally, legal and administrative frameworks contribute to great uncertainty in any review of self-government financing.

In its proposed constitutional accord of 1984, Canada affirmed that "the aboriginal peoples of Canada have the right to self-governing institutions" subject to the identification and negotiation of "financial arrangements related thereto".⁷ Any student of Canada's constitutional reform process will emphasize its inherent complexity; whether complete patriation occurred or not in 1982,⁸ it took Canadians 114 years to agree to this step.

Six comprehensive claims, with important financial implications, are currently under negotiation. The federal native claims policy, based on delay and arcane legal jousting, has produced only three comprehensive settlements since 1975. It was not surprising that the Minister of Indian Affairs and Northern Development recently appointed a task force to conduct a fundamental review of federal comprehensive claims policy.⁹

Aboriginal peoples, furthermore, confront a bewildering bureaucratic maze, federal and provincial, in their attempt to obtain services. Estimated federal expenditures for aboriginal peoples reached \$2.6 billion in 1984, and involved seven different departments and agencies.¹⁰ The Kativik Regional Government (see appendix), established under the 1975 James Bay and Northern Quebec Agreement, negotiates its annual budget with seven provincial departments.

Complexity should breed neither scepticism, nor despair. It is our contention that the "radically different approaches" to financing native self-government, called for by the representatives of Canada's three national political parties, constitute a legitimate topic for debate and resolution, if only because of present circumstances. To quote the Prince of Orange, "il n'est point besoin d'espérer pour entreprendre, ni de réussir pour espérer".

This cursory paper is divided into two parts.

In Part I, an attempt will be made to outline – as concerns native bodies – autonomous and other sources of income. What is the aboriginal tax base at present? Is the role of development corporations ambiguous? Has the expensive conditional transfer system resulted in marked improvement of services?

In addition, the financing of federal, provincial, regional and municipal governments in Canada is reviewed with a view to providing a framework for the consideration of aboriginal self-government. What are the reasons for deficient funding of local government? Are most federal transfers conditional, and why? Does the transfer mode detract from accountability?

In Part II, the question of criteria for assessing the financing of aboriginal institutions is first addressed. What are the thirteen possible areas which aboriginal peoples and governments could examine for purposes of financing native self-government? Six possible options for institutional arrangements are presented in this context.

Among fundamental problems: Why is block funding the key to change? Is financing off a land base an inconceivable option? What is the scope for expanding autonomous sources of income?

A few caveats are called for.

As this paper is not a memorandum to cabinet, it is designed to produce discussion and not decisions. It does not explore the merit of self-governing institutions, nor is it confined to the "resourcing of aboriginal governments" item - amendments to Part III, including equalization, cost-sharing and service delivery - on the 1983 constitutional conference agenda for the future.¹¹

It would be folly to lay any claim to an exhaustive analysis of financial schemes, existing or possible. For example, the federal government's first inventory of federal-provincial programs, developed by colleagues in the Privy Council Office, and, from 1975, in the Federal Provincial Relations Office, covered hundreds of pages and required several man years to devise. Perusal of federal and provincial accounts already defies auditors. However regrettable, over-simplification represents the price to pay in the effort to gain an overview of financing self-government in present circumstances.

PART I EXISTING ARRANGEMENTS

A review of existing sources of revenue
for aboriginal peoples and of general
Canadian financial practice

1 FUNDING OF ABORIGINAL INSTITUTIONS

This chapter depicts "own" sources of revenue, "other" sources of revenue (including transfers), and general funding patterns.

1. "OWN SOURCE" REVENUES

These are monies obtained from taxation, resource revenue-sharing and development corporation funds.

A. Taxation

Description

Tax revenues derived from territorial, regional or municipal-type powers and the implementation thereof.

Illustrations

(a) The Northwest Territories, with a clear native majority, applies provincial-type taxing powers with two major exceptions: the sales tax and resource royalties. For example, in 1981, income tax returns in the territory accounted for 23.7 per cent of expenditures.¹ The seven largest municipalities implement a property tax which provides about 25 per cent of their income.²

(b) In 1983, the Nunavut Constitutional Forum, in designing a constitution for the Arctic which contains a strong Inuit majority, stated residents should enjoy the same financial "rights and obligations" as other Canadians.³

(c) Under Bill 23 legislation enacted in 1978, Northern Quebec communities are entitled to municipal-type taxation prerogatives which, in Quebec, can encompass the right to tax animals. These towns, 80 per cent inhabited by Inuit, are specifically entitled to a tax rate of one per cent on stock in trade, of eight per cent on rental payments, and to a merchant tax.⁴ Cree Regional Authority bands enjoy local taxation powers following the James Bay and Northern Quebec Agreement of 1975.

(d) The Kativik Regional Government, a "novel instrument" in Canadian politics according to John Ciacca, can raise municipal levies in areas lying outside Northern Quebec towns; it can lay claim to an aliquot share (quota) of taxes levied by Northern Quebec communities.⁵

(e) If tax exemptions are to be viewed as an indirect source of revenue, incomes earned by Indians on reserve are not subject to federal income tax.⁶

(f) Under an agreement reached with Denmark in 1979, the Greenland Home Rule Government, elected by a largely Inuit population, acquired jurisdiction over taxation on the island.⁷

B. Resource Revenue-Sharing

Description

The right enjoyed by aboriginal institutions to a share, in the form of royalties or other modes of resource revenues.

Illustrations

(a) In *Canada*, Indians on reserve can enjoy access to a share of non-renewable resource exploitation revenues,

the most spectacular case being constituted by Hobbema arrangements and the resulting Peace Hill Trust in Alberta. Under the James Bay and Northern Quebec Agreement, Inuit exercise a veto on non-renewable resource development on Category I lands, and would receive compensation in the event of development on Category II lands. Under the "community" philosophy presently pervading D.I.A.N.D. in Ottawa, towns and hamlets in the Northwest Territories are being actively encouraged to negotiate directly with private companies.

D.I.A.N.D. manages a trust fund for resource receipts and funding on reserves. According to a Study Team report dispatched to the Nielsen Task Force on Program Review, trust assets amounted to \$845 million in 1984, whereas per capita trust accounts varied from \$32,000 in parts of Alberta to \$8 elsewhere.⁸

In the Northwest Territories, Dene and Inuit representatives, in their attempt to obtain public government, have laid claim to a share of resource revenues. During constitutional talks on aboriginal questions, all native delegations have, at one time or another, repeated this priority. For its part, the Coolican Task Force considers resource revenue-sharing to be a prime component of comprehensive land claims talks.⁹

The James Bay and Northern Quebec Agreement contains no reference to resource revenue-sharing. Interestingly, the 1984 Western Arctic Claim Agreement, in the context of Inuvialuit Development Corporation activities, states:

Royalties and the payments in lieu of royalties on the first ten productive mineral leases taken out by the corporation in the settlement region will be waived for the first fifteen years.¹⁰

(b) *In the United States*, tribal councils can implement schemes for oil, gas and other development with uneven, but occasionally high, windfalls. For example, in 1967, the Office for Navajo Economic Opportunity employed 2,720 people!

In 1972, the Inuit-controlled North Slope Borough in Alaska, having recourse to the American "home rule" model, applied, despite strong State and corporate opposition, a petroleum development tax. By 1978, the borough employed 500 people with a budget of \$74 million.¹¹

(c) Through agreement with Denmark, the Greenland Home Rule Government is entitled to a share of revenues accruing from non-renewable resource development (which it can veto), such income to be subtracted, up to a limit, from annual Danish subsidies.¹²

C. Development Corporation Funds

Description

Under the umbrella of the controversial "extinguishment" clause implemented since 1975 by the federal government, aboriginal parties receive, in exchange, financial compensation to be managed by "development" corporations which, in turn, engage in commercial and investment pursuits. Income from such pursuits is subject to taxation.

Illustrations

(a) In *Canada*, the James Bay and Northern Quebec Agreement provided for financial compensation equivalent to \$225 million destined for the Cree and Inuit parties to be paid by 1997. Inflation has reduced compensation in real terms: in 1982, the federal government estimated that 1977 dollar compensation might only amount to \$86 million. The Cree and Inuit parties have established a number of ventures (e.g., air lines) and seek revenues from portfolio management.¹³

Financial conditions obtained in 1984 by the Inuvialuit are somewhat more favourable: global compensation of \$45 million in 1977 dollars, the establishment of an "Economic Enhancement Fund" (\$10 million) and of a social development fund (\$7 million).¹⁴

(b) Under pressure to proceed with petroleum development in Alaska, President Nixon signed, in 1971,

the Alaska Native Claims Settlement Act which granted some \$1 billion to the different native corporations. This accord provided the model for the James Bay and Northern Quebec Agreement - to the extent Canada and Quebec had recourse to the same per capita compensation figure: \$20,000.¹⁵

D. An Evaluation of "Own Source" Revenues

Funding patterns include, *inter alia*: very limited taxation powers for aboriginal peoples, the narrow impact of such existing powers, the ambiguous implications of reliance on resource-related revenues, and the financial problems faced by aboriginal development corporations.

Limited Taxation Powers

In Canada, it is safe to assert that aboriginal peoples are, with the exceptions noted above, entitled to few direct taxation prerogatives. Even the Northwest Territories, with an aboriginal majority, has been denied access to monies derived from non-renewable resource development. The territory applies no sales tax, if only because the cost of living index in Frobisher Bay surpasses that of Montreal by 75 to 90 per cent.¹⁶

Narrow Impact of Existing Fiscal Powers

In a major paper prepared for the Institute of Intergovernmental Relations, Douglas Sanders criticized the Indian new deal in the U.S. because of the dearth of provisions respecting a "local tax base".¹⁷ In a commentary on Kativik Regional Government issues¹⁸ - which should be perused by all parties in regard to identification of aboriginal rights and self-government - M. Rostaing notes: "There is no tax base to speak of".¹⁹

Given economic and legal circumstances, a narrow fiscal scope for aboriginal authorities should hardly cause officials to move eyebrows in Groucho Marx style.

For example, Northern Quebec municipality rights to tax rental payments (8 per cent rate) constitute a quite theoretical proposition as Inuit households, because of understandable housing subsidies, only allocate three per cent of their income to rent.²⁰ Thriving commerce on

reserves or in northern communities does not constitute the rule: government is the business of these zones. In 1985, the MP for Ungava and Prime Minister of Canada, noted the consequence of economic stagnation:

If people in southern Canada saw the disparities that exist from Ottawa to Northern Quebec, they would, or they should, say that we as a nation have failed in our obligations to bring justice and fairness to native peoples across this country.²¹

Granted the exclusion from resource revenue-sharing, a future Nunavut territory, as Inuit as Quebec is French or Nova Scotia anglophone, would obtain, according to a 1983 Nunavut Constitutional Forum Study, only 10 per cent from "own" resources in relation to planned expenditure.²²

Implications of Resource Revenue-Sharing

There is no moral or practical reason for aboriginal peoples to deny themselves an avenue to revenues from what they have always considered their lands and waters. All the more so because, to take the example of electricity prices, the Economic Council of Canada has reported the extert, in 1980 dollars (\$3.7 billion), of low rents in relation to real return on capital.²³ 1986 Kativik Regional Government budget estimates would have amounted to one per cent of 1983 Hydro Quebec profits or 0.025 of assets declared in 1984.²⁴

However, aboriginal institutions would be remiss if they were to uniquely focus upon sudden resource windfalls. The price of oil, at time of drafting, hovers around the \$11 (U.S.)/barrel level: in 1981, the authors of the National Energy Program forecast for oil levels predicted, for 1986, a \$50 (U.S.) plane. As noted by the London *Economist*: "All this was based on the assumption that oil prices would rise indefinitely".²⁵

In their studies for Queen's University, both Ms. Graham and D. Sanders highlighted the unpleasant consequences for the Alaska North Slope Borough and the Navajo Tribal Council of "diminishing" oil and gas royalties.²⁶

Revenues, to be useful, have to be predictable.

Hybrid Nature of Development Corporations

In financial terms, development institutions face a daunting challenge, if account is taken of their political, social and cultural activities. It is, to say the least, bizarre for a private corporation executive to be elected by a regional demographic majority.

An imprecise mandate combined with almost limitless economic and social needs led, in 1983, to the appointment of Thomas Berger to review the Alaska native claim settlement experiment: his 1985 report is "highly critical of development corporations in Alaska, many of which are teetering on the edge of bankruptcy".²⁷ Trust fund investment opportunities do not abound on reserves, in settlements, or in the north. As noted by the Canadian Arctic Resources Committee (during an excellent critique of existing land claims process policies): "A responsible manager of a trust fund probably would not invest in the north at all".²⁸

Disenchantment with the development corporation model, however founded, has logically induced aboriginal peoples and governments to focus upon self-governing institutions. Indeed, the melding of political and financial functions makes an aboriginal corporation, in present circumstances, a doubtful financial proposition.

2. "OTHER SOURCE" REVENUES

As Grant Reuber commented in the course of an analysis of Canada's financial problems,²⁹ there exists, across the country, an "imbalance" between revenue-raising capacity and actual government responsibilities. In no instance, as partially demonstrated in the previous section on independent sources of revenue for aboriginal institutions, does this generalization apply so fully as in the circumstances faced by native peoples. Hence, to quote David A. Boisvert: "Revenue-sharing with senior governments is a more important route for most aboriginal peoples".³⁰

Revenue-sharing entails the consideration of the existing regime of *transfers* to native institutions and the overall issue of *services* directly and indirectly provided.

Veterans and survivors of the often tedious constitutional and federal-provincial consultation process know that officials become comatose during discussion of such items as aboriginal consent in relation to the amending formula or extinguishment of title. When the question of "services" or "resourcing" arises, they depart from slumber and apply concentration. The abortive "Austin" review³¹ of federal and provincial services to natives, proposed by an admittedly moribund Government of Canada and concerning jurisdiction and financial responsibility, should, retrospectively, have provoked a more positive reaction.

This is no mere academic problem for indigenous peoples; acrimonious legal disputes, mainly affecting the Metis, non-status Indians and the Inuit, prevent effective service delivery. According to the federal government:

Indians living off reserve face a complicated pattern of eligibility for government services. The federal government has taken the view that Indians living off reserve should receive basic provincial services like any other citizens. Some provinces, however, have traditionally considered Indians to be a federal responsibility.³²

While Inuit were assimilated by the Supreme Court to Indians in 1939 - in very unpleasant circumstances,³³ the federal Department of Indian Affairs and Northern Development does not consider Metis and non-status Indians to be a federal responsibility under s.91(24) of the *Constitution Act*.³⁴ A future federal government could even claim that this section is "discretionary" in that legislation is not required under the constitution. Jurisdiction does not, in law, require enacting laws.

Account having been taken of a murky legal framework prevailing to the disadvantage of all Canada's natives, aboriginal persons and institutions enjoy access to unconditional transfers in a few instances, to conditional transfers, and to monies expended under the federal and provincial spending powers.

A. Unconditional Transfers

Description

Such "block funding" or "formula based" transfers are those designed to enable receivers to spend funds *as they wish*. Such funds are predictable in terms of reception. Examples in Canada include statutory subsidies and equalization payments, intended, according to the *Constitution Act, 1982*, to ensure "reasonably comparable levels of public services at reasonably comparable levels of taxation".³⁵ In Greenland, the Home Rule Government, mainly peopled by Inuit, is entitled to unconditional transfers from Denmark. In sum, provincial cabinets in Canada or the Home Rule Government can make *plans* to finance trade missions without interference, and with some reasonable certainty of solvent conditions.

Illustrations

Very few examples of direct, general purpose grants can be traced in Canada. Even the Kativik Regional Government is constrained by law to seek the Quebec Municipal Affairs Department's approval of its budget.³⁶ A federal bill in respect of the B.C. Sechelt band contains programme and specific purpose intents.

With its 58 per cent indigenous population, Northwest Territories block funding, agreed to in 1982,³⁷ supplies the best illustration of direct funding to institutions accountable to aboriginal peoples.

B. Conditional Transfers

Description

Specific-purpose grants (i.e., those pertaining to a given service such as schools or health care) demand negotiation between indigenous representatives and other government authorities. Such transfers can be equated to the principle of *administrative delegation*. They are not necessarily predictable.

Illustrations

(a) In 1985, the *federal government* claimed, with respect to federal programmes for Indian reserve communities in areas such as education, housing and health, that "more than half the dollar value of these programs is administered by the bands themselves".³⁸ Within the 1983-84 budget framework, sums involved are considerable: \$58 million for school construction and \$92.9 million for on-reserve housing construction.³⁹

To take a further example, under the 1984 Cree Naskapi Act, the Cree Regional Authority is enabled to directly deliver services in such fields as training. Disbursement still depends on departmental approval.

In the opinion of the Nielsen Task Force Study Team on "Indians and Natives" (sic), conditional federal transfers have established an "artificial world" on reserves. It argues in favour of a national heritage trust company for Indian assets and the "introduction of the user pay principle" on reserves.⁴⁰

(b) *Provincial governments* may, or may not, choose to engage in conditional financing. Through transfers, Quebec will, for example, provide the Kativik Regional Government with \$7.5 million in 1986, following sectoral agreement on priorities for municipal affairs housing, social affairs, manpower, hunting and fishing and other areas. Under the Metis Betterment Act, Alberta delegates certain responsibilities to local settlements, involving a transfer of several million dollars. The *Northwest Territories* government delegates certain functions to hamlets and towns following budget consultations.⁴¹

C. Recourse to Federal and Provincial Spending Powers

Description

A federal or provincial spending power is founded upon the *discretionary* latitude enjoyed by the two orders of government to spend monies in those fields they wish to influence. Such fields don't always coincide with jurisdictional definitions (e.g., federal C.A.P. transfers or provincial expenditures on offices located abroad).

As noted by P.E. Trudeau in 1969,⁴² the federal spending power enables Parliament to make payments to persons and entities for purposes not explicitly encompassed in its legislative scope.

For aboriginal institutions, payments made under the spending power umbrella are *incremental* and subject to permanent review.

Illustrations

Among instances of spending power prerogatives: the 1985-86 Secretary of State citizenship development funding levels:⁴³

native friendship centres: \$16,064,000
native communications: \$3,659,000
northern native broadcasting: \$9,028,000
native representative organizations: \$14,421,000
constitutional review process: \$3,940,000
native women (sic): \$2,349,000
native social and cultural development: \$2,050,000

In comparison, the "women" (sic) programme involves funding of \$13.1 million.

Provinces are free to make similar commitments (e.g., Saskatchewan funding of the World Assembly of First Nations, Quebec funding of the Inuit I.T.N. communications unit, Northwest Territories funding of the Inuit Circumpolar Conference⁴⁴).

If governments spend monies, they are enabled, in the spending power context, *not* to spend them. The Canadian Arctic Resources Committees describes the relationship between spending and subordination:⁴⁵

The current minister of Indian Affairs and Northern Development cut off funding for the Council of Yukon Indians when Yukon communities failed to ratify an agreement in principle in 1984. The previous government took similar action to force the Dene and the Metis of the Western Arctic to negotiate their claims together, against their wishes.

In 1981, Quebec threatened to cut off funding to Northern Quebec institutions unless the latter agreed to the immediate transfer of federal powers to the province referred to in s.29.0.40 of the 1975 James Bay and Northern Quebec Agreement.⁴⁶

D. An Evaluation of "Other Source" Revenues

Four questions will be subjected to cursory examination:

- Is the existing system adequate?
- Is the existing system effective?
- Is the existing system expensive?
- Is the existing system reliable?

In reviewing these questions note should be taken of the Special House of Commons Committee comments, advanced in 1983, on Indian self-government and related financial arrangements, and based on an independent Coopers and Lybrand report. Members of the so-called "Penner" committee stressed the negative implications of "extremely complex planning, budgeting, reporting and financial control systems."⁴⁷

They recommended: "new funding arrangements"; the concept of "block funding" for native institutions; and direct payments for aboriginal institutions considered "accountable".⁴⁸

Question 1: Is The Existing System Adequate?

Adequacy of transfers between different institutions of government, as noted by Gordon Robertson in his Institute for Research on Public Policy publication on northern provinces,⁴⁹ is a permanent source of doubt and controversy. The equalization formula, for instance, is based on fiscal yield as opposed to fiscal need (i.e., the ability to raise tax as opposed to genuine expenditure requirements, as in housing subsidies or transport costs in the arctic).

Nevertheless, there are two reasons to question the adequacy of government transfers to aboriginal persons and institutions.

The first pertains, very simply, to recipient perceptions. During exchanges since 1982 between

governments and aboriginal representatives on constitutional matters, the litany concerning "adequate financial provisions" for self-government has consistently surfaced.⁵⁰

Second, conditions of life in aboriginal communities on- and off-reserve, despite alleged 1985 federal expenditures of \$2.5 billion, induce a degree of scepticism. Canada, in 1985, made the following admissions in this respect:⁵¹

- four in ten aboriginal people never attend high school;
- in rural areas, 45 per cent of aboriginal men had jobs;
- "wages were relatively low";
- 60 per cent of Indians on-reserve have recourse to social assistance;
- aboriginal life-expectancy is ten years less than for non-aboriginal individuals;
- native incarceration is five times the national average;
- suicide rates are high.

With great reservation and reticence, the federal government, was forced to avow serious deficiency in implementing the 1975 James Bay and Northern Quebec accord: in 1982, federal officials highlighted "inadequate" or "non-existent" services for Cree and Inuit in Quebec.⁵²

Question II: Is The Present System Effective?

If the present transfer system is implicitly formulated in order to keep, in crude terms, "boys on the farm and Indians on reserve", its effectiveness can be debated. On the average, the off-reserve Indian population has increased by one per cent per year since 1966,⁵³ mainly because of poor housing and employment conditions on reserves, and the eventual availability of social services in urban areas.

In addition, the very principle of self-governing aboriginal institutions implies responsibility and accountability on the part of native representatives.

Present transfer modes would seem, for the most part, to correspond to the model of neo-colonialism described by Hugh Brody after extensive research in the arctic:⁵⁴ "senior" institutions locate aboriginals in positions of apparent power, without allocating the reality of power. This policy, whether subconscious or not, leads to ennui and malaise in aboriginal circles: commitment to confederation will only decline. The core of the problem, to cite Douglas Sanders in his Queen's publication on aboriginal self-government in the U.S., is that, "in both Canada and the United States, there has been little serious focus on (aboriginal) economic development in the last two decades".⁵³

Question III: Is The Present System Expensive?

The administration of delegated service delivery to aboriginal institutions leads to considerable expenditures. "Duplication of administration", to quote the Penner committee, is rife. "The cost is high" even in federal-provincial coordination of shared programmes.⁵⁶

The Cooper's and Lybrand analysis, prepared for the special House of Commons committee, estimated D.I.A.N.D. and related administrative costs accounted for 30 per cent of expenditures targetted at aboriginal institutions.⁵⁷

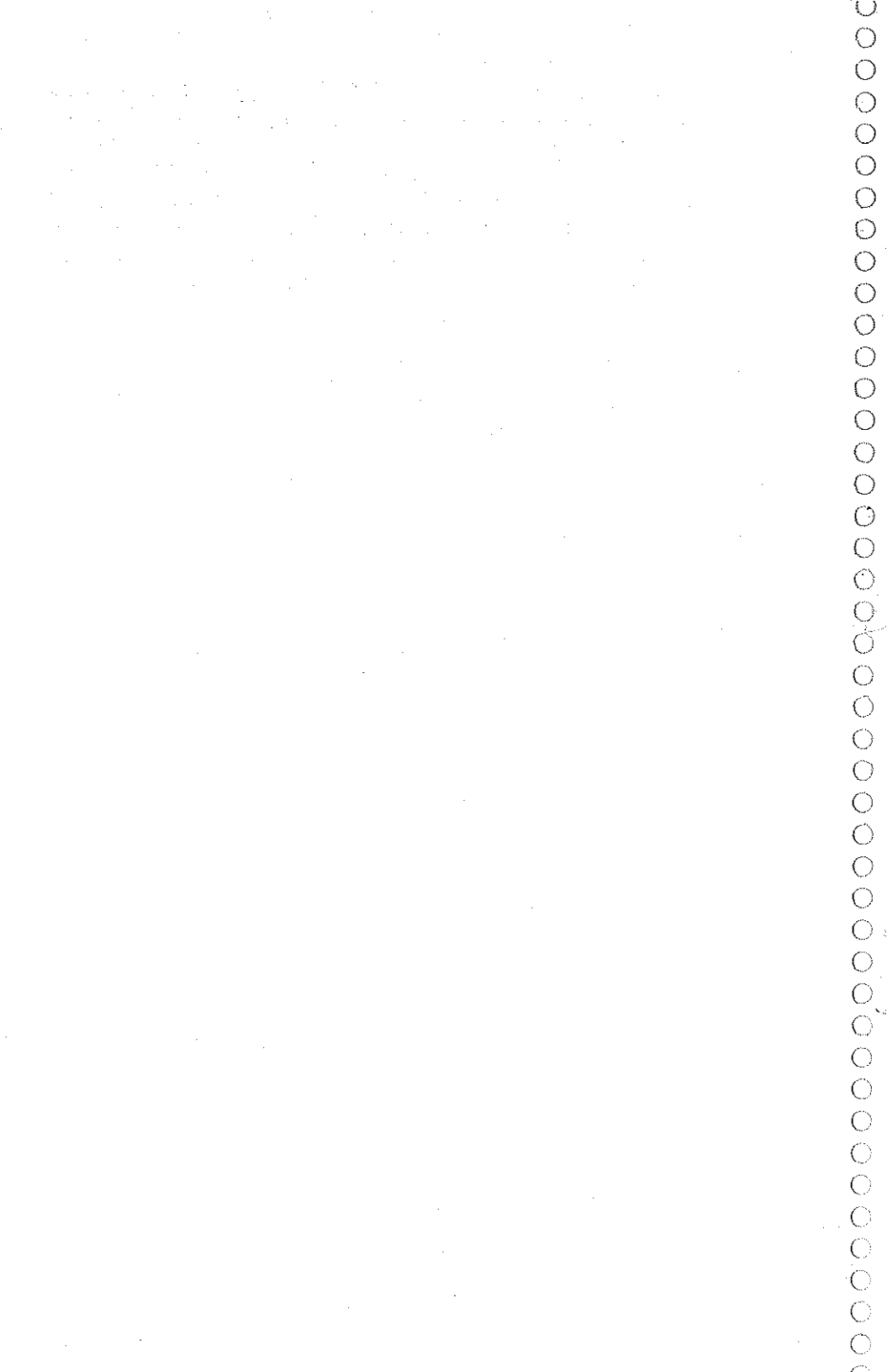
One illustration to show the cost of coordination between southern cities, Montreal or Quebec, and northern communities:

for 1986, the Kativik Regional Government had planned eight trips to the south for the chairman for negotiation purposes; 12 trips south and only 4 trips north for department heads, legal advisors and coordinators; and six trips south and three trips north for manager, treasurer and secretary(!).⁵⁸

Question IV: Is The Present System Reliable?

If, according to M. Rostaing, "an inordinate amount of time and resources" is concentrated on funding negotiations, can aboriginal representatives count upon reliable and predictable transfers?⁵⁹

The answer is negative. The Penner report reference to 8 month delays in processing funding agreements mirrors horror stories to be heard in any aboriginal institution across the country.⁶⁰ Predictability supposes, naturally, agreed criteria and countervailing powers. Most aboriginal institutions still have to obtain bargaining powers sufficient to frighten or, for political purposes, to seduce other jurisdictions.



2 FINANCING CANADIAN GOVERNMENTS

INTRODUCTION

This chapter will be concerned with federal and provincial revenues and, in a second phase, municipal and regional government income.

As noted by Birch,⁶¹ finance is the central problem of federalism. As a result, students of and actors involved in the federal-provincial game have access to a vast literary output on the issue, whether analytical or partisan. For example, the renewal of the federal-provincial Established Programme Financing arrangement in 1982 induced a torrent of publications on transfers from institutions such as the Canadian Tax Foundation, the Economic Council of Canada and the House of Commons; more recently, Volume III of the Report of the Royal Commission on the Economic Union and Development Prospects contained occasionally provocative insights into the public finance question.⁶²

The basic problem is that Canada and the provinces compete for the same electorate as do municipalities and provinces; competition does not exclude cooperation, but pervades the definition of arrangements shifting over time in relation to economic conditions.

1. FEDERAL AND PROVINCIAL FINANCIAL REGIMES

A. "Own Source" Revenues

These include taxation powers, resource revenue-sharing and potential incomes to be derived from utilities or enterprises.

Taxation Powers

The federal and provincial governments share access to the tax base and to fiscal revenues.

The *Constitution Act, 1867* endows the federal government with paramount taxing power: "the raising of money by any mode or system of taxation". It also provides the provinces with important financial rights concerning "direct taxation within the province" and the "borrowing of money"; provinces are entitled to "the management and sale of the public lands belonging to the Province"; furthermore, s.109 affirms provincial competence to make laws in respect of "lands, mines and royalties".⁶³

In 1979, federal and provincial governments almost reached agreement on provincial access to "indirect taxation". However, provinces were allowed, in the new s.92(a) enacted in 1982, access to indirect taxation with respect to natural resources.⁶⁴

In the early decades of confederation, customs revenues supplied Canada with 80 per cent of its federal income. With great financial pressures flowing from wars and depression, and in order to end anarchic tax competition between the provinces, Ottawa occupied the personal income tax field 1941 in exchange for subsidies to the provinces. By the 1950s, spending priorities had shifted to social programmes and provincial jurisdiction: between 1957 and 1981, through the transfer of "tax points", the federal government quadrupled tax room left to the provinces. This evolution severely affected federal revenues - as of 1979, Ottawa retained only 34 per cent of all public revenues after transfers.⁶⁵

Energy Revenue-Sharing

This issue dominated federal-provincial relations following the 1973 OPEC offensive on oil prices. The national

energy conflict generated acute tension in the absence of constitutional provisions concerning the sharing of revenues.

Since the recent conclusion of the Western and Atlantic Accords, the federal government agreed to a reduced slice of the petroleum taxation pie, both onshore and offshore, as did the western "producing" provinces. While s.50 of the *Constitution Act, 1982* settled the contentious debate over legislative jurisdiction, it was not extended to the offshore. In 1980, in recognition of the special needs of local residents, the federal government proposed that provinces involved obtain 100 per cent of onshore-type resource income until such provinces attained the status of "have" provinces; revenues would thereafter proportionately decline.⁶⁶ The Atlantic Accord contained similar revenue provisions for Newfoundland.

Canada applies full revenue prerogatives in the two territories. In 1979, C.M. Drury recommended the latter gain access to resource-related financial flows.⁶⁷

Utilities and Enterprises

Governments may, or may not, directly establish or seek expropriation of commercial utilities and enterprises. As of 1986, they maintain hundreds of institutions which range from Air Canada to provincial hydro utilities.

While profit motivations and records vary from sector to sector, commercial ventures can provide an important source of income for the public sector as demonstrated by hydro sales and profits. According to a 1985 publication and Hydro Quebec reports, Hydro Quebec was Canada's first corporation in 1983 in terms of assets and second in profits (\$707 million); Sask Power returned a 10 per cent rate of profits on sales.⁶⁸

B. "Other Source" Revenues

These include unconditional transfers, conditional transfers and deployment of the federal spending power.

Unconditional Transfers

The federal government effects, under the constitution, statutory subsidies and equalization payments to certain provinces.

In 1983-84, statutory subsidies only amounted to \$35.7 million, whereas equalization payments surpassed \$4.4 billion.⁶⁹ Part III of the *Constitution Act, 1982* specifies Parliament's commitment to make the latter grant to provinces with a view to reducing regional disparities, and to ensure "reasonably comparable public services at reasonably comparable levels of taxation". The equalization formula, which presently benefits the four Atlantic provinces, Quebec and Manitoba, rests on the principle of tax yield (i.e., the ability of provinces to raise taxes). In the past, discussions occurred as to the possibility of injecting a "horizontal" (inter-provincial) equalization component, along West German lines, in the existing formula.

Conditional Transfers

The main federal conditional transfers, the Established Programme Financing (E.P.F.) - \$6.6 billion in 1983 - designed to improve services in the fields of post-secondary education, hospital care and medicare, and the Canada Assistance Plan (C.A.P.) - \$2.1 billion in 1983 - for welfare services, originated in the new emphasis during the 1950s and 1960s on social priorities.⁷⁰ While born in contention, these arrangements provide Canadians with social services superior to those found in the United States.

C.A.P. is based on the "fifty cent buck" concept whereby Ottawa matches provincial expenditures. On the other hand, by 1976, the federal government deficit had already started to balloon. In exchange for a new provincial "per capita formula", the federal government conceded to the provinces the right to spend specific-purpose grants in flexible modes: in 1980, the federal government was ploughing more money into universities than the provinces.⁷¹ E.P.F., since 1976, represents a *partially unconditional* grant in that provinces and territories, while maintaining medicare,

hospital services and post secondary institutions, are not obliged to strictly match federal transfers.

Deployment of the Federal Spending Power

The federal government applies discretion in making payments to provincial governments in areas outside its legislative competence. Illustrations include the federal transfers in promotion of "bilingualism in education" (\$182.2 million in 1983)⁷² and subsidies made for infrastructure under economic development agreements.

C. Analysis

First, the federal deficit will dissuade Parliament from entering into major new spending initiatives. In 1984, the federal deficit corresponded to seven per cent of G.N.P. while the much decried U.S. deficit amounted to four per cent of G.N.P.; in 1985, 35 per cent of federal tax revenues were directed to interest payments; and, in 1986, the federal deficit reached \$33 billion.⁷³

Second, the *equalization* formula fails to account for the cost of services and fiscal need: the price of road construction diverges between Ontario, Newfoundland and the Northwest Territories or the Yukon. This hiatus led the Royal Commission on the Economic Union and Development Prospects to urge "careful consideration" of linking costs and equalization levels; such a proposal should generate scepticism in government circles, just as a majority of provinces rejected B.C.'s traditional stand of direct payments to individuals and the federal proposal, formulated in 1980, of equalizing services *within* provinces.⁷⁴

Third, no constitutional provision constrains public sector authorities to make most transfers. Federal conditional transfers to the provinces could be *repealed* by legislation. With regard to equalization payments, s.36(2) of the *Constitution Act, 1982* does not specify funding levels; as Professor Hogg asserts, this provision is probably not "justiciable".⁷⁵

Fourth, the very rationale for federal transfers is a strong "fiscal imbalance" prevailing among provinces.⁷⁶ Similar disparities should exist among aboriginal institutions.

Fifth, most federal transfers take the form of *specific form grants*: \$20.9 out of \$26.8 billion in 1985.⁷⁷

Sixth, shared-cost programmes or transfers blur political *accountability*. Very often, citizens don't know who to praise or blame for service deficiencies, while the political and financial costs of negotiation and control are high.

Seventh, the transfer system is very *expensive*. Between 1965 and 1976, federal outlays under C.A.P. and hospital insurance increased, respectively, by 800 and 500 per cent.⁷⁸

2. MUNICIPAL AND REGIONAL GOVERNMENT FINANCES

INTRODUCTION

Section 92(8) of the *Constitution Act, 1867* assigns to provincial jurisdiction "municipal institutions in the province". There can be a twin irony here. First, cities and towns, in the 19th century, played a central role in the provision of public services such as education and welfare; they initiated income tax regulations. Second, cities such as Toronto, Montreal, Vancouver or Winnipeg may lay legitimate claim to service impact greater than some provinces, an impact affirmed, in other claims, by the borrowing powers of U.S. cities or the "provincial status" of such towns as Bremen and Hamburg in the F.R.G.⁷⁹

With the creation of the federal Ministry of State of Urban Affairs in 1970-71 and the advent of trilateral consultations, including federal representatives, municipal authorities counted upon greater legal recognition and related financial facilities. The abolition, in 1979, of M.S.U.A. and the collapse of the trilateral process ensured subordinate legal protocol for Canadian municipalities.⁸⁰

Such *regional governments* as have been constituted in Quebec, Montreal, the Hull area, Hamilton, Ottawa or Toronto, operate within even more uncomfortable financial and legal confines: created by provincial legislation, they rely on member municipalities for financing. As could be easily imagined, this double inferiority leads to *conflict* and permanent negotiation.⁸¹

A. Municipal Government Financing

"Own Source" Revenues

Municipal revenue patterns vary from province to province. However, *property taxation* supplies the main source of autonomous income: 32 per cent of municipal revenues in Canada as of 1982.⁸² Not without reason, the Royal Commission on the Economic Union and Development Prospects defined such taxation as being "regressive and inelastic".⁸³

Municipalities can maintain certain commercial ventures, such as utilities, with a theoretical profit objective. Depending on the province, municipalities are enabled to implement tax levies in some unusual areas: to take the Quebec municipal code, and apart from traditional business taxes (which accounted for 3.7 per cent of income in 1982), water supplies can be taxed as well as the possession of animals.⁸⁴

"Other Source" Revenues

Canadian municipalities mainly rely on provincial (and incidentally federal) subsidies for operations and investment. Such transfers combined with grants-in-lieu of taxes, accounted for 50 per cent of municipal revenues in 1982: Canada's cities, towns and villages spend twice more than they earn.⁸⁵

Certain provinces, such as Quebec, allocate a determined percentage of provincial *sales tax* revenues to municipalities. This provision accounted for 21 per cent of revenues for Trois Rivières in 1978 and 13 per cent of Montreal revenues.⁸⁶

B. Regional Government Financing

On the basis of examining the ten Ontario regional municipalities and the three Quebec urban or regional communities, regional government, a provincial creature, does not entail direct taxation powers. Revenues derive from direct ventures, such as policing or transportation; additional income, as for the Kativik Regional Government, accrues from municipal and provincial subsidies.⁸⁷

In the course of perceptive reviews of regional government in Ontario and Quebec, both Graham and Sewall⁸⁸ highlight the local confederal implications, positive and negative, for regional institutions: a need for cooperation qualified by an unwillingness to discard local and municipal tax advantages. Until new improvisation, regional government is diplomatic government: a lowest common denominator among competing jurisdictions.

C. Analysis

First, it is incumbent on aboriginal representatives to assess the Macdonald Commission's characterization of regional and local financing: the *complexity* of financial flows, their *insecurity*, and the *mismatch* between responsibility, day-to-day living conditions, and related monies.⁸⁹ These observations lead to the logical recommendation that local government enjoys "greater discretion",⁹⁰ with the thought of constitutional affirmation. Provinces will oppose such a step, if only to avoid the German model of city-states - cities will hardly obtain constitutional jurisdiction in the coming years.

Second, parties to negotiations on aboriginal self-governing institutions will also want to evaluate the taxation capacity of local and regional government in relation to the *economic base*. For instance, property and water taxes amounted to 34 per cent of Quebec City revenues in 1978, 34 per cent of Montreal revenues, and to...seven per cent of Northern Quebec communities revenues.⁹¹

Third, great caution should be applied in transposing *existing* regional government models to financing aboriginal institutions. The basic problem pertains to the situation described by Mr. Bean for the Western Constitutional Forum: fiscal power has to be divided between local, regional and provincial-type authorities. Regional government "is not necessarily a good thing".⁹²

PART II CRITERIA AND POSSIBLE OPTIONS

3 CRITERIA FOR EVALUATING FINANCIAL ARRANGEMENTS

INTRODUCTION

With a view to the analysis of possible policy options for financing aboriginal self-government, four criteria will be presented:

1. effectiveness
2. efficiency
3. equity, and
4. autonomy

1. EFFECTIVENESS

According to Webster's "New World Dictionary", "effectiveness" is the ability to produce "a desired result".¹ In the context of aboriginal self-government, the desired results correspond to improved services and an improved economic base.

Under the *Constitution Act, 1982*, Canada and the provinces are committed to the provision of "essential public services of reasonable quality to all Canadians". It is fair to say that most aboriginal persons in Canada are denied access to the "minimal level of public services" which, to cite David Slater, the equalization formula is intended to ensure.² This is especially true of reserves and settlements.

During the course of his review of aboriginal self-government in the United States, Douglas Sanders wrote: "In both Canada and the U.S., there has been little serious focus on economic development in the past two decades".³ Yet, "Indian self-government, regardless of which form emerges, will only be viable if it rests on a firm economic base".⁴

Reality precludes the possibility of taxing a non-existent economic base. The international development crisis demonstrates that transfers hardly counter the effects of global economic dependence – not that such transfers should not occur. Canada's natives, if personal experience is to be accepted, want their children to become teachers, managers, engineers and doctors, like their fellow citizens. The ultimate test of new financial modes pertains to the achievement of this goal.

2. EFFICIENCY

Efficiency can be equated to the ability to produce a desired result at least possible cost.

Management methods shape the efficiency of financing. In this respect, federal, provincial and aboriginal parties to ongoing talks agree, at least, on the pitfalls of existing bureaucratic techniques for financing services to natives, and, implicitly, to the risk of "the curse of bigness" notion formulated by Professor Elezar to describe the costs of distant decision-making in pluralistic political systems.⁵ Big may be powerful, small "beautiful": small can also be efficient. Furthermore, unconditional transfers are not always inefficient as noted by the Economic Council of Canada's 1982 review of equalization and the location of resources.⁶

As a counterpart, aboriginal representatives will recognize the importance of accountability in the matter of service delivery. To paraphrase Truman, kitchens can get hot: elected leaders face tough decisions, especially in the field of revenue; if postponed, such decisions become difficult. If people don't choose, circumstances choose in their place.

3. EQUITY

Equity consists in the recourse to general principles of fairness in the complete or partial absence of clear legal provisions. In 1980, Premier Peckford, in his attempt to convince First Ministers of Newfoundland's right to ownership over offshore resources, referred to equity as "this great Canadian concept": "we want to and will share" incomes accruing from development.⁷

Fiscal equity is both vertical, in the treatment of individuals, and horizontal as concerns regions. It implies the avoidance of excessive fiscal pressure, if only to attract investment and combat migration. One caveat: Part III of the *Constitution Act, 1982* at s.36, while referring to opportunities for all Canadians, applies a horizontal equity focus to inter-regional equalization.

Equity, contrary to myth, does not automatically signify vast outlays of money. Reports published by the Northwest Territories Assembly and the Nunavut Constitutional Forum reveal, for example, that (in 1981 dollars) federal transfers to the projected Nunavut Territory would amount to two per cent of federal transfers to the province of Quebec.⁸

4. AUTONOMY

Autonomy can be interpreted as the ability to function independently from other elements of the same entity. In 1985, David Hawkes, writing on the meaning of aboriginal self-government, outlined the different degrees of autonomy available to native self-governing institutions, ranging from legislative prerogatives to administrative delegation.⁹ For his part, the Minister of Indian Affairs and Northern Development, before the standing committee concerned with his functions, claimed to be working towards "the goal of restoring to Indian people the degree of rights and self-determination that most of us have always enjoyed and take for granted."¹⁰

Personal and collective autonomy constitutes both a necessary and desirable objective in general; in complex political systems, it is the very foundation of the polity. However, this concept is not without ambiguous connotations for the financing of transfers to aboriginal self-governing institutions.

For instance, political autonomy is reduced when governments, such as the Atlantic provinces, are forced to rely on financial transfers from another jurisdiction: what are the political implications of the future Nunavut territory relying for 90 per cent of its revenues on federal transfers?¹¹ Or, to proceed further, what are the consequences of existing federal and provincial deficits on the scope of likely transfers to native institutions: transfers depend on the financial health of jurisdiction which originate them. Finally, Canada and the provinces, after many years of often acrimonious but always intense financial relations related to grants (unconditional and conditional), will have grasped that the transfer system can lead to increased jurisdictional demands: depending on circumstance, intergovernmental financial flows can pose a threat to national and provincial unity.¹²

4 THE SCOPE OF RESOURCING AND POSSIBLE OPTIONS

INTRODUCTION

For discussion purposes, this chapter will present some thirteen possible sources of revenue for aboriginal institutions and will outline six possible options in relation to mode of organization:

1. the status quo;
2. programme delivery delegation;
3. the land claims model;
4. municipal government financing;
5. regional government financing; and
6. the sharing of internal sovereignty with aboriginal institutions.

If some countries can boast of too much history, Canada lays claim to an excess of geography. Diversity excludes uniform or Cartesian approaches; fear of flexibility reflects an ignorance of reality.

A political myth concerning the legal and practical equality of provinces should, in this instance, be dispelled. At the time of confederation, s.133 only bound the province of Quebec, which was also the only province to agree to a second legislative chamber. The B.N.A. Act stated that the construction of a railway between

Montreal and Halifax was a condition of union; Alberta and Saskatchewan were denied ownership of natural resources between 1905 and 1930; and the Act of Union with Newfoundland contained special provisions for education. Provinces enjoy unequal representation in the Senate (unlike the U.S.); even the existing amending formula, with its provision for demographic conditions, favours Ontario and Quebec.¹³

While, as David Hawkes noted in 1985,¹⁴ progress in negotiating aboriginal self-government (and its financing) will be "slow and incremental", a spirit of tractability would ease the definition of aboriginal self-government.

This principle can be applied, in particular, to joint examination of the *question of aboriginal self-government off a land base*.

In this regard, the rejection by the Royal Commission on the Economic Union and Development Prospects¹⁵ of aboriginal institutions detached from a territorial definition should be greeted with scepticism. The concept of "consociation" (from the Latin *consociare* meaning to unite or join), developed by Renner and other Austrian politicians at the turn of the century, implied jurisdictional authority in relation to ethnic - as opposed to territorial - criteria.¹⁶ In 1976, Professor Jacques Brossard postulated a pluralistic legal framework wherein, on the same territory, certain institutions would implement legislation in given areas and a different political actor would make laws in certain specified fields (e.g., education or culture).¹⁷

The francophone cultural community of Belgium is designed to provide services on a non-territorial basis; certain Canadian constitutional and legislative stipulations (educational guarantees for language minorities, reference to Indians and lands reserved for Indians in s.91(24)) seek the same objective. While not devoid of ambiguity (e.g., the spectre of a ghetto situation experienced by Jews entitled to certain collective rights under the peace treaties signed between European nations in 1919-1920),¹⁸ the notion of aboriginal self-government off land requires serious consideration if and when account is taken of the implications of an increasing urban native population.

The precise forms of such government lie outside the confines of this paper, except with respect to the "ethnic" consociational requirement. Institutions could be corporate, administrative or legislative in essence, provincial or national in scope. For instance, a Metis or non-status Indian corporation could receive compensation with the provision that such monies would be deployed for the economic and social development of natives concerned, as is the case for Makivik Corporation. Metis and non-status Indian institutions could provide, under delegation, federal and provincial services to urban natives. They could, conceivably, be enabled, in addition, to pass by-laws, ordinances and, possibly, binding legislation with respect to service delivery to natives off land.

Issues of education, health and welfare, especially in northern regions and on the Prairies, preclude the dismissal of the "consociation" alternative, if only because aboriginal representatives could insist on massive compensation for lands on which immigrants from Europe constructed their towns and cities.

1. THE SCOPE OF POSSIBLE RESOURCING

In the perspective of aboriginal self-governing institutions, the following sources of revenue are, in theory, available:

- (i) direct income tax powers in the personal and corporate fields;
- (ii) direct sales tax powers;
- (iii) the sharing of federal and provincial income tax points;
- (iv) the sharing of provincial sales tax revenues;
- (v) access to revenues accruing from resource development;
- (vi) municipal and regional-type taxation powers;
- (vii) unconditional federal and provincial "block-funding";
- (viii) federal/provincial transfers calculated on the E.P.F. "per capita" formula;
- (ix) indirect taxation;
- (x) programme administration funds;

- (xi) special purpose grants;
- (xii) recourse to federal and provincial spending powers, and;
- (xiii) profits derived from special ventures, utilities and enterprises.

(i) Direct Income and (ii) Sales Tax Powers

The public government of Nunavut elected by a strong Inuit majority, as proposed by I.T.C. and the Nunavut Constitutional Forum, and in the probable event of Northwest Territories division, would, in law, be entitled to levy direct income and corporate taxation and to opt for a sales tax if it so wished.¹⁹ The question of direct taxation in southern Canada is blurred by financial problems faced by Canada and most provinces; direct taxation, furthermore, constitutes a component of shared internal sovereignty.

(iii) Sharing of Federal and Provincial Income Tax Points

This source of revenue, which the Metis National Council has emphasized,²⁰ would, for purposes of agreement and implementation, entail the definition, in general terms, of destination of services and of modes of accountability. The sharing of a tax base would, reasonably, impact on the scale of direct and conditional transfers to aboriginal institutions. For its part, the Royal Commission on the Economic Union and Development Prospects, in its examination of local and regional government financing, suggested serious attention be given to local government access to income tax revenues collected by federal and provincial jurisdictions.²¹ This option could be easily applied to institutions devoid of a land base.

(iv) Sharing of Sales Tax Revenues

This question is academic for many observers in that, during the recent past, such jurisdictions as Alberta or the Northwest Territories have not applied a retail tax levy. On the other hand, Northern Quebec communities, instituted in public law as of 1978, are entitled to a portion of sales tax revenues raised by the province.²² Governments like retail taxation because of the rapidity

with which it provides monies to the public purse, but dislike it because of its visibility.

(v) Access to Resource Development Revenues

The Metis National Council call, made partially in a consociational perspective, for consideration of a share in resource royalties for aboriginal institutions is not unfounded in fact. To take merely one example, according to David Slater of the Economic Council of Canada, "the price of power is relatively low in Canada": hydro rents, in relation to social return on capital, were estimated at \$3.7 billion.²³

Despite Chief Dion's comments on the negative impact of sudden interruptions of oil monies ("the easy come, easy go reckless spending of money"²⁴ in certain Alberta reserves), aboriginal institutions, peopled by *autochtōns* (from the Greek meaning "sprung from the land itself"²⁵) should at least, like other Canadian governing institutions, be allowed to make their mistakes themselves. The allocation of resource development-related funds, in law, can be reserved for existing or future native self-governments.

(vi) Municipal and Regional Government Taxation-Type Powers

During the course of discussions on aboriginal constitutional matters since 1982, this avenue has provided a focus for serious review amongst participants.²⁶ Those taxation prerogatives enjoyed by Quebec Cree and Inuit communities, by the Kativik Regional Government or by the B.C. Sechelt Band, constitute illustrations of autonomous income scope.

(vii) Unconditional Federal and Provincial Transfers

This source of revenue would, in terms of "block funding" or formula-based financing, provide aboriginal self-governing institutions with *predictable* revenues which they would have the discretion to spend on given sectors of their own choice. *With almost certain future recourse to transfers, block funding supplies the most politically effective and efficient method to substantiate self-government.*

Equalization payments affirmed in the *Constitution Act, 1982*, Part III, symbolize the commitment of Parliament and the provinces to:

promoting equal opportunities for the well being of Canadians; furthering economic development to reduce disparity in opportunities; providing essential public services of reasonable quality to all Canadians.²⁷

It is hardly surprising, then, that Manitoba, right from initial working group meetings on aboriginal constitutional matters in November and December 1982, linked funding and service delivery to the Part III concept, and proposed that Canada and the provinces commit adequate resources to allow aboriginal peoples to achieve their rights.²⁸

On March 15, 1983, the Inuit Committee on National Issues, party to the First Ministers, Conference on aboriginal constitutional matters, developed this concept in the following draft amendment to the *Constitution Act, 1982*, s.36(3):

Parliament and Legislatures, together with the Government of Canada and the provincial governments

– are committed to providing the aboriginal peoples of Canada with resources to meet their economic, social and cultural needs:

(a) through *direct payments* to their representative institutions;

(b) by providing essential public services of reasonable quality through joint delivery or other means which ensure the direct involvement of aboriginal peoples;

(c) by ensuring that the benefits from payments made by the Government of Canada in the form of equalization and other transfer payments are enjoyed by the aboriginal peoples.²⁹

Subsequently, the Metis National Council claimed:³⁰

Equalization payments could be made to take into consideration the level of development of Metis peoples and the degree of social poverty suffered by them.

The so-called "Penner" report of 1983 favoured "direct payments" to aboriginal institutions recognized as being "accountable"; Douglas Sanders echoed this recommendation in his 1985 review of U.S. aboriginal self-government.³¹

Like it or not, Canadians will have to measure the consequences of "*special status*" accorded, using Peter Hogg's vocabulary, to aboriginal peoples by virtue of sections 25, 35 and 37 of the *Constitution Act, 1982*.³² From our narrow focus, it would appear, regardless of institutional arrangements, that "block funding" would best meet the norms of effectiveness, efficiency and autonomy depicted in the previous chapter.

(viii) Per Capita (EPF Style) Transfers

This would consist of transfers made to accountable aboriginal institutions on a per capita member basis, both for certain designated purposes (e.g., education, health and welfare), and within the programme objective framework (e.g., no extra-billing on reserves or general educational criteria) agreed to with the financing authority, whether federal or provincial. It obtained favourable opinion from the special House of Commons Committee on Indian Self-Government in 1983.³³ This financing mode could apply to urban native services, on condition that parties concerned agree to membership criteria.

Meetings between officials, ministers and representatives of aboriginal institutions in 1986 revealed deep interest in this transfer approach,³⁴ although differences continue as regards the impact on federal transfers to the provinces for social purposes.

Under the E.P.F. formula devised in 1975 and agreed to in 1976, the provinces, in exchange for abandoning the "fifty cent buck" system, gained the power to mix funds with wide allocative scope under the umbrella of

certain agreed goals (e.g., universality of access to medical care).

(ix) Indirect Taxation

Whereas provinces have long applied indirect, value-added taxation in the form of sales taxes on a territorial basis, they and Canada failed to agree to a constitutional affirmation of this right in 1979.³⁶ Under the *Constitution Act, 1982*, the provincial governments gained entrenched access to this mode of taxation with respect to natural resources.

(x) Programme Administration Funds and

(xi) Special Purpose Grants

These are basically similar in that programme design and policy formulation essentially belong to the federal or provincial department originating the transfer of funds. The delegation of administration, along designated sectoral lines, for the implementation of designated purposes, corresponds to strictly *conditional* financing. Given existing federal-provincial practice (e.g., bilingualism in education funding), this mode of resourcing forms a normal and incremental component of intergovernmental financial flows.

(xii) Recourse to Federal and Provincial Spending Powers

Recourse, on the part of aboriginal institutions, to the federal spending power, would continue to apply to education or health, or for discretionary financial largesses eventually deployed by provincial legislatures.

(xiii) Ventures, Enterprises and Utilities

Limiting federal, provincial, regional and municipal governments as now constituted, aboriginal institutions have already founded security services in Saskatchewan, airlines in Quebec, film production companies in Alberta, cooperatives in the Northwest Territories, and so on. Self-government arrangements and their modulation would have no effect on such ventures.

2. POSSIBLE OPTIONS FOR FINANCING ABORIGINAL SELF-GOVERNMENT

Options presented below concern a range of institutional arrangements which are not, depending on location and identity, self-exclusive: for instance, the Inuit political majority of Nunavut could enjoy control over territorial, regional and municipal government and, in addition, operate ethnic institutions confirmed by a land claims agreement. For purposes of discussion, six models are outlined:

1. the status quo;
2. program delivery delegation;
3. the land claims model;
4. a municipal government status;
5. a regional government status; and
6. the sharing of internal sovereignty with aboriginal institutions.

The financial content of different options is open to debate. For example, a regional government model for aboriginal institutions would require imagination because of the deficiencies of the Ontario and Quebec experiments.

OPTION I: The Status Quo

Description

This would require no change from the existing, haphazard crazy quilt, involving essentially a discretionary funding framework with very limited, uneven taxation powers for aboriginal institutions (as described in Chapter I, Part I), with incremental emphasis on program delegation.

Discussion

In terms of criteria suggested in Chapter I, Part II, it would be difficult, if not impossible, to argue that existing financial arrangements ensure "reasonably comparable" or even "minimal"³⁷ public services to aboriginal peoples. This is also true of their access to a viable economic base, and to efficient - cost effective

- programme delivery. It would not solve the problems faced by urban natives.

On the other hand, Canada and the provinces could, *in the equity perspective*, lay some claim to major expenditures (close to \$3 billion for Ottawa or close to \$20,000 for per capita Quebec destined to northern communities).³⁸

OPTION II: Programme Delivery Delegation

Description

Policies and programmes designed by Canada and the provinces, formulated presumably in cooperation with the aboriginal peoples concerned, would be delegated to representative aboriginal institutions, although constrained by service objectives and financial accounting conditions. Canadian constitutional law excludes the delegation of legislative powers.³⁹ Aboriginal representatives to constitutional and political discussions on delegation might wish, if they so desired, to insist that withdrawal of administrative delegation functions be accompanied by the *consent* of the concerned native institution.

Discussion

This option has not been dismissed by certain aboriginal delegations to the constitutional discussions (i.e., I.C.N.I. or the M.N.C.). The latter has stated that "funding could be provided for in specific agreements covering the implementation of agreed services to be delivered by Metis governments".⁴⁰ It attracted the approval, in 1985, of the Royal Commission on the Economic Union and Development Prospects.⁴¹

However, during such talks and to the extent of its active participation, the Assembly of First Nations has rejected, in principle, delegation in favour of a third order of government.⁴² Indeed, delegation, in the past, has been flawed by financial disputes and joint programme design. In addition, as noted by Mr. Savoie in a review of the implementation of New Brunswick General Development Agreement published in 1981, delegated service delivery entails excessively

bureaucratic decision-making modes and expensive coordination costs.⁴³

OPTION III: The Land Claims Model

Description

Focus for financing programmes originated by aboriginal institutions would, as was the case in Alaska in 1971, revolve around land claims settlements which, in existing circumstances, provide compensation for surrender of title. Such settlements in Canada do not exclude provisions for local organs of government. Compensation amounts to a theoretical \$20,000 for each aboriginal claimant, and can lead to the foundation of ventures and enterprises. This model would, obviously, not answer the needs of urban natives.

Discussion

This model, established in Canada following the 1975 James Bay and Northern Quebec Agreement, presents at least the merit of historical experience.

On the other hand, it has not, in economic terms, operated well. The 1982 D.I.A.N.D. Review of the J.B.N.Q.A. implementation process publicly highlighted poor public services and infrastructure in zones covered by the agreement. In March 1986, the special federal Task Force on Land Claims headed by Murray Coolican, emphasized in its final report the economic and financial pitfalls of linking improved living conditions for Canadian native peoples to "once and for all" compensation payments in exchange for extinguishment of title.⁴⁴ In any case, constitutional talks on aboriginal constitutional matters, since 1983, have been concentrated on one "key to change", as the Prime Minister said: self-government.⁴⁵ The land claims negotiation process should not be viewed as a substitute for serious conversations on self-governing institutions.

OPTION IV: Municipal Government Financing For Aboriginal Bodies

Description

Aboriginal self-governing institutions would, for defined purposes, be incorporated as municipalities according to differing provincial and territorial legislative frameworks, and, thereby, have direct access to a range of taxation powers which, in theory, could encompass property, business, animals or conceivably rents.⁴⁶ They would be entitled under law to both conditional and (narrow) unconditional grants from other jurisdictions. They might be in a position to expect revenues or compensation from resource development, and could certainly engage in commercial ventures. During negotiations, such organs would be well advised to stress the recommendation for direct tax point sharing with the provinces, advanced by the Royal Commission on the Economic Union and Development Prospects. As well, they might heed the potential implications of the Quebec Union des Municipalités commission, headed by Jacques Parizeau since 1985, and designed to review jurisdiction and financing. Provincial governments, faced with complexity of circumstance and difficult bureaucratic constraints, may find the courage to devolve functions in the cultural, education and social welfare fields to local government.⁴⁷ This option would be difficult to apply in the urban native context.

Discussion

Local government taxation status won the approval of the A.F.N., on presentation of the 1986 federal legislation for the B.C. Sechelt Band self-government profile, and that of other aboriginal delegations to the constitutional talks since 1983.

The problem does not essentially pertain to law. It concerns an economic base to be constructed through positive measures (e.g., tax incentives, low rents, special tax exemptions granted by senior jurisdictions), in order to attract investments, and through negative measures, such as a variation on the Alaska North Slope Borough "Petroleum Development Tax" applied in 1972.

The novelist Gore Vidal has Washington Irving tell a young man: "It seems so simple, doesn't it? To make a fortune."⁴⁸ Only simple in that it requires imagination and management to create, in our clime, a tax base and viable economic ventures.

OPTION V: Regional Government Financing

Description

Under the regional (intra-provincial) government mode as may prevail in present conditions, aboriginal self-governing institutions could lay claim to a share of municipal revenues (aliquot), to those revenues foregone by municipalities on regional lands as might be defined, to a share of income and sales tax points, to resource revenue shares, and to direct and conditional federal, provincial and territorial grants. Because the intra-provincial arrangement eschews strictly territorial definition, it could be applied to institutions divorced from a land base.

Discussion

Perusal of the Appendix pertaining to the Kativik Regional Government should testify to the doubtful taxation revenues to be obtained by supra-municipal institutions from the existing aboriginal tax base. Previous analysis shows the fragility of regional government concepts in Canada, as opposed to the U.S. concepts of home rule administration and county government: "regions are the creature of provincial government in Canada".⁴⁹

Nevertheless, regional government presents many advantages when considering the delivery of services to natives in urban centres. From a financial perspective, it takes account of economies of scale to be gained by centralized service delivery within a given province, which may contain Indians off-reserve, Metis and Inuit, and serious coordination cost gains, including accountability considerations. "Regional government" definition and implementation could demand flexibility and thought; but constitutional negotiations, according to an international expert, precisely relate to "the conciliation

of authority and freedom",⁵⁰ a difficult but necessary challenge.

OPTION VI: The Sharing of Internal Sovereignty With Aboriginal Institutions

Description

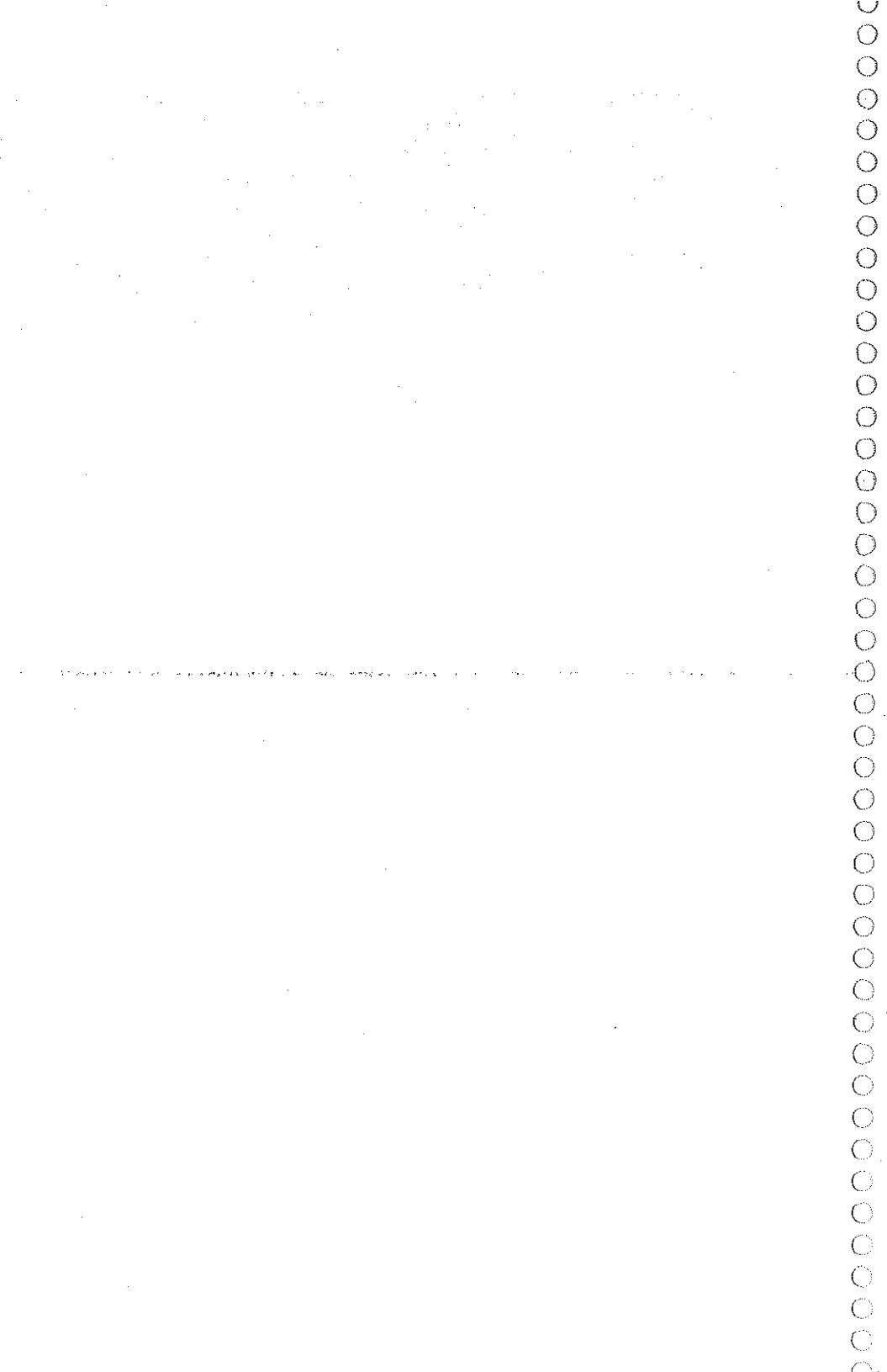
Under Canadian constitutional law, designated and representative aboriginal institutions, whether defined on a territorial basis or not, would share legislative powers, to be circumscribed, and financing prerogatives with Canada and the provinces, a right still denied to municipalities and regional governments as stressed by the Royal Commission on the Economic Union and Developments Prospects.⁵¹ They could be entitled to income and sales tax legislative powers, resource revenue-sharing, access to funds and obligations flowing from intergovernmental transfer accords, special purpose grants, utility legislation, etc. This option has been approved by the Metis National Council, subject to negotiation.

Discussion

Option VI is that preferred by the Assembly of First Nations in the course of ongoing constitutional talks: it claims "sovereign jurisdiction of the First Nations governments".⁵² The Inuit Committee on National Issues, adopting a more devious but sophisticated rationale, has never claimed "sovereignty" for ethnic self-governing bodies because, rightly or wrongly, it maintains "public government" models (e.g., Nunavut or the Kativik Regional Government) could meet Inuit needs because Eskimos will, barring inconceivable developments (such as the absence of residency requirements) comprise the Arctic demographic majority.⁵³ As is the case for Quebec and French-speaking Canadians, specific financial needs, required to sustain a national culture, would be met through traditional legal avenues.

The Native Council of Canada has applied emphasis to "guaranteed representation" in provincial and national legislative fora in order to ensure special law-making status.⁵⁴

Understandably, the aboriginal "sovereignty" alternative has not elicited great enthusiasm on the part of federal and provincial ministers concerned. In competition for the same electorates, having subordinated, in law and reality, cities such as Toronto, Montreal or Vancouver, their inclination is to avoid intrusion on the part of aboriginal Canadians. Most federal and provincial delegates to such exchanges at constitutional conferences view the whole exercise with either exasperation or indifference.



5 CONCLUSIONS

The table on the following page provides a summary of the options assessed in relation to the four criteria defined above. The results are ambiguous.

First, no option is perfect in the abstract.

Of the 24 possible impacts (resulting from six options viewed in relation to four criteria), many (nine) are deemed to be potentially neutral or uncertain. It is not clear that the sharing of internal sovereignty model, for example, would either be "efficient" or lead to greater equity. Increased autonomy carries a cost, while ensuring, in theory, a greater ability to produce agreed results. It has also to be admitted, somewhat cynically, that comprehensive land claims accords constitute a cheap way of obtaining land for the federation as a whole.

Some of the positive impacts are two-faced. For instance, the ethnic corporate model presents the advantage for aboriginal peoples of very clear autonomy.

As will be noted, the main negative impacts pertain to the status quo option, to the delegation option, and to the land claims model.

TABLE
Financing Aboriginal Self-Government
OPTIONS IN RELATION TO CRITERIA

OPTIONS	CRITERIA			
	Effectiveness	Efficiency	Equity	Autonomy
Status Quo	-	-	+	0
Delegation	-	-	+	0
Land Claims	-	0	-	+
Municipal Model	+	+	0	0
Regional Model	0	+	0	+
Partially Sovereign	+	?	?	+

SYMBOLS:

- + = positive impact
- = negative impact
- 0 = neutral impact
- ? = uncertain impact

If great caution should be applied in evaluating six or more options for institutional arrangements, one thing is obvious: the problem *per se* cannot be dismissed. As R.L. Watts of Queen's University perceived when discussing the topic of survival and disintegration of federations, the coincidence of visible economic disparities and of ethnic differences guarantees tension within the polity as a whole.¹ Hardly accidental is the urgency applied by aboriginal delegations to constitutional talks since 1982 on "adequate financial provisions" for native self-governing institutions.² It would be to the advantage of Canada and the provinces to seek solutions to this problem, and to be seen to do so.

Second, those federal and provincial officials under the impression that constitutional change should be averted would be well advised to keep such thoughts to themselves. Minorities such as the French Canadians and the native peoples require constitutional entrenchment in order to survive, to remain themselves. The rule of law was not only invented for the rich: it is also the tool of peripheral groups.

Federal and provincial representatives, in cooperation with Indians, Inuit and Metis, do not lack words to translate the principle of adequate financing of native self-government. For instance, in 1984, a politically decrepit but imaginative Government of Canada proposed the following commitment to the aboriginal peoples of Canada:

the aboriginal peoples of Canada have the right to self-governing institutions that will meet the needs of their communities, *subject* to the nature, jurisdiction, powers of those institutions, and to *the financial arrangements relating thereto*, being identified and defined through negotiations with the government of Canada and the provincial governments...³

This sensible approach, outlined by David Hawkes in his description of the 1985 Conference of First Ministers on aboriginal constitutional matters,⁴ was adopted by the

Conservative government during the constitutional talks among first ministers, and consisted of federal and provincial commitment to aboriginal self-government, subject to negotiations. "Bottom-up" negotiations, to succeed, are conditional on basic political principles defined by the basic political leaders.

It also has to be recognized that financing of aboriginal self-government cannot be dissociated from general local government taxation powers. It is true, to quote the British editorialist Neal Ascherson, that surprisingly, "British political culture despises local government".⁵ As local government in Canada is the creature of the whims of provincial politicians, this cliché bodes ill for a revision of intra-provincial fiscal modes. However, whether in Quebec, Western Europe or the United States, concerned observers increasingly emphasize the disadvantages of uniform regional provisions for education and social services, in part because of arduous labour negotiations. Local government income and sales tax powers, already applied in the past, now constitute a legitimate topic for debate.

Effectiveness, in political terms, depends on the ability of political leaders to agree in principle, and to agree to seriously implement such accords as they might arrive at. This truism, enunciated by J. Peter Meekison, the former and influential Deputy Minister of Federal Intergovernmental Affairs for Alberta, contains more than two grains of truth.⁶ Or, as affirmed by Ron Burns: "Problems of federal-provincial relations are not resolved by independent economic analyses, useful as they are".⁷

APPENDIX

Financing the Kativik Regional Government

INTRODUCTION

1. The Kativik Regional Government, composed of an elected council, an executive committee and related staff was established, under the umbrella of the 1975 James Bay and Northern Quebec Agreement, through Quebec legislation enacted in 1978.¹
2. The K.R.G., enjoys a broad mandate: local administration and assistance to Northern Quebec municipalities; transport, communications, and paramountcy in relation to municipal by-laws; justice; education; economic development; manpower; environment and land use.² *There is no equivalent* for such a mandate in Canada.

I. FINANCIAL PROVISIONS

3. Taxation powers granted to the K.R.G. include the right to municipal-type powers on lands not imposed by Northern Quebec communities, and the right to an aliquot share of municipal tax income in the region.³ It can derive revenues from services rendered or rentals.
4. The subordinate status of the K.R.G. is exemplified by the provincial obligation to submit its annual

budget to the Department of Municipal Affairs for approval.

5. According to a regional connaisseur, M. Rostaing: "there is no tax base to speak of in Northern Quebec".⁴ K.R.G. taxation prerogatives are quite theoretical. The implications of a feeble tax base have been recognized by the Quebec M.A.M.:

En raison de leur situation économique, les villages nordiques n'ont pas présentement les ressources financières pour se procurer ces infrastructures nécessaires sans l'apport d'une aide extérieure".⁵

II. EXTERNAL FINANCING PROCESS

6. Like it or not, the K.R.G. is forced to negotiate its annual budget with seven Quebec departments: M.A.M., S.H.Q., M.L.C.P., M.M.S.R., M.E.Q., M.A.S. and finally, the Quebec Conseil du Trésor - Treasury Board. As of 1986,⁶ K.R.G. had submitted estimates amounting to \$7.5 million, mainly allocated to municipal assistance and support for hunters and fishermen. At any rate, Quebec, rightly or wrongly, retains "*the final word*"⁷ over K.R.G. policies and programmes.
7. This specific factor led the Inuit Committee on National Issues to address M. Coolican, head of the special task force on the lands claims process, in the following terms:

The federal government should clearly articulate that self-government is the overriding objective in all policy concerning aboriginal peoples..."⁸

NOTES AND REFERENCES

INTRODUCTION

1. Simeon R., *Federal-Provincial Diplomacy*, University of Toronto Press, 1972, p. 66.
2. 1981 Census figures (notoriously unreliable with regard to native communities) quoted by: CARC, *CARC's Brief To the Task Force on Native Claims Policy*, Ottawa, November 1985.
3. Canada, *Canada's Aboriginal Peoples: Who Are They?*, First Ministers' Conference on Aboriginal Constitutional Matters, Background Notes, March 1985, p. 5.
4. Royal Commission on the Economic Union and Development Prospects, Final Report: Volume III, (hereby described as "Volume III"), Ottawa, 1985, pp. 369-370.
5. Makivik Corporation, *Emploi et revenu dans le nord québécois: colonisés chez nous*, Kuujjuaq, 1985, p. 110.
6. Volume III, pp. 369-372.
7. Canada, *Proposed 1984 Constitutional Accord on the Rights of the Aboriginal Peoples of Canada*, Ottawa, March 8, 1984, Part II amendment s. 35 (2)(b).
8. The United Kingdom has no written constitution. Under the rule of Parliamentary sovereignty,

Westminster could repeal all laws from the BNA Act (1867) to the Constitution Act (1982). The question of whether Elizabeth II signed the latter act in 1982 as Queen of Canada or of the United Kingdom could keep constitutionalists busy.

9. See Task Force on Comprehensive Claims Policy, *Living Treaties - Lasting Agreements*, Ottawa, DIAND, March 1986.
10. Canada, *Federal Programs and Services for the Aboriginal Peoples*, FMC Background Notes, p. 4.
11. 1983 Accord on Aboriginal Constitutional Rights, Agenda Item 5 (designated under the 1982 s. 37 provision), *Amendments to Part III*.

PART I

1. Dean J. M., "The Appropriate Fiscal Transfer to the N.W.T.", *Canadian Public Policy*, summer 1981, p. 413.
2. Office of the Special Representative, *Constitutional Development in the Northwest Territories*, Ottawa, 1980, p. 117.
3. Malone M., *Nunavut Financial Perspectives*, Nunavut Constitutional Forum, 1983, pp. 70-71.
4. Graham K. et al., *Regional Governments: A Selective Review*, Western Constitutional Forum, 1983, p. 18.
5. Editeur officiel, *La convention de la Baie James et du Nord Québécois*, Quebec, 1978, p. XV.
6. Sanders D., *Legal Aspects of Economic Development on Indian Reserves*, Hull, DIAND, nd., p. 20.
7. DIAND, *Home Rule Government for Greenland*, 1979, pp. 150-156; Rouland N., *L'autonomie du Groenland: du droit à la réalité*, deuxième colloque franco-soviétique, Paris, le 26 avril 1983, p. 15.
8. *Natural Resources*, M.S.S., 1986, pp. 225-226.
9. Dene Nation, *Public Government for the People of the North*, Yellowknife, November 9, 1981; *Living Treaties*, op.cit., pp. 65-68.
10. DIAND, *The Western Arctic Claim* 1984, p. 7.

11. Sanders D., *Aboriginal Self-Government in the United States*, Institute of Intergovernmental Relations, Kingston, 1985; Graham, *op.cit.*, pp. 39-40.
12. DIAND & Rouland, *op.cit.*
13. MAIN, *L'Evolution de la mise en oeuvre de la convention de la Baie James et du Nord Québécois*, p. 15.
14. The Western Arctic Claim, *op.cit.*, pp. 6-7.
15. Graham, *op.cit.*, pp. 39-40.
16. "Emploi et revenu...", *op.cit.*, Statistics Canada surveys of the North are feeble; the NWT Bureau of Statistics enjoys, for obvious reasons, better access of local data on living conditions. Readers interested in NWT statistics should consult the "NWT Data Book" published by Outcrop Publications in Yellowknife.
17. Sanders, *Aboriginal...*, *op.cit.*, pp. 58-60.
18. Rostaing J. P., "The Initial Experience of the Kativik Regional Government", *Etudes Inuit Studies*, Quebec, vol. 8, 1982.
19. *Ibid.*, p. 17.
20. Beaulieu D., *Les Inuit du nouveau Québec: leur milieu socio-économique*, Quebec, ministère des Institutions financières, 1982, p. 36.
21. Statement made by the Prime Minister in Kuujuaq on July 7, 1985.
22. NWT Legislative Assembly, "Report on the Impact of Division of the Northwest Territories", Yellowknife, 1981, p. 27.
23. Slater D., "The Case for Equalization", R. G. Robertson Ed., *Accord Canada*, Montreal, IRPP, nd., p. 19.
24. L'Action nationale, Septembre 1985, p. 19.
25. The Economist Survey of Canada, London, February 15, 1986, p. 10.
26. Graham, *op.cit.*, p. 96.
27. "CARC's Brief...", *op.cit.*, p. 6.
28. *Ibid.*, p. 9.
29. Reuber Grant, *Canada's Political Economy*, Toronto, McGraw Hill Ryerson, 1980, p. 60.

30. Boisvert D., *Forms of Aboriginal Self-Government*, Institute of Intergovernmental Relations, Kingston, 1985, p. 52.
31. Proposed Constitutional Accord, March 1984, para. 3.
32. "Federal Programs and Services for Aboriginal Peoples", *op.cit.*, p. 2.
33. In the 1930s, severe famine broke out in Northern Quebec communities: M. Duplessis considered the Inuit to be a federal responsibility and welfare services were entrusted to...the Hudson's Bay Company. In 1939, the Supreme Court assimilated Inuit to "Indians" under the s. 91(24) heading. In the first half of this century, the Inuit population of Northern Quebec declined by over 50%!
34. Private notes received by the author based on several cabinet documents prepared by DIAND staff.
35. S.36(2), Part III, *Constitution Act, 1982*.
36. K.R.G. Manpower Department, *Manpower & Economic Development: Progress Report and Plan of Action*, Kuujuaq, March 1984, pp. 8-10.
37. On November 26, 1982, the Minister of Indian Affairs and Northern Development, J. Munro, announced federal agreement in principle to division of the NWT and to the concept of "block funding" to the NWT executive council.
38. Volume III, *op.cit.*, p. 365.
39. DIAND, *Annual Report*, 1983-84.
40. Ottawa, M.S.S., 1986, pp. 22-23.
41. "Constitutional Development in the NWT", *op.cit.*, pp. 118-122.
42. Canada, *Federal-Provincial Grants and the Spending Power of Parliament*, 1969, p. 30.
43. Secretary of State, *Budget 1985-1986*, Part III: Citizenship programmes, table 8.
44. The success of the World Assembly of First Nations organized by the Federation of Saskatchewan Indians from July 18-25, 1982, was seriously compromised by the change of provincial administration during the spring, in that new ministers decided to review all spending commitments entered into by Mr. Blakeney's government.

45. "CARC's Brief...", *op.cit.*, p. 12.
46. S. 29.0.40 of the James Bay and Northern Quebec Agreement stipulates the concept of unified service delivery. At the end of 1980 and the outset of 1981, Quebec, for reasons of its own, applied heavy pressure on the K.R.G. and Inuit municipalities to agree to the transfer of federal services to the provinces. This incident prompted Makivik corporation to lobby for what was to become the "Tait" report on implementation issued in 1982.
47. House of Commons, *Proceedings of the Task Force on Indian Self Government*, Ottawa, October 1983, p. 82, the "Penner" report.
48. *Ibid.*, pp. 84-100.
49. Robertson Gordon, *Northern Provinces: A Mistaken Goal*, Montreal, IRPP, 1985 p. 29.
50. Meeting of Officials on Self Government, December 1983, doc 840 290 010, p. 7.
51. Volume III, p. 363, also: DIAND, *Indian Conditions: A Survey*, 1980, p. 153.
52. DIAND, *Etude de la mise en oeuvre de la convention de la Baie James et du Nord québécois*, Ottawa, 1982, pp. 33-34.
53. Sanders, D. *Aboriginal...*, *op.cit.*, p. 62.
54. Brody Hugh, *The People's Land*, Penguin, 1976, p. 196.
55. "Aboriginal Government in the United...", *op.cit.*, pp. 60-62.
56. "Proceedings of the Task...", *op.cit.*, pp. 85-87; ENAP, *Analyse des chevauchements des programmes fédéraux et québécois*, Quebec, 1978, p. 28.
57. "Proceedings...", pp. 89-90.
58. Internal KRG budget estimates obtained in Kuujuaq on December 20, 1985.
59. Rostaing, *op.cit.*, p. 28.
60. "Proceedings...", *op.cit.*, p. 83.
61. Birch A. H., *Federalism, Finance and Social Legislation*, Oxford University Press, 1955, p. VI.
62. Economic Council of Canada, *Financing Confederation*, Ottawa M.S.S., 1982; Broadway R. W., *Intergovernmental Transfers in Canada*, Canadian Tax Foundation, Toronto, 1980, 95 p; etc.

63. Sections 91 (1) (A) 91(2) 91(3) 91(14) (91(18)91(19) 92(5) 92(13) 92(16) - *Constitution Act, 1867*.
64. CICS, *List of Best Effort Proposals*, Ottawa, March 1979, doc. 800 10 036.
65. Parliamentary Task Force on Federal Provincial Arrangements, *Fiscal Federalism in Canada*, Ottawa, 1981, p. 8.
66. Offer made by Minister Lalonde at the FMC session on the constitution, September 9, 1980, (personal notes).
67. "Constitutional Development in the NWT", *op.cit.*, Chapter VI.
68. Hydro Quebec, *Forces*, fall 1984, p.29; Kierens T., "Resourcing the Economy", Robertson G. ed., *Accord Canada*, Montreal, IRPP, nd. p. 21.
69. Volume III, p. 225.
70. *Idem*
71. "Fiscal Federalism in Canada", *op.cit.*
72. Volume III, p. 225.
73. *The Economist*, "A Survey of Canada", February 15, 1986, London, p. 13.
74. Volume III, pp. 190-196.
75. Hogg Peter, *Constitutional Law in Canada*, University of Toronto Press, 1985, p. 119.
76. Minister of Finance, *Federal Provincial Fiscal Relations*, Ottawa, 1981.
77. "Northern Provinces...", *op.cit.*, pp. 34-35.
78. Minister of Finance, *op.cit.* table II-1.
79. The best comparative review remains: Bowie R. & Friedrich C., *Studies in Federalism*, Boston, Little Brown, p. 887.
80. On August 1, 1978, the then Prime Minister announced spending cuts of 2 Billion dollars following a trip to the Bonn summit; his Minister of Finance had not been consulted. This resulted in the demise of MSUA.
81. Graham, *op.cit.*, p. 96.
82. Volume III, p. 383-384.
83. *Idem*
84. Bureau de la Statistique, *Annuaire du Québec*, Quebec, 1982, p. 938.
85. Volume III, p. 382.

86. Bureau de la Statistique, *op.cit.*
87. Rostaing, *op.cit.*, p. 22.
88. Sewell J. on the C.U.Q., *The Globe and Mail*, January 31, 1986, p. 8; Graham *op.cit.*, pp. 96-97.
89. Volume III, p. 377.
90. *Ibid.*, p. 383.
91. Bureau de la Statistique, *op.cit.*, p. 938.
92. Bean W., *Regional Government in the NWT*, Western Constitutional Forum, Yellowknife, 1983, p. 22.

PART II

1. The Nelson, Foster and Scott 1968 Toronto Edition
2. Slater, *op.cit.*, p. 16.
3. "Aboriginal Self-Government in the United...", *op.cit.*, p. 62.
4. Long J. A., Little Bear L. & Boldt M., "Federal Indian Policy", *Canadian Public Policy*, spring 1982, p. 197.
5. Elezar D., *The American Federal Policy - Towards 76*, Philadelphia, *Publius*, 1973, p. 238; a collection of brilliant essays.
6. "Financing Confederation", *op.cit.*, p. 120.
7. Statement made to the FMC on the constitution, Ottawa, September 9, 1980 (personal notes).
8. "Nunavut Financial...", *op.cit.*, p. 57.
9. Hawkes D., *Aboriginal Self-Government: What Does it Mean?*, Institute of Intergovernmental Relations, Kingston, 1985, pp.27-35.
10. Speech to the Standing Committee on Indian Affairs and Northern made by Hon. David Crombie, Ottawa, November 21, 1985, p. 7.
11. "Nunavut Financial...", *op.cit.*, p. 56.
12. Deutsch A., "Three Fiscal Irritants in Confederation", *Canadian Public Policy*, spring 1981, pp. 343-345.
13. Malone M., *Une place pour le Québec au Canada*, Montreal, IRPP manuscript; Brown G. P., *Documents on the Confederation of North America*, Carleton Library, 1969.

14. Hawkes D., *Negotiating Aboriginal Self-Government*, Institute of Intergovernmental Relations, Kingston 1985, p. 3.
15. Volume III, p. 372.
16. Lijphart A., "Consociation and Federalism: Conceptual and Empirical Links", *Revue canadienne de science politique*, autumn 1979, pp. 506-514; MacRae K. D., "The Concept of Consociational Democracy and its Application to Canada", *Multi-Linguistic Political Systems*, Presses de l'Université Laval, Quebec, 1972, pp. 245-301.
17. Brossard J., *L'Accession à la souveraineté et le cas du Québec*, Presses de l'Université de Montréal, 1976, pp. 738-756.
18. On this issue see: Walter F. P., *History of the League of Nations*, Oxford University Press, New York, 1952, 2 Volumes.
19. Nunavut Constitutional Forum, *Building Nunavut*, 1983, p. 9.
20. M.N.C., *Position Paper on Fiscal Arrangements*, Winnipeg, November 16, 1983, doc. 840 285 009, p. 2.
21. Volume III, p. 384.
22. Rostaing, *op.cit.*, p. 17.
23. Slater D. W., "The Case for Equalization", *op.cit.*, p. 19.
24. Chief Dion quoted by *The Globe & Mail*, February 6, 1986, p. A4.
25. New World Dictionary, *op.cit.*, p. 99.
26. FPRO, *Draft Statement of Issues*, January 1983, p. 23.
27. Part III, *Constitution Act, 1982*.
28. "Draft Statement...", p. 23.
29. I.C.N.I., *Proposed Amendments to the Constitution*, Ottawa, March 15, 1983, doc 800 17 016.
30. "Position Paper...", *op.cit.*, p. 2.
31. "Proceedings...", *op.cit.*, p. 100; "Aboriginal Self-Government in the United...", *op.cit.*, p. 60.
32. Hogg, *op.cit.*, p. 564.
33. "Proceedings...", *op.cit.*, p. 100.

34. Information obtained from an aboriginal delegation to meetings of officials and ministers, February-March 1986.
35. The problem in 1976 was very simple: the already ballooning federal deficit persuaded the federal government to drop the shared-cost fifty-cent buck concept in exchange for greater provincial discretion in EPF expenditures. EPF is a semi-conditional grant.
36. Doc. 800 10 020, CICS, March 19, 1979.
37. Slater, *op.cit.*, p. 38.
38. Canada, FMC Background notes and internal Quebec budget estimates for Northern Quebec of over 100 million dollars for a population of 6,000 people.
39. Canadian tribunals reject the notion of legislative inter-delegation. The issue was discussed in Vancouver by Ministers in 1979: a consensus was reached on the need for a constitutional amendment.
40. "Position Paper...", *op.cit.*, p.2.
41. Volume III, pp. 373-375.
42. Report on Working Group 4 Proceedings, December 15-16, 1983.
43. Savoie D. J., "*Federal Provincial Collaboration: the Canada New Brunswick C.D.A.*", Queen's McGill University Press, 1981, p. 188.
44. "Evolution de la mise en oeuvre...", *op.cit.*, pp. 33-34. "Living Treaties...", *op.cit.*, p. 70
45. Opening statement by the Prime Minister to the FMC on constitutional aboriginal matters, Ottawa, April 2, 1985.
46. Graham, *op.cit.*, p. 18.
47. Volume III, p. 384.
48. Vidal G., *Burr*, London, Panther, 1984, p. 161.
49. Volume III, pp. 373-374.
50. Hauriou A., Gicquel J. & Gelard P., *Droit constitutionnel et institutions politiques*, Paris, Montchrestien, 1975, p. 33.
51. L'Heureux J., *The Division of Power and Municipiplities*, University of Toronto Press, 1985.
52. Report on Working Group 4..., *op.cit.*
53. *Idem*
54. "Draft Statement of Issues", *op.cit.*, p. 11.

CONCLUSIONS

1. Watts R. L., "Survival and Disintegration of Federations", in *One Country or Two*, McGill Queen's University Press, 1971, pp. 41-72.
2. Meeting of Officials on Aboriginal Constitutional Matters, December 1983, doc 840 220 010, p. 7.
3. "Proposed 1984 Constitutional Accord...", *op.cit.*
4. "Negotiating Aboriginal...", *op.cit.*, p. 8.
5. Ascherson N., "Why the G.L.C. Had to go", *The Observer*, London, March 30, 1986, p. 11.
6. Meekison J. P., "Constitutional Reform in Canada", in *Canadian Federalism: Myth or Reality*, Toronto, Methuen, 1972, p. 249.
7. Burns R., *The Tax Rental Agreements 1941-1962: The Acceptable Mean*, Canadian Tax Foundation, 1980, p. 175.

APPENDIX

1. Sq 78 c87, Act Concerning the Northern Quebec Villages and the Kativik Regional Government, *Bill 23*, Editeur officiel, *The James Bay and Northern Quebec Agreement*, Quebec, 1978, p. VX.
2. *Ibid.*, p. 225.
3. Rostaing, *op.cit.*, p. 22.
4. *Ibid.*, p. 17.
5. *Proposition de plan d'investissement pour l'amélioration des infrastructures municipales en milieu nordique*, 1984, p. 3.
6. Internal K.R.G. budget estimates obtained on December 20, 1985.
7. Rostaing, *op.cit.*, p. 23.
8. I.C.N.I., *Submission to the Task Force on Native Claims Policy*, Ottawa, November 1985, p. 15.