

Canadian Representation and Aboriginal Peoples:
A Survey of the Issues

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Executive Summary

1. From the colonial period, various legal and political accommodations have been made within Confederation for linguistic, cultural and religious minorities. The same cannot truly be said for the Aboriginal peoples of Canada. Aboriginal peoples have had a great struggle for recognition, protection and respect for their inherent rights; a struggle in which they have steadfastly resisted domination by the majority settler state.
2. The recognition of Aboriginal and treaty rights in the *Constitution Act, 1982* is a recognition of the foothold Aboriginal peoples maintain within the settler state. However, unanswered questions abound about the place of Aboriginal peoples within Canada.
3. The question of representation in Canadian political institutions often focuses on electoral representation. The scarcity of Aboriginal representation in Canadian political institutions comes at a time when women, members of ethno-cultural and visible minorities, people with disabilities and special interest groups have their own concerns about representation. Parliamentary institutions and their legitimacy are under attack because their membership does not reflect the composition of Canadian society; nor does the membership of these groups believe their representatives can make a difference in national decision making.
4. However, the question remains whether adding Aboriginal peoples to a collection of 'disadvantaged' groups really addresses the issue for Aboriginal peoples — recognition of their distinct rights and recognition of their special place within Canada. Assumptions that Aboriginal peoples are a 'racial minority' or should be treated equally with all other Canadians fail to recognize Aboriginal peoples as distinct political communities with recognizable claims for collective rights along with the capacity to forge their own destinies within Canada. This in itself raises questions about the legitimacy of Canada's power over Aboriginal peoples.
5. Many Aboriginal people have some familiarity with Maori representation in New Zealand and look to this experience as a precedent. While opinions are divided on the merits of distinct political representation for the Maori, a summary examination of the issues is presented to provide background and insight.
6. Segments of the Aboriginal population have long been interested in Aboriginal representation in Parliament, particularly the membership of the Native Council of Canada (now

the Congress of Aboriginal Peoples) and the Métis National Council. While Inuit representatives have supported measures designed to increase Inuit representation in the House of Commons and the Senate, the same cannot be said for the First Nations.

7. Senator Len Marchand approached the Royal Commission on Electoral Reform and Party Financing (RCER) with his views on structural reform of the House of Commons to guarantee seats for Aboriginal peoples based on the Maori experience in New Zealand. Senator Marchand formed the Committee for Aboriginal Electoral Reform, a committee of five current and former Aboriginal parliamentarians. The committee found strong support in Aboriginal communities for the creation of Aboriginal electoral districts. It also found some hostility, especially in First Nations that lack a tradition of electoral participation because of their views on sovereignty and a history of legislative exclusion from the vote.

8. The RCER recommended a proposal that would allow for the establishment of federal electoral districts in which only Aboriginal electors could vote. A guaranteed process would be established in which an Aboriginal electoral district would be created provided a minimum registration threshold of Aboriginal voters was reached. Assuming a maximum registration, the recommendations of the RCER effectively called for a system of proportionate representation for Aboriginal peoples. In addition, the RCER saw no contradiction between Aboriginal electoral districts and self-government and in fact found these concepts complementary.

9. Some leading writers have suggested such an approach is valid only if it is established in the spirit of partnership and power sharing. Others suggest the approach of the RCER dealt with changes to an institution without considering the legitimacy of the exercise of state power over Aboriginal peoples. The more appropriate course of action would be to deal with the issue of legitimizing all national institutions before the place of Aboriginal peoples in these institutions is addressed.

10. Yet other critics point to the recommendations as a scheme in which the ancestry of an individual is the basis for electoral reform. This approach reinforces the notion that Aboriginal peoples belong to a disadvantaged 'racial minority' whose plight requires redress. Such a scheme does not address issues of power sharing, but seeks to increase the influence of Aboriginal people as individual Canadians. Such a scheme is also tantamount to continuing to have Canada exercise power over Aboriginal people.

11. In addition, the RCER did not consider a number of constitutional methods through which

Aboriginal representation might be assured. The commission limited its examination to changes that Parliament could make acting alone. These additional options, all of which would involve the provinces, are outlined briefly.

12. A further option is an Aboriginal parliament. Building on the concept of the Saami parliaments in Finland, Norway and Sweden, the Native Council of Canada proposed a constitutionally entrenched House of the First Peoples during the last round of constitutional negotiations. The proposed house could hold a variety of powers, ranging from legislative vetoes to double majority rules on certain matters to advisory functions such as oversight and the conduct of special studies.

13. Few Aboriginal people have been elected to provincial legislative assemblies since the Métis were the dominant population in Manitoba in the early 1870s. Provincial affiliates of the Métis National Council and the Native Council of Canada have supported such representation in presentations to provincial electoral boundaries commissions. Little support is evident from First Nations, who see such representation as inconsistent with bilateral and treaty relationships with the federal government. However, some guarded recent support by First Nations in New Brunswick and Nova Scotia is considered. But for these few sporadic examples, no serious dialogue has occurred to date with Aboriginal representatives on this matter.

14. While very few Aboriginal people have ever been appointed to the Senate, the record of appointments to date illustrates some acknowledgement of the need to give Aboriginal peoples a voice in the upper chamber. During the last round of constitutional negotiations, Senate reform became a dominant theme. Negotiators from all parties agreed on the need for Aboriginal representation in the Senate. Further study is required regarding the number and methods of selection of Aboriginal senators, their roles, powers and tenure, as well as the distribution of seats among Aboriginal peoples.

15. Aboriginal representation on federal boards and commissions is reviewed briefly. Further consultation with Aboriginal peoples is required to determine the desirability and feasibility of developing an appointment equity program for federal boards and commissions.

16. If anything begs for reform, it is the judicial system. At the last round of constitutional negotiations the parties agreed on the need for a process to ensure Aboriginal people are considered for appointment to the courts. A number of other options requiring further discussion and debate are raised.

17. The writer concludes by observing that the failure of the last round of constitutional negotiations to win public support may foreshadow the emergence of another examination of the issues. A focused discussion between Aboriginal peoples and federal, provincial and territorial leaders on the subject of power sharing would provide a context for discussion on the various issues.

Canadian Representation and Aboriginal Peoples: A Survey of the Issues

by Robert A. Milen

Introduction

Since the colonial period, various legal and political accommodations have been made within Confederation for linguistic, cultural, and religious minorities. The same cannot truly be stated for the Aboriginal peoples of Canada — the Indian, Inuit and Métis peoples. Aboriginal peoples have had a great struggle for recognition, protection and respect for their inherent rights. Canada's record, particularly in relation to First Nations, has been one of imposed policy on unwilling subjects of the state. As noted by former Prime Minister Mulroney in a 1991 speech to the First Nations Congress in Victoria,

...at different periods in our history, governments have attempted to suppress, even eradicate your cultures, beliefs and traditions. (Mulroney 1991, p. 2)

For their part, Aboriginal peoples have steadfastly resisted domination by the majority settler state. They have strived to protect their territories, their governmental, political, legal, educational, social and cultural institutions, their languages, lifestyles and economic way of life from incursion by the state. Indeed, to this day, many Aboriginal people deny they are Canadian citizens. Others debate their place within the Canadian federation without compromising their views on their sovereignty and inherent rights.

The recognition of Aboriginal and treaty rights in the *Constitution Act, 1982* is a recognition of the foothold Aboriginal peoples maintain within the settler state. However, unanswered questions abound about the place of Aboriginal peoples within Canada. This paper attempts to identify some of the issues with a view to provoking debate about viable solutions.

The scarcity of Aboriginal representation in Canadian political institutions comes at a time when others — women, members of ethno-cultural and visible minorities, people with disabilities, and special interest groups — have their own concerns about representation. Parliamentary institutions and their legitimacy are under attack because their membership does not reflect the composition of Canadian society; nor does the membership of these groups believe their representatives can make a difference in national decision making. Electoral

equality for these groups is made more difficult by the unresponsiveness of the major political parties. For example, the successful route to election to the House of Commons passes through the nomination processes of these parties, which themselves insufficiently under-represent the electorally marginalized — Aboriginal peoples, women, members of ethno-cultural and visible minorities, people with disabilities, special interest groups and, because of the cost of the nomination process, the poor.¹

However, the question remains whether adding Aboriginal peoples to a collection of other 'disadvantaged' groups really addresses the issue for Aboriginal peoples — recognition of their distinct rights and recognition of their special place within the fabric of Canadian Confederation.

Part of the debate on representation centres around the concept of 'equality'. This word is dynamic, with ever-changing definitions. For example,

- Does equality mean individual equality and a guarantee of uniformity of treatment within the territorial boundaries of the state? Does this then mean that because Aboriginal people live within Canada, they must be Canadians and, therefore, must not be treated differently from other Canadians? In the context of its mandate pertaining to language, the Royal Commission on Bilingualism and Biculturalism put the point this way:

The equality to which we refer requires that a person who engages in some activity or associates with some institution need not renounce his own culture, but can offer his services, act, show his presence, develop and be accepted with all his cultural traits. (RCBB volume 1, p. xl)

- Does equality mean equality of opportunity or equality of access to Canadian political institutions? Must there be an equality of outcomes?
- Does equality mean (a guarantee of) different or special treatment for a distinct 'minority' within the state? Does this then mean that Aboriginal peoples are a disadvantaged 'racial minority' whose plight requires redress. In other words, does such a concept of equality of treatment require or obligate the Canadian state to undertake positive measures to preserve, sustain and protect the distinct nature and character of Aboriginal peoples and to ensure their voices are heard in Canadian political institutions? Such measures may be justified as a temporary measure to reduce inequality and are sanctioned by section 15(2) of the *Canadian Charter of Rights and Freedoms*.
- Or, does equality relate to a partnership between the original inhabitants of the territory that is now Canada and its settlers? Do the continuing and evolving terms of this partnership

require the Canadian state to undertake positive measures to ensure the voices of Aboriginal peoples are heard in Canadian political institutions? And, furthermore, do the terms of this partnership require the Canadian state to ensure appropriate power-sharing arrangements with Aboriginal peoples?

Besides differing views on the definition of equality, it is suggested that more fundamental issues arise regarding Aboriginal representation in Canadian political institutions. In fact, it could be suggested that limiting the discussion to the concept of equality itself is misguided — it is clothed in liberal democratic values. Rather, the notion of equality should perhaps be cast aside in favour of a focus on Aboriginal political values.

In this regard, the focus of the debate would recognize Aboriginal people as members of distinct political communities with recognizable claims for collective rights and the capacity to forge their own destinies within the boundaries of Canada. (Chartrand 1993, pp. 236, 239) Assumptions that Aboriginal peoples are a racial minority or should be treated equally with all other Canadians fail "to recognize Aboriginal peoples as distinct political communities with unique status". This in turn raises questions about the "legitimacy of Canada's power over Aboriginal peoples". (p. 232) Accordingly, Aboriginal peoples

...are now challenging Canada to rationalize its exercise of power over them. In so doing, they are also arguing that this status allows — indeed requires — them to participate in the design of those institutions which exercise political power in Canada. (p. 238)

Notwithstanding the view held, other issues that have been raised include the following:

- How are Aboriginal peoples to be represented in Canadian political institutions?
- Should Canadian political institutions mirror the Aboriginal (as well as ethnic and general class) characteristics of the public? (Kymlicka 1993, p. 67)
- Is Aboriginal representation more than 'mirror representation'? Is the purpose to overcome "a trail of barriers and prejudices that makes it difficult for historically disadvantaged groups to participate effectively in the political process"? (Kymlicka 1993, p. 70)
- How can Aboriginal peoples incorporate into Canadian political structures without losing their distinctiveness?
- How can representation in Canadian political structures be meaningful and effective? Does mirror representation amount only to token representation? (Kymlicka 1993, p. 78)
- What are the paradoxes and challenges of representation for Aboriginal peoples in

contemporary Canadian society?

- Is the case for distinct representation one of reducing or eliminating systemic barriers? Is the case one of interest group advocacy? Or, is the case based on a notion of an inherent group or collective right?
- What are the links and what is the relationship between Aboriginal self-government and the institutions of Canadian parliamentary democracy? More specifically, what are the links between Aboriginal self-government and Aboriginal electoral districts?

It is suggested that a discussion of these issues raises a more fundamental question: could it not be suggested that this discussion should not occur until after questions pertaining to "the legitimacy of Canada's power over Aboriginal peoples" are resolved? Should Canada be first required "to justify its exercise of power over [Aboriginal peoples] and to explain its claims to resources and land"? (Chartrand 1993, p. 242)

This study attempts to canvass these issues further. Not all readers will agree with the views expressed in this study, nor should they. Given the brevity of the study, it would be impossible to be definitive. The study seeks only to stimulate thought, to raise questions and issues, and to provoke further investigation. Where recommendations are made to the Royal Commission on Aboriginal Peoples, they are offered with these objectives in mind.

The question of representation in Canadian political institutions often focuses on electoral representation. Many Aboriginal people have some familiarity with Maori representation in New Zealand. In the next section we introduce the issue of representation in Parliament with an overview of distinct Maori representation. We go on to look specifically at Aboriginal representation in the House of Commons. Drawing very briefly on experience in the Scandinavian countries and Greenland, the concept of an Aboriginal Parliament is reviewed. A contemporary proposal for a constitutionally entrenched Canadian Aboriginal Parliament is then considered. Then we look briefly at the scant representation of Aboriginal peoples in provincial legislative assemblies and consider possible initiatives to increase Aboriginal representation. The remaining sections discuss measures to increase Aboriginal participation in the Senate, Aboriginal representation on federal boards and commissions and Aboriginal appointments to the judicial system. The study ends with a brief list of recommendations.

Maori Political Representation in New Zealand

Maori/settler experiences in New Zealand provide insight about the role of distinct political representation for an indigenous minority population. A summary examination of the issues in New Zealand, whose experience dates back more than a century, is intended to provide background and insight into the broader issues of Aboriginal representation (and power sharing) discussed in subsequent sections of the paper.

New Zealand is a unitary state with a unicameral parliament and cabinet form of government. Two simultaneous national elections take place at a maximum of every three years: a general election for 95 general seats and an election for four Maori seats. The latter have been reserved for the Maori — though not constitutionally — since 1867.ⁱⁱ Thus, it has been suggested,

A basic division in society has become institutionalized within the formal political structure and the party system. What began as a pragmatic, temporary expedient has become an established part of New Zealand's politics. (McLeay 1980, pp. 44-45)

Arguments have continued about whether this 'division' should remain. Those opposed to the division cite the following arguments:

- special electoral districts bring to mind apartheid, racism, discrimination and paternalism;
- special treatment (in a heterogeneous state) for a minority group denotes classes of persons and may lead to an atomization or balkanization of society;
- there should be no special treatment for one minority group while all others are ignored; if one group merits special treatment, they all do;
- there should be no special privileges for anyone;
- separate electoral representation isolates the Maori from mainstream society;
- four electoral districts isolate Maori MPs, making them ineffective;
- distinct representation "has weakened traditional Maori governmental structures" (Canada, House of Commons 1983, p. 153);
- electoral representation based on the 'ethnicity' of an individual (i.e., who you are) is fundamentally inconsistent with the nature of electoral politics in New Zealand;
- independently elected representatives exercise little power or influence (unless such representatives join one of the political parties represented in Parliament);
- special representation is inconsistent with individual legal equality, on which society places a high premium, and is therefore socially intolerable; and
- the low Maori electoral participation rates in the four Maori electoral districts show that

distinct representation is not supported by a large segment of the Maori population.

In addition, it can be argued that

today the overriding criterion is for suffrage which is both 'universal and equal', and that the growth of mass literacy and mass communications during the twentieth century has undermined any justification for a continuation of special representation. (McRobie 1978, p. 271)

Supporters of distinct representation for the Maori in the New Zealand parliament argue that

- representation of minority groups within society is necessary. Since the Maori are the largest minority in New Zealand, political structures ought to include minority representation;
- distinct representation ensures mindful observance of political and socio-economic interests that might otherwise be ignored (McRobie 1978, p. 217);
- distinct representation maintains the separate identity of the Maori;
- distinct Maori representation is a right contingent only upon Maori consent for its continuation;
- distinct representation is not apartheid because direct representation recognizes that there are two equal and valuable cultural groups in New Zealand. Both should be separately represented in parliament until the Maori decide otherwise. Further, distinct representation is not apartheid because it is not imposed upon the Maori;
- distinct representation allows the Maori some measure of political power with which to influence the decision-making system;
- distinct representation is "necessary to ensure that the rights and interests of the Maori people...are adequately articulated and protected" (Boston 1987, p. 107);
- rather than being eliminated, Maori representation should be increased to take into account their proportionate share of the population — the four allotted electoral districts are not proportional to the Maori share of the population; and
- distinct representation can help the Maori protect their language and culture against the current of individualism and egalitarianism within New Zealand society.

One writer puts the issue this way:

Where these biases and interests cut across and into the historically defined legal, property, kinship, community and language rights of the minority people, and where there are insufficient blocs of minority voters to produce minority representatives, then special representation can be justified. For those are issues

that lie beyond the egalitarian and universalistic measures of even an humanitarian state... (McLeay 1980, p. 62)

New Zealand is now moving to a system of mixed member proportional representation, with 120 representatives in Parliament. Voters will have 2 votes — one for a candidate running for election in an electoral district, and another for the party the voter wants to see represented in parliament. Based on the current population there will be 64 members of Parliament, including 3 Maori representatives, chosen from 64 electoral districts. A further 56 will be elected from party lists. (New Zealand 1993)

A Maori voter will continue to have a choice between being registered on a Maori electoral roll or on a general roll. In both electorates, a Maori individual will have one vote for a candidate running in an electoral district and one for the party the voter wishes to see represented in Parliament. The number of Maori representatives can increase or decline — this depends on the number of voters on the Maori roll. Based on the number of people registered on the Maori electoral roll in 1992, there will only be 3 Maori electoral districts at this time. (New Zealand 1993)

Although the system is changing, the concept of distinct Maori representation remains. Why? It is suggested that the longevity of this system can be attributed to its ability to preserve competing interests (Fleras 1985a, p. 575) and that it is therefore a success.

It is further suggested that distinct representation for the Maori is consistent with the principles of the British parliamentary system with one caveat: the most fundamental basis of representation in the British parliamentary system is geographic. The four parliamentary seats historically reserved for the Maori are a significant departure from the geographic basis of representation. Nevertheless, a clear precedent exists for the establishment of distinct representation for an indigenous population in a parliamentary system, albeit in a unitary state.

Beyond this, it is suggested that the New Zealand experience holds lessons for Canada, lessons that provide insight into more fundamental issues of power sharing with Aboriginal peoples, such as self-government. Augie Fleras is of the view that

Even as a symbol, the principle of AEDs [Aboriginal electoral districts] may have a powerful impact in sending out positive messages about the status of Aboriginal/government relations and restructuring of Aboriginal relations with the state. (Fleras 1991, p. 89)

Fleras goes on to say that

The concept of separate Maori representation provides a useful departure point for

designing a viable system of AEDs in Canada.... Foremost in terms of lessons from New Zealand is the acknowledgement that AEDs constitute but one component in the overall drive to entrench Aboriginal rights through Aboriginal self-determination along political, social, economic and cultural fronts. An equally important lesson is the necessity to have Aboriginal input in the design and implementation of a new electoral process. Anything less than this can only squander the potential of AEDs amidst charges of appropriating Aboriginal rights to self-determination. Finally, AEDs must be established in the spirit of power-sharing, not as a conflict-management device with public relations overtones. Otherwise, what we have is a system that nominally reintegrates an Aboriginal voice into the electoral process but whose underlying logic detracts from any standard of what is fair, just and equitable. (Fleras 1991, 98-99)

Aboriginal electoral districts "must be defined as one component in a comprehensive package for advancing Aboriginal rights along a broad range of political, social, economic and cultural fronts". They must be established "in the spirit of partnership and power-sharing". (Fleras 1992, p. B3)

Debate over guaranteed Aboriginal representation in Canada arose in the context of efforts to reform the process of electing members to the House of Commons.

Aboriginal Peoples and Electoral Reform in Canada

Segments of the Aboriginal population have long been interested in Aboriginal representation in Parliament. As early as 1979, the Native Council of Canada (NCC, now the Congress of Aboriginal Peoples) sought guaranteed Aboriginal representation in the House of Commons. A declaration of the NCC stated that Aboriginal people "have the right to guaranteed representation in all legislative assemblies." Later the NCC sought constitutional guarantees for Aboriginal representation in Parliament and in the provincial and territorial legislatures in proportion to their share of the Canadian population. (NCC 1981, pp. 34-40) The NCC saw guaranteed representation as an Aboriginal right within section 35 of the *Constitution Act, 1982*. Therefore, section 35 required amendment to provide further definition and elaboration of this, and other, rights.

During four first ministers conferences on Aboriginal constitutional matters in the 1980s, the hearings on Senate reform in 1982-83, and the Charest Committee hearings on the Meech Lake Accord in 1990, the NCC maintained this stance. For example, the NCC told first ministers in 1983 "that we have a right to guaranteed representation in Parliament and Legislative Assemblies". (NCC 1983b, p. 6)ⁱⁱⁱ NCC affiliates supported this position.^{iv}

At the four first ministers conferences on Aboriginal constitutional matters in the 1980s

and the hearings on Senate reform in 1982-83, the Métis National Council (MNC) stated an identical point of view. In its presentation to the Special Joint Committee of the Senate and House of Commons on Senate Reform, the MNC stated that

A recurring theme throughout the evolution of the Métis has been our struggle for political autonomy within the Canadian federation. That is because we have never opted for outright sovereignty. We have sought participation in the larger political system as well as self-government within it. Louis Riel's provisional governments in Manitoba in 1869 and in Saskatchewan in 1885 tried to gain self-government through provincial status as well as guaranteed parliamentary representation. (MNC 1983, pp. 4-5)^v

This position was also supported by MNC affiliates.^{vi}

Representation is particularly important to the constituencies of these organizations. Since their membership lacks a land base (with the exception of the Métis settlements in Alberta) and a federal ministry to enter into relations with them, representation in legislative assemblies would allow Aboriginal peoples "to increase their involvement in the decision-making process of the state" and to help protect and promote their collective interests.

Without governments of their own and without a population concentration which would favour the election of Aboriginal candidates, they have been alienated by the political system and denied effective representation in political institutions. Proposals for guaranteed representation are designed to ensure that Aboriginal people fully participate in the decisions of public institutions such as legislative assemblies and regional governments which impact directly on their collective interests. (Weinstein 1986, p. 7)

Inuit representatives, through the Inuit Committee on National Issues (ICNI), have supported measures designed to increase Inuit participation rates in the House of Commons and the Senate:

We believe effective and increased Aboriginal participation in the affairs of Parliament would go far in enhancing Parliament's authority, as it would go in furthering the contribution of Canada's Aboriginal peoples to the political process in this country. (ICNI 1983b, pp. 20-21)

However, Inuit leaders were reluctant to endorse any scheme of guaranteed representation, believing that such representatives "would end up being isolated, not being part of the mainstream". (ICNI 1983b, pp. 31-32) Rather, they endorsed a form of public government in an area in which they are the majority population — Nunavut.

The Inuit in Greenland also endorse the notion of public government in which Inuit, by virtue of their population size, are able to elect Inuit representatives. By way of brief background, the constitution of the Kingdom of Denmark (1953) included Greenland, ending its

status as a colony. This constitution gives Greenlanders, the majority of whom are Inuit, a status equal to that of all other Danish citizens. By 1979, home rule was established, giving Greenlanders a local legislature akin to a provincial government, with Denmark retaining control over certain key areas such as national defence and foreign affairs. The Greenland Home Rule Act (1979) protected the "fundamental rights" of the resident population regarding natural resources. Greenlandic, one of the languages of the Inuit, is the principal language, although Danish must be "thoroughly taught". Either language can be used for official purposes.

The public government of Greenland makes no distinction among electors on the basis of ethnicity: all have equal rights. An analogy can be made to the proposed model for Nunavut, which is based on public government making no distinction among electors based on 'ethnicity'. Perhaps the fact that, as in Greenland, the Inuit are the majority population in Nunavut heavily influences the choices made by Inuit in favour of public government.

The remaining group of Aboriginal peoples in Canada, the Indian people or First Nations, have a different perspective. The first known call for guaranteed representation was made by the Malecite Nations in 1946. (RCER volume 1, p. 174) At one time the Indian Association of Alberta also proposed "the creation of distinct Indian constituencies based on Reserves". (Marchant 1982, p. 1) However, First Nations have generally not directed political action toward representation in Parliament.^{vii} The question of the utility of a few seats in a settler-dominated House of Commons was subordinate to the unfinished business of the nation-to-nation relationship involving (constitutional protection of the inherent right of) self-government and the honouring of treaties and the treaty-making process. First Nations were concerned that discussion of parliamentary representation could be a barrier to the rightful place of First Nations in their lands, or at least could side-track priority issues of power sharing.

But are self-government and increased representation in parliamentary institutions mutually exclusive? Are they compatible? These issues were raised in the report of the Royal Commission on Electoral Reform and Party Financing, whose recommendations and proposed reforms were based on consultation with a number of Aboriginal communities by a committee of present and former Aboriginal members of Parliament — the Committee for Aboriginal Electoral Reform.

The Royal Commission on Electoral Reform and Party Financing

Like New Zealand, Canada has followed the British parliamentary system and adopted a geographic basis for representation. After Confederation an additional element was added to the geographic basis of representation — members of Parliament were elected to represent constituencies within provinces.

In November 1989, the Royal Commission on Electoral Reform and Party Financing (RCER) was appointed to conduct a thorough examination of all aspects of the Canadian electoral system. As its hearings progressed, Aboriginal electoral reform became a significant priority issue.

Aboriginal Testimony and Submissions

Traditional positions maintained by Aboriginal leaders were enunciated. The NCC expressed the view that "self-government can mean little if it is not reflected in national institutions". (NCC 1990a, p. 6) This position was endorsed by two NCC affiliates. (Gould 1990; Robinson 1990) One MNC affiliate supported the creation of guaranteed seats in Parliament. (Morin 1990) Inuit representatives continued to support the notion of greater representation in Parliament but maintained that guaranteed seats were not their preferred vehicle to obtain greater electoral clout. (Nungak 1990)

Considerably more was spelled out by representatives of First Nations. Representatives spoke of being "effectively disenfranchised" because they could not vote for a candidate of choice. (Coon Come 1990, p. 622) Others called for a system of representation based on the New Zealand experience or their own electoral districts. (Crees of Quebec 1990, pp. 18-21) Others spoke of the need to have elected representatives "who do not have to be taught who we are, what we want, and why we are important to this country." (Manitoba Keewatinowi Okimakanak 1990, pp. 133-134)^{viii} Most representatives saw improved representation in the House of Commons and self-government as being complementary, although self-government remained a priority. (Milen 1991, p. 41)

The Committee for Aboriginal Electoral Reform

On 13 May 1990, Senator Len Marchand of British Columbia appeared before the Royal Commission on Electoral Reform and Party Financing to outline his case for structural reform of

the House of Commons to ensure equality of representation for Aboriginal peoples. While outlining what he saw as impediments to Aboriginal electoral participation in the federal electoral system, Senator Marchand convinced the Royal Commission to examine the concept of distinct representation for Aboriginal peoples.^{ix}

Senator Marchand was of the view that Aboriginal peoples are citizens of Canada who have not been, and still are not, adequately represented in the House of Commons. Because of the relatively small and dispersed Aboriginal population, Senator Marchand was convinced this lack of representation would continue. He therefore supported the concept of guaranteed representation in the House of Commons.

As a model, Senator Marchand supported the system of guaranteed Maori representation in New Zealand. While very well versed in the arguments advanced for and against this system of representation, he was convinced of the soundness of the model.

Senator Marchand was the first member of a First Nation to be elected to the House of Commons and the first to be appointed to the federal cabinet. Senator Marchand subsequently conducted two cross-country consultations with Aboriginal representatives on the issue of electoral reform and, in the first, found support for the concept of Aboriginal electoral districts. (LeClair et al. 1991, p. 4)

In its response to this first consultation process, the Royal Commission requested that Senator Marchand undertake further consultations to determine whether there was sufficient Aboriginal support for the concept of Aboriginal electoral districts to include it in the recommendations of the Royal Commission.

The second round of consultations was conducted through the auspices of the Committee for Aboriginal Electoral Reform, a committee of five present and former Aboriginal parliamentarians chaired by Senator Marchand^x that took a non-partisan approach to its work. The committee's mandate was reform of

...the federal electoral system to redress the structural inequalities which have blocked the effective participation and representation of Aboriginal people in the process of Canadian electoral democracy. (Committee 1991a, p. v)

The genesis of the committee's approach lay in recognition of the historical failure of Aboriginal peoples to secure effective representation in the House of Commons. At the time of the committee's work, the Aboriginal peoples of Canada had elected only 12 self-identified MPs since Confederation out of a total of 10,966 MPs. (This figure includes all members elected

before the 1993 general election. In the last federal election, Elijah Harper was elected in the northern Manitoba constituency of Churchill. This now means that since Confederation 13 self-identified MPs have been elected out of a total of 11,261 MPs.)

Of the Aboriginal MPs elected at the time of the committee's work, three (including Louis Riel) were elected in Manitoba in the 1870s, when the Métis constituted a majority in the province. Nine more have been elected since 1960, when on-reserve Indians were finally permitted to vote. Of these nine, six have been elected in the Northwest Territories, where Aboriginal peoples make up the majority.^{xi} Of the three elected south of the 60th parallel, one MP has been elected in each of the following provinces: Manitoba, Alberta and British Columbia. Table 1 presents the self-identified Aboriginal members of Parliament who have been elected this century.

The committee saw no conflict between the inherent right of Aboriginal self-government and electoral participation within the Canadian federation. Indeed, the committee found self-government and electoral participation complementary:

We draw an analogy with the European community, where strong sovereign governments have believed it proper and effective to give their people the ability to elect their representatives in the European Parliament. Elected representatives from each member country are thus in a position to advance their common interests and to deal effectively with issues that cut across their individual boundaries. (Committee 1991a, p. 1)^{xii}

The Committee found strong support in Aboriginal communities for the creation of Aboriginal electoral districts. It also found some hostility. Opposition to the work of the committee was rooted in the lack of a tradition of electoral participation in many First Nations because of their views on sovereignty and a history of legislative exclusion from the vote. (Milen 1991, pp. 47-48) Tough questions were asked about the legitimacy of Parliament authority over Aboriginal peoples and its relevance to them.

Table 1
Self-Identified Aboriginal Members of Parliament
Elected to the House of Commons in the Twentieth Century

Member of Parliament	Federal Constituency	Length of Mandate	Political Party
Gene Rheaume (Métis)	Northwest Territories	1963-65	Progressive Conservative
Len Marchand	Kamloops-Cariboo (B.C.)	1968-72	Liberal

(Indian)		1972-74 1974-79	
Wally Firth (Indian)	Northwest Territories	1974-79	New Democratic Party (NDP)
Peter Ittinuar (Inuk)	Nunatsiaq (Northwest Territories)	1979-6 December 1982 December 1982-July 1984 July 1984-September 1984	NDP Liberal Independent
Cyril Keeper (Métis)	Winnipeg-St. James (Man.) Winnipeg North Centre (Man.)	1980-84 1984-88	NDP
Thomas Suluk (Inuk)	Nunatsiaq	1984-88	Progressive Conservative
Jack Anawak (Inuk)	Nunatsiaq	1988-present	Liberal
Ethel Blondin (Indian)	Western Arctic (Northwest Territories)	1988-present	Liberal
Willie Littlechild (Indian)	Wetaskiwin (Alberta)	1988-1993	Progressive Conservative
Elijah Harper (Indian)	Churchill (Manitoba)	1993-present	Liberal

In its recommendations, the committee observed that "Aboriginal peoples are also citizens of Canada and have as much right as any other citizen to participate freely in the parliamentary process on an equal footing with other Canadians." (Committee 1991b, p. 271)

The committee therefore recommended that guaranteed electoral districts (constituencies) be set aside to ensure adequate Aboriginal representation in the House of Commons. The number of electoral districts would be determined according to the following formula: first, the number of electoral districts would be allotted to each province according to the current formula. Second, the electoral quotient of each province would be determined, as is now the case, by dividing the total population of a province by the number of electoral districts. This would determine the population size of each electoral district, which is subject to a permitted deviation of 25 per cent. This means that the population size of a electoral district may vary by 25 per cent (above or below the provincial electoral quotient). Third, the number of Aboriginal electoral districts would be equal to the number of self-identified Aboriginal people (as determined by the 1991 census figures) divided by the electoral quotient. (Committee 1991b, pp. 251-253)

Whatever the opinion of the work and recommendations of the committee, it is suggested

that the committee made a significant contribution was made to Canadian electoral politics. This contribution should not be overlooked. Their belief that Aboriginal people are Canadians sparked a very important debate at the community level regarding the application of Canadian citizenship to Aboriginal people. The committee directly challenged the notion that Aboriginal people are not Canadians^{xiii} and that the affairs of Parliament do not concern them. They took this view to Aboriginal communities and debated it fully with participants.

The writer attended many of these community meetings. Debate was often spirited. Committee members welcomed this debate. They expressed the view that they were not in the communities to defend an institution because of their election to it; they were in the communities to debate an institution in which they passionately believed. Committee members believed that representation in the House of Commons was necessary to defend and protect the interests and rights of Aboriginal peoples. For example, at one meeting committee member Ethel Blondin was asked pointedly why House of Commons debates on foreign policy were either relevant or important to Aboriginal people. Ms. Blondin replied that this question should be directed to the Innu of northern Labrador every time a fighter jet flies low over their lands on a NATO training exercise.

Recommendations of the Royal Commission

The Royal Commission on Electoral Reform and Party Financing was of the view that the under-representation of Aboriginal peoples in the House of Commons was symptomatic of distress in Canada's electoral system. The RCER noted that current federal electoral legislation did allow for electoral boundaries commissions to draw electoral boundaries around communities of interest^{xiv} and that this has permitted the drawing of electoral boundaries around geographically clustered anglophone minorities in Quebec and francophone communities in Ottawa and Winnipeg.

The problem for Aboriginal peoples is the drawing of electoral boundaries that place northern Aboriginal communities in the same ridings as larger, more southerly non-Aboriginal communities. To respect the electoral quotient within a province (discussed earlier), northern communities are linked with voters in the more densely populated southern communities to achieve this quotient. Aboriginal people, who are a majority in northern communities, thus become a minority in the constituency. Drawing electoral boundaries on an east-west basis would

increase the proportion of Aboriginal electors. However, this would still constitute "insufficient gerrymandering" (Arsenault 1992, p. 15) and would not alleviate the dilution of the Aboriginal vote.^{xv} Aboriginal peoples would still be systematically under-represented in Parliament.

The Royal Commission noted that measures to assure direct representation of particular groups are part of Canada's constitutional heritage and political practice:

- In 1867, the *Constitution Act, 1867* entrenched the boundaries of 12 constituencies in Quebec with English-speaking majorities and provided that these boundaries could be changed only with the agreement of the majority of members representing these ridings.^{xvi} (RCER volume 1, pp. 178-179)^{xvii}
- Since Confederation, Quebec's 24 senators have each represented an 'electoral division' within that province — an arrangement still in force and intended to assure representation of Quebec's English-speaking minority. (volume 1, p. 179) (However, because of population shifts, this is of limited relevance today.)
- 'Dual member' constituencies have been used at the federal and provincial level to ensure the election of representatives from specific groups (most often religious or linguistic). (volume 1, p. 179)

The RCER implied that administrative changes alone in the way Elections Canada conducts its operations would not help bring Aboriginal people into the electoral process^{xviii} and would not significantly increase Aboriginal representation in the House of Commons. (volume 2, pp. 170-171) The commission also implied that encouraging political parties to take concrete measures to increase Aboriginal representation and voice within party structures did not hold great hope that Aboriginal people would eventually gain greater electoral representation (volume 2, p. 171) This would depend on the willingness of political parties to make concrete efforts and reforms, an outcome that is not assured.

Therefore, in its recommendations, the commission proposed creation of federal ridings in which only Aboriginal electors could vote. Commissioners stated four main reasons why they believed their recommendations were in the interests of all Canadians:

- First, there is the unique constitutional status of Aboriginal peoples under Canada's Constitution. (volume 1, pp. 179-180)
- Second, Aboriginal people have always resisted assimilation, choosing instead to preserve their distinct identity. (volume 1, pp. 180-181)

- Third, the Parliament of Canada has a special relationship with Aboriginal peoples. Therefore, Aboriginal peoples should be represented in the House of Commons to speak for their interests. (volume 1, pp. 181-182)
- Fourth, the claims of Aboriginal peoples as the first peoples of this land to effective representation are unique. (volume 1, p. 182)

In addition, the commission did not see any contradiction between distinct electoral representation in the House of Commons and self-government. The RCER concluded that

The creation of Aboriginal constituencies should not be construed as affecting any other Aboriginal rights or claims. Aboriginal constituencies acknowledge Aboriginal peoples' desire to be directly represented in the House of Commons. Such representation is not a substitute for Aboriginal self-government or other freedoms. (volume 1, p. 190)

The commission quoted Ovide Mercredi, then Vice-Chief, Manitoba Region, Assembly of First Nations:

There is no inconsistency in Canada recognizing our collective rights of self-government and us still getting involved and maintaining our involvement in the political life of the state, which means getting involved in federal elections. (volume 1, p. 177)

The commission recommended that an Aboriginal electoral district be created only when a sufficient number of Aboriginal voters had registered for this purpose before the constituency boundaries were redrawn in a province. (volume 2, p. 141) If the largest possible number registered, there could be one or two electoral districts created in British Columbia, one in each of the prairie provinces, two in Ontario and one in Quebec. (volume 1, p. 186)

With respect to the mechanics of creating an Aboriginal electoral district, Aboriginal voters would have the right to enrol on an Aboriginal voters list in the province in which they lived, if they so chose. Elections Canada (or its proposed successor, the Canada Elections Commission, as it was called by the Royal Commission) would undertake the general supervision of the registration process in co-operation with Aboriginal organizations. (volume 1, p. 191) The registration process would be administered by persons qualified to be registered as Aboriginal voters. Special efforts would be made to ensure voters are registered, including enumeration of voters in areas with high Aboriginal populations; mail registration; and an organized voter registration drive. (volume 2, p. 147)

At the conclusion of this process, a register of Aboriginal voters would be prepared. The name and address of each eligible voter would appear. However, to respect a voter's privacy

rights, an address would not be published if so requested by a voter. This register would be open for inspection by registered Aboriginal voters.

The boundaries of Aboriginal electoral districts would then be drawn. This process would be undertaken by the boundaries commission appointed for each province. Under current electoral legislation, a commission for a province is chaired by a judge appointed by that province's chief justice and two other persons chosen by the speaker of the House of Commons. In a province where only one Aboriginal constituency would be created, the boundaries of the province would serve as the boundaries of that Aboriginal constituency. (volume 2, p. 149)

The Royal Commission also recommended that

...where more than one Aboriginal constituency is to be created in a province, a special boundaries commission be created, composed of the chairperson of the boundaries commission for the province, who shall also act as chair for this special commission, plus two Aboriginal voters appointed by the Speaker of the House of Commons, with the mandate to determine the boundaries and names of the Aboriginal constituencies. (volume 2, p. 150)

The Commission foresaw the creation of these districts unfolding along the following timelines:

Following the 1991 census and the redistribution of seats to be undertaken subsequent to this census, the chief electoral officer will be able to indicate the potential number of Aboriginal constituencies that could be established in each of the six provinces in question [British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec]. Given that the next federal general election will be held in 1992 or 1993, the new distribution of seats will not take place until after this election, as the law requires a period of one year between the redrawing of constituency boundaries following a redistribution and the use of new boundaries for a general election. The first opportunity to create an Aboriginal constituency in any province, therefore, cannot occur until after the next election [i.e., until the election following the 1993 election]. (volume 1, pp. 191-192)

The recommendations of the Royal Commission effectively called for a system of proportionate representation for Aboriginal peoples — approximately 3.5 per cent of the population would have 3.5 per cent of the ridings, assuming a maximum Aboriginal voter registration. In effect, the Royal Commission adopted an approach that could see a future House of Commons mirroring the Canadian population in terms of its Aboriginal/non-Aboriginal composition.

The RCER was of the view that such representation would not ghettoize Aboriginal

peoples. Nor would the small number of MPs elected make them ineffective. The Royal Commission believed that the

...interests of minority groups, however defined, are best protected and secured when they have representatives who can speak directly and explicitly on their behalf. (volume 2, p. 184)

In addition, the commission believed that a persuasive case could be made that greater Aboriginal representation in the House of Commons and self-government "are complementary and mutually reinforcing". (volume 2, p. 185)

There was, however, a significant departure from the basic thrust of the approach recommended by the Committee for Aboriginal Electoral Reform. The Royal Commission recommended a guaranteed process for the establishment of Aboriginal electoral districts, rather than guaranteeing a specific number of seats for Aboriginal people. The commission saw this as overcoming the shortcomings of the New Zealand situation where Maori electoral participation rates are low in elections for their guaranteed seats. An Aboriginal electoral district would be created in a province only when so desired by Aboriginal people (volume 1, pp. 183-184), and over time an Aboriginal electoral district could be lost if sufficient numbers of Aboriginal voters did not register. Table 2 sets out the differences between the committee's proposal and the commission's recommendations.

Aboriginal electoral districts would be similar to other ridings in terms of number of electors. (volume 1, p. 187) Elections conducted in these districts would be the same as in other, with the possible exception of differences related to candidate expenses in the geographically much larger Aboriginal districts. Any qualified person, Aboriginal or non-Aboriginal, could be a candidate for office. Political parties could support candidates.

The only exception to the creation of Aboriginal electoral districts under federal electoral law related to Atlantic Canada. Because the entire Aboriginal population of Atlantic Canada could constitute only one electoral district, the Royal Commission recommended that

...the federal and provincial governments concerned meet with Aboriginal leaders in the area to determine how a seat could be allocated through a constitutional amendment for the purpose of creating an Aboriginal constituency. (volume 1, p. 187)

The Royal Commission walked on thin ice here. It did not want to make a specific recommendation for a constitutional amendment, fearing that the debate over such an

amendment would detract from other constitutional processes and negotiations in which Aboriginal peoples were involved. Hence the careful language adopted.

Table 2
Establishing Aboriginal Electoral Districts

Royal Commission	Committee for Aboriginal Electoral Reform
Determined according to the basic current formula.	Determined according to the current formula.
Determine the population size of each electoral district (the 'quotient') in a province by dividing the total number of voters in a province by the number of electoral districts.	Determine the population size of each electoral district (the 'quotient') in a province by dividing the total population in a province by the number of electoral districts.
Size of each electoral district may vary by 15 per cent.	Size of each electoral district may vary by 25 per cent, as is the case under current law.
Aboriginal voters are registered. If the registered number of Aboriginal voters in a province is within 15 per cent of the quotient for that province, an Aboriginal electoral district is created.	No registration is required; census population figures are used. If the Aboriginal population in a province is within 25 per cent of the quotient for that province, an Aboriginal electoral district is created.
In subsequent years, a lack of registration means the loss of an Aboriginal electoral district. New ones can be created if sufficient voters register.	Electoral districts are never lost despite the number of electors who may vote in such a district. Additional districts are created as the Aboriginal population grows.

The recommendations of the Royal Commission generally received little comment,^{xix} especially from Aboriginal political organizations. Part of the reason may relate to the beginning of constitutional discussions around the time the commission's report was released, discussions in which the priority issue of self-government came to the forefront.

Of the few general criticisms, one relates to the heavy reliance in the recommendations on the role of political parties in Canada's system of electoral democracy. As for importing the concept of Aboriginal electoral districts, debate and divided opinion continue. In earlier works, for example, some eminent writers raised the same concerns cited about the New Zealand experience, such as whether guaranteed electoral districts for the Maori in New Zealand have been beneficial or detrimental.^{xx} Fleras, for example, wondered whether the model had restricted utility outside New Zealand. He noted that Maori tribes constitute 13 per cent of New Zealand's

population, while Canada's Aboriginal population is about 3.5 per cent of the total. Differences in history, geography, and demographics complicate the issue. (Fleras 1991, p. 85) On the other hand, Fleras also felt there were appropriate lessons to be learned from the Maori experience, lessons that were considered earlier in this study.

One criticism that could be made relates to the failure of the Royal Commission to discuss in any depth the relationship between Aboriginal electoral districts and Aboriginal self-government. Tony Hall sees Aboriginal MPs as "the pivot point" between Aboriginal governments and the government of Canada (1991a, p. 104; 1986, p. 204):

Parliamentarians representing Aboriginal constituencies would not be leaders of Aboriginal governments. The task of choosing those leaders must take place within an institutional framework of Aboriginal peoples' own making. But parliamentarians representing federal Aboriginal ridings would be well placed to act as intermediaries who could help smooth the relationship between Aboriginal governments and the federal government. Certainly they would be better positioned to perform that function than the individual who presently holds that responsibility, the Minister of Indian Affairs. (1991b, p. 135)

Will Kymlicka sees the point differently: Aboriginal electoral districts seek to provide greater inclusion for Aboriginal peoples while "demands for self-government reflect a desire to weaken the bonds within the larger community, and indeed question the larger community's very nature, authority and permanence". (1993, p. 81) As a result, Aboriginal people "may view their own political community as primary, and the value and authority of the larger federation as derivative".

Other criticisms include the implication of apartheid. For one commentator, for example, the concept of Aboriginal electoral districts

...is flawed. It would serve only to warm the odious corpse of apartheid in Canada's voting system. The principle upon which it is based offends the concept of democratic representation. (Lee 1991)

It is suggested that this view has no redeeming qualities whatsoever. The Royal Commission's recommendations, and those of the Committee for Aboriginal Electoral Reform, are directed to including Aboriginal people in the electoral process, not excluding them from it. In addition, Aboriginal people would have the choice of casting a ballot in a general electoral district or in an Aboriginal electoral district. This situation is comparable to the voting privileges now accorded such groups as university students who can cast a ballot on campus or in their home community. Finally, anyone could seek office in an Aboriginal electoral district; candidates

need not be of Aboriginal descent to run for office.

In this regard, however, it is arguable that allowing non-Aboriginal candidates to run for office in Aboriginal electoral districts could result in the election of non-Aboriginal people. This would not guarantee the election of MPs who 'mirror' the electorate. (Kymlicka 1993, p. 79) Such an approach could be criticized as undermining the legitimacy of the concept of Aboriginal electoral districts. On the other hand, it could be argued that "what matters...is not who is elected, but how they are elected — i.e., they [MPs] are elected by, and hence accountable to, Aboriginal people". (Kymlicka 1993, p. 78)

Nevertheless, schemes of deliberate exclusion that keep people out of the democratic processes by denying them the right to vote based on 'ethnic' identity are immoral. Canada led the move to expel South Africa from the British Commonwealth of Nations because of discriminatory acts toward the black majority^{xxi} and East Indian minority. Neither Canada nor the Aboriginal peoples of Canada tolerate discriminatory acts such as those in South Africa that deliberately exclude people from governance and from participation in the franchise on the basis of one person, one vote.

Aboriginal peoples are struggling to take their rightful place in Canada. All Canadians, whether Aboriginal or non-Aboriginal, are included under Canada's electoral laws. The concept of distinct representation in the House of Commons seeks to enhance electoral participation by Aboriginal people, not deny it as would be the case under a scheme of apartheid. What the Royal Commission intended was a scheme to include Aboriginal peoples in the democratic processes and to improve the quality of their representation, not to keep them out of these processes. Also, Aboriginal people would have the right to vote either in an Aboriginal electoral district or in a general electoral district. Therefore, any comparison with discriminatory regimes is not well founded.

The recommendations of the Royal Commission were made after thorough study, a process in which Aboriginal peoples themselves participated. The New Zealand precedent was considered, as were the aspirations of Aboriginal people at the community level for distinct representation. Their recommendations were made without prejudice to self-government and other inherent rights of Aboriginal peoples. In the end, it is for the reader to judge the merits of the arguments for and against the work of the committee and the Royal Commission.

Other criticisms of the commission's recommendations, however, raise more fundamental

issues and merit further examination. One of the major criticisms of the approach of the Committee for Aboriginal Electoral Reform and the Royal Commission was their failure to consider recognition of Aboriginal peoples as distinct political communities with the capacity to forge their own destinies within the boundaries of Canada. Instead, the approach of both sought to increase Aboriginal influence through an increase in the effectiveness of individual voting power as an incidence of Canadian citizenship.

This result is a scheme in which individual ancestry is the basis of recommendations for electoral reform. Such a scheme reinforces the notion that Aboriginal people belong to a disadvantaged 'racial minority' whose plight requires redress. This approach draws criticism from those upholding liberal democratic notions of individual rights and from critics who object to 'race-based' self-government. Aboriginal peoples are not 'races' within the boundaries of a legitimate political state but political communities with recognizable claims for collective rights. (Chartrand 1993, p. 236)

Furthermore, such a scheme does not address issues of power sharing but seeks to increase the influence of Aboriginal people as individual Canadians. Such a scheme is tantamount to continuing to have Canada exercise power over Aboriginal peoples. Thus, Paul Chartrand suggests that the recommendation for the creation of Aboriginal electoral districts "provides a good example of the limits of a policy that does not address the issue of legitimacy". (p. 242) The Committee for Aboriginal Electoral Reform, for example,

...never considered the issue of legitimacy in respect of the exercise of state power over Aboriginal peoples as such. It took existing institutions as they were and sought modifications to them. (p. 243)

The more appropriate course of action would be to deal with the issue of legitimizing all national institutions before the place of Aboriginal peoples in these institutions is addressed. (p. 244) Such a course of action would also be appropriate before undertaking increased representation in provincial legislative assemblies, in the Senate, on federal boards and commissions and in the federal judiciary, subjects discussed in the remainder of this study.

In the meantime, readers are left to draw their own conclusions about the desirability and efficacy of the Royal Commission's recommendations. It is clear that the commission concluded that a guaranteed process to establish Aboriginal electoral districts is the best means of rectifying under-representation of Aboriginal peoples in the House of Commons while accommodating the

aims and aspirations of many Aboriginal people for a greater say and a greater role in Canada's institutions of governance. However, the model adopted by the Royal Commission did not consider other possibilities for electoral reform.

Alternative Approaches to Aboriginal Electoral Reform

The approach to electoral reform endorsed by the Royal Commission is by no means the only available choice. Six other options exist, all of which would require a constitutional amendment.

The first option, the 'topping up' approach, would see the creation of Aboriginal electoral districts over and above those currently allocated to the provinces. Where there is a large Aboriginal population in a province, an Aboriginal electoral district could be created. But as noted earlier, the formula used to determine the number of electoral districts in a province has constitutional protection. The addition of Aboriginal electoral districts could affect some provinces' share of seats in the House of Commons. Section 52 of the *Constitution Act, 1867* states that the number of House of Commons seats can be increased only if the proportionate representation of the provinces is respected. In 1982, this rule was strengthened by requiring that such changes be made only with the approval of Parliament and at least two-thirds of the provinces. An amendment under section 38 the *Constitution Act, 1982* would therefore likely be required to create Aboriginal electoral districts in this manner.^{xxii}

A second option would be to extend constituency boundaries across provincial boundaries, especially in the northern parts of the prairie provinces. Since this would violate the rule of assigning electoral districts to provinces, an amendment under section 38 of the *Constitution Act, 1982* would most likely be required.

These options were not considered by the Royal Commission. The RCER limited its recommendations to electoral reforms that could be undertaken by Parliament acting alone pursuant to section 44 of the *Constitution Act, 1982*.

A third option would be to adopt the model established in the state of Maine in 1827 and still in effect today — representation of the Penobscot and Passamaquoddy nations by one non-voting member each in the state legislature. This approach was rejected by the Royal Commission because the representatives would not be permitted to vote, thereby creating two classes of elected representatives. Nevertheless, this approach could be adopted by Parliament acting alone pursuant to section 44 of the *Constitution Act, 1982*.

A fourth option would be to move away from the principle of making all electoral districts the same size in terms of number of voters, subject to a reasonable deviation from the electoral quotient. If this option were adopted, Aboriginal electoral districts would have a smaller number of voters than general electoral districts (though they might still cover an entire province). As a result, more Aboriginal MPs could be elected than the relative size of the Aboriginal population would warrant. A possible trade-off might be a non-voting, consultative role in the House of Commons. Again, this could be accomplished by Parliament acting alone pursuant to section 44 of the *Constitution Act, 1982*.

A fifth option would be to allow Aboriginal people to cast two ballots. One would be for the candidate of choice in a general electoral district, the other for an Aboriginal candidate in an Aboriginal electoral district. Members so elected would have the same rights and privileges as all other MPs. (Métis Society 1991; Fleras 1991, pp. 96-98)^{xxiii} Again, this again raises the issue of proportionate representation of provinces, as well as constitutional objections to the principle of one person, one vote. Such a proposal would require a constitutional amendment under section 38 of the *Constitution Act, 1982*.

A sixth option would see Aboriginal peoples casting two ballots, as in the previous option. However, the member of Parliament representing an Aboriginal electoral district would not have voting privileges. This scheme could be accomplished by Parliament acting alone under section 44 of the *Constitution Act, 1982*.

Instead of electoral reform, a further option would be to restructure Parliament (the House of Commons and the Senate) through creation of an Aboriginal Parliament. Before considering such an institution, it should be noted that the Royal Commission on Electoral Reform and Party Financing opened the door to consideration of a constitutional amendment to achieve representation of Aboriginal peoples in Atlantic Canada. Other constitutional options clearly exist. It is suggested, however, that serious questions have to be asked about the desirability of Aboriginal peoples stretching or diverting their limited time, energy, and resources into constitutional reform of a parliamentary institution while other priority issues, such as self-government, remain outstanding.

Therefore, it is recommended that the Royal Commission on Aboriginal Peoples consult with the Aboriginal peoples of Canada to determine whether further study should be undertaken regarding the creation of Aboriginal electoral districts;

Any such study must recognize that the creation of Aboriginal electoral districts "is but one component in a comprehensive overhaul of Aboriginal-government relations" (Fleras 1991, p. 93); and

Any such study must ensure that electoral reform of the House of Commons is not a substitute for self-government and must not derogate from the Aboriginal and treaty rights and other rights and freedoms of the Aboriginal peoples of Canada.

An Aboriginal Parliament

David Hawkes and Brad Morse were the first to propose an Aboriginal Parliament. They suggested such an institution could be designed along the lines of the Saami parliaments in Scandinavia. (Hawkes and Morse 1991, p. 180) This invites a brief consideration of these indigenous institutions.

Saami Parliaments in Scandinavia

The Saami are the Indigenous people of northern Europe. They live in northern Sweden, Norway and Finland and in the northwestern region of Russia. In all cases the Saami are small minorities^{xxiv} living in nation-states, none of which has a federal constitution like Canada's.

In Sweden, Norway and Finland, Indigenous people enjoy the same voting rights and privileges as all other citizens. Sweden recognizes no special rights for the Saami and has no institutional structure to secure their participation in government. To take into account the views of the Saami in Norway and Finland, however, institutions have been created that are referred to as 'parliaments'. This name is misleading, as neither institution exercises a legislative function.

Finland

The Saami parliament in Finland was established in the early 1970s and was the first Saami parliament created. It is called the Delegation for Saami Affairs. The Saami elect 20 members: four Saami constituencies elect 12 members, and four Saami local councils elect two members each. The parliament can express opinions and act in an advisory capacity on Saami issues.

However, there is no legal obligation on any authority to be bound by, or act upon, any opinion expressed, or any recommendation made, by the Saami parliament. This parliament does, however, have the authority to name representatives to certain boards established by local, provincial and national levels of government.

Norway

A Saami Act was passed by the Norwegian legislature in 1987, recognizing the Saami for the first time as a distinct people entitled to special rights, such as language, culture and social life, and allowing for a Saami parliament called the *Samething*.^{xxv} In 1989, Saami voters elected their first representatives to the Saami parliament; 39 members were elected, 3 each from 13 constituencies.

Although the *Samething* lacks legislative powers, the Saami Act did give it a mandate to assess the political, economic and cultural needs of the Saami. Public institutions must consider the views of the *Samething* before acting on matters affecting the Saami. The effect has been to create an institutional link between government and public bodies and Saami views. A process has been established by which the Saami can be engaged in the decision-making process. The *Samething* can take a reference for a study emanating from government. Public bodies are expected to consult with the Saami parliament. In these regards there are similarities with the Saami parliament in Finland.

However, there are some important differences. First, this parliament is publicly funded but has control over its own budget. It has the capacity to initiate research. Second, an annual report is presented to the central government. Also, every four years an additional report is presented that deals in a more comprehensive way with issues affecting the Saami.

Thus, while there is an institutionalized linkage between non-Saami institutions and the Saami parliament, while the Saami parliament plays a continuing watchdog role over Saami affairs, and while public bodies often consult with the Saami parliament, nothing obligates any level of government or public body to act on recommendations made by the *Samething*.

The Saami parliament in Norway bears some resemblance to two Canadian organizations dealing with women's issues. The Saami parliament bears some legal similarity to the Canadian Advisory Council on the Status of Women to the extent that both are created by a national government. Both were established to create a formal link between a specific identifiable group and government. Both have a research capacity, but neither has any legislative function. Both can make recommendations but cannot bind government.^{xxvi}

In its representative function, the Saami parliament bears some similarity to another institution — the National Action Committee on the Status of Women. The National Action

Committee has been referred to as a "Parliament of Women", as its membership is made up of representatives of Canadian women's groups. Neither enjoys any legislative power, only the power of persuasion.

Establishing an institution such as the *Something* to provide effective political representation for Aboriginal peoples in Canada would require a constitutional amendment to change the structure of Parliament.^{xxvii} Failing that, the only alternative would be the creation of an advisory body under federal legislation. Because of the obvious limitations of this approach, the last round of constitutional discussions saw a proposal to entrench an Aboriginal parliament called the House of First Peoples to address these shortcomings, to effect meaningful reform of Parliament, and to obtain for Aboriginal peoples a measure of power sharing from the settler state.

None of the Saami institutions offers a solution to issues of representation in settler institutions or of power sharing in Canada. These institutions have, however, served as the basis for a model of a more forceful and effective House of the First Peoples.

House of the First Peoples

The Native Council of Canada proposed a constitutionally entrenched House of the First Peoples during the last round of constitutional negotiations. Although never seriously considered by the negotiators, the concept deserves attention.

A third House [of Parliament] could hold a variety of powers, ranging from legislative vetoes, double majority rules on certain matters, or, at the extreme, advisory functions such as over-sight and the conduct of special studies. (NCC 1992, p. 3)

Oversight or override of parliamentary initiatives could relate to matters that "directly affect areas of exclusive Aboriginal jurisdiction...or where there is a substantial impact on a particular law on Aboriginal peoples." (NCC 1992, p. 3)

With respect to the selection of representatives for the third house, a number of options could be considered:

- electoral districts representing all Aboriginal people, regardless of their Aboriginal identification, within that district;
- electoral districts representing one Aboriginal people, i.e., separate representation for Indian and Métis peoples or Indian peoples and Inuit in the North;
- appointment by Aboriginal organizations or Aboriginal governments;

- indirect elections in which Aboriginal associations or Aboriginal governments represent each Aboriginal people; or
- indirect elections in which an electoral college mechanism is established composed of delegates of each Aboriginal people.

Former Indian affairs minister Tom Siddon put a new twist on the question of selecting representatives: his vision for Aboriginal self-government is an Aboriginal parliament. This parliament would administer the Indian affairs budget and spell an end to the department and the *Indian Act*. (Aubry 1993, p. 3)

It is suggested that the method of selection to a third House would have to reflect Aboriginal principles of democracy within their own institutional framework. In many instances representatives may be elected directly (e.g., Mi'kmaq could elect a Mi'kmaq representative), but in a number of nations indirect representation might more accurately reflect traditional democratic institutions. (NCC 1992, p. 3)

These approaches would be more in keeping with the consensus style of decision making adopted by many First Nations. However, such approaches may not preclude the possibility of competition involving on-reserve and off-reserve people(s), Aboriginal men and Aboriginal women, or members of First Nations and Métis.

One criticism that might be raised is that such an approach might lead to *de facto* constitutional recognition of Aboriginal organizations. These organizations have been criticized for not representing all their purported constituents — such as Aboriginal women. Also, over time, changes could occur in who each organization represents: witness the 1982 exodus of the prairie Métis from the Native Council of Canada. From that time on, the prairie Métis have been represented by the Métis National Council. In addition, a question arises about whether people would be disenfranchised if they were not members of any Aboriginal organization. On the other hand, the direct involvement of Aboriginal organizations or Aboriginal governments might limit or remove the possibility of competition developing between members selected for the House of the First Peoples and the leaders of Aboriginal associations or Aboriginal governments.

Other issues requiring further resolution include defining the matters to which the double majority rule would apply. It is suggested the double majority rule would have application to the following matters:

- bills relating to language and culture;
- bills relating to the subject-matter of section 91(24) of the *Constitution Act, 1867*;

- bills relating to the subject-matter of section 35 of the *Constitution Act, 1982*;
- bills relating to Aboriginal and treaty rights, including the inherent right of self-government;
- bills relating to the other rights or freedoms that pertain to the Aboriginal peoples of Canada; and
- bills primarily affecting Aboriginal peoples.

Whether Canadians would accept this departure from established practice is open to debate, as these proposals were never seriously considered or pursued by first ministers during negotiations.^{xxviii} Rather the final text agreed upon by the parties stated simply that

the issue of Aboriginal representation in the House of Commons should be pursued by Parliament, in consultation with representatives of the Aboriginal peoples of Canada, after it has received the final report of the House of Commons Committee studying the recommendations of the Royal Commission on Electoral Reform and Party Financing. (Canada, Consensus Report 1992, p. 8)^{xxix}

The legislative committee studied the RCER report in three stages. Reports and recommendations were presented to Parliament after the first two stages, but the third stage of the study, which considered the possible creation of Aboriginal electoral districts, was terminated prematurely when the 1993 election intervened. Even though the recommendations of the RCER have reached a standstill in Parliament, the concept of Aboriginal electoral reform has spurred interest and debate about Aboriginal representation in provincial legislative assemblies. But before turning to this subject,

It is recommended that the Royal Commission on Aboriginal Peoples consult with the Aboriginal peoples of Canada to determine whether further study is warranted regarding the creation of a House of the First Peoples.

Any such study should consider issues such as the number of representatives, methods of selection, accountability of representatives, and their roles, powers and tenure.

Initiatives at the Provincial Level

Few Aboriginal people have been elected to provincial legislative assemblies since the Métis were a majority in Manitoba in the early 1870s. The first such person this century was Frank Calder, elected in British Columbia in 1950 and subsequently re-elected six times. A member of the Nisg'aa First Nation, Mr. Calder became the first Aboriginal provincial cabinet member this

century when he was appointed minister without portfolio in 1973.

Table 3 presents the nine self-identified Aboriginal representatives who are currently members of provincial legislative assemblies.

Table 3
Self-Identified Aboriginal Members
of Provincial Legislative Assemblies

Province	Self-Identified Members	Length of Mandate	Political Party
British Columbia	No self-identified members		
Alberta	Pearl Calahasen (Métis) Mike Cardinal (Indian)	1989-present 1989-present	PC PC
Saskatchewan	Keith Goulet (Métis)	1986-1991; 1991-present	NDP
Manitoba	Neil Gaudry (Métis) Greg Dewar (Métis) George Hickers (Inuk) Oscar Lathan (Indian)	1990-present 1990-present 1990-present 1990-present	Liberal NDP NDP NLDP
Ontario	Peter North (Indian)	1990-present	NDP
Newfoundland	William Anderson III (Inuk)	1993-present	Liberal
Quebec New Brunswick Nova Scotia Prince Edward Island	No self-identified members		

Impediments to Aboriginal electoral participation and representation identified by the Committee for Aboriginal Electoral Reform (Committee 1991b, pp. 8-12) and the Royal Commission on Electoral Reform and Party Financing (volume 1, pp. 169-171) apply to provinces as well: the failure of the electoral system to recognize Aboriginal communities of interest, population dispersal over large geographic areas, impediments within the party system, problems relating to enumeration and registration, inadequate communications media, election administration officials non-conversant in local Aboriginal languages, socio-economic factors, and a lack of a tradition of political participation in First Nations communities.

As noted earlier, members of the Métis National Council and the Native Council of

Canada welcome measures to provide their membership with fair political representation in provincial legislative assemblies. This is reflected in presentations made by provincial affiliates of these organizations to provincial boundaries commissions.

Métis National Council Affiliates

In a presentation by the Métis Society of Saskatchewan (MSS) to the most recent electoral boundaries commission in Saskatchewan, the MSS did not see the constitutional issue of Aboriginal self-government as detracting

...from Aboriginal involvement in the federal and provincial orders of government. In fact, it would make it more justifiable to accommodate Aboriginal representation in those two orders.

It is with this in mind that we propose that there must be guaranteed Métis representation in the provincial legislature. (MSS 1991, p. 2)

The MSS also proposed that Métis people be allowed to cast two ballots — one for a Métis candidate in a Métis electoral district and one for a candidate of choice in a provincial electoral district. "Both successful candidates would be playing a different role, and the Métis vote would still retain its importance." (p. 4)

While the views of the MSS did not persuade the electoral boundaries commission in Saskatchewan, an innovative approach was adopted to ensure Aboriginal representation in northern Saskatchewan, where Aboriginal people are in the majority. When the boundaries commission was established, section 14 of the Electoral Boundaries Commission Act provided for 29 urban, 35 rural, and 2 northern electoral districts. In the case of the 64 southern districts, the population quotient (the variation in the size of the voter population from one electoral district to another) was plus or minus 25 per cent. For the two northern electoral districts, the variation was plus or minus 50 per cent.^{xxx}

Court action regarding this redrawing of boundaries brought comments from both the Saskatchewan Court of Appeal and the Supreme Court of Canada on the size of the variation for the two northern electoral districts, although this was not an issue before either court. Justice McLachlin of the Supreme Court of Canada noted that the Court of Appeal found that special treatment for northern electoral districts was constitutionally acceptable, and the Supreme Court took no issue with this point. (Reference 1991b, 17)

Native Council of Canada Affiliates

Continued support for representation in provincial legislatures from affiliates of the Native Council of Canada is evident in submissions to the New Brunswick Representation and Electoral District Boundaries Commission. One of the mandates of the commission was to consider "the best approach to ensuring that New Brunswick's Aboriginal people are given representation in the Legislative Assembly in a manner similar to the approach currently employed in the State of Maine", that is, the creation of one electoral district for a non-voting member. (New Brunswick 1992, p. 17)

President Frank Palmater of the New Brunswick Aboriginal Peoples Council stated that two seats, whose incumbents would have full voting privileges, should be set aside for Indian people in the provincial legislature:

As we have said for the past 20 years, for Aboriginal self-government to be effective, it must be a broad and all inclusive structure that not only allows for institutions of self-determination for our people, but must afford the opportunity for Aboriginal participation on Federal and Provincial Parliament and Legislative Assemblies. (New Brunswick Aboriginal Peoples Council 1993, p. 1)

This issue was particularly critical given the provincial government's March 1993 budget, which made provincial sales tax applicable to purchases made by off-reserve Indian people. The Council was of the view that there could be no taxation without representation. (p. 1)

First Nations

In the past, there has been little support by members of First Nations for distinct representation in provincial assemblies. Such representation was seen as inconsistent with First Nations' bilateral and treaty relationships with the federal government. A further reason related to continuing problems between First Nations and provincial governments over hunting, fishing, trapping and gathering rights and a lack of sympathy on the part of provincial governments to issues concerning land and Aboriginal and treaty rights.^{xxxi} Certainly, the suggestion of former Alberta Liberal leader Nick Taylor to establish three electoral districts for members of First Nations in Alberta was for naught. (*Edmonton Sun* 1991) Nor has any support been apparent for former B.C. Liberal leader Gordon Wilson, who implied that Aboriginal peoples should have their own provincial electoral districts. (British Columbia 1993b, p. 7093)

Recently, some guarded expression of support for guaranteed representation has been expressed by First Nations in New Brunswick, although such representation is not a high priority.

(Mawiw Council of Chiefs 1991, p. 2; Dedam 1992) The Kingsclear First Nation, for example, saw the establishment of two electoral districts — one for the Mi'kmaq^{xxxii} and one for the Maliseets — as recognizing "the existence of the two founding Indian Nations". (Kingsclear N.D., p. 1)

The Mawiw Council of Chiefs saw the creation of Aboriginal seats in the legislature as "a complement to, and symbol of, the New Brunswick First Nations' inherent sovereignty within Canada and the Province". (p. 1) As proposed by the Kingsclear First Nation, electoral districts would be established along tribal lines. (p. 3) However, electoral boundaries would be established along "the historic boundaries separating the `hunting grounds' of the Province's two Tribal Peoples". (p. 3) In addition, under this scheme members of First Nations would have a dual vote: one for a member in an Aboriginal electoral district and another for their local MLA. (p. 3) This proposition is identical to the position advanced by the Métis Society of Saskatchewan, described earlier.

Of particular note is the fact that, for the first time in any submission before a provincial electoral boundaries commission, the Mawiw Council of Chiefs addressed the role of members of First Nations in provincial affairs:

The Mawiw Council believes that its constituents have a huge stake in Provincial Affairs, and, in fact, that they have an obligation to help preserve the Province's Natural Environment, ensure that the Province is a Prosperous, Safe and Clean home for Future Generations, and that all New Brunswickers achieve ever increasing levels of Tolerance and Respect for the unique Cultures, Languages and Values found in New Brunswick. (pp. 7-8)

This aspect of the Council's proposal breaks new ground. It warrants further investigation and discussion.

In Nova Scotia, the province's most recent electoral boundaries commission examined the issue of a voting member for Aboriginal peoples. The terms of reference for the Commission stated that

In the case of Native representation, the will of the Legislative Assembly of Nova Scotia to provide for an additional member of the Assembly to represent the Mi'kmaq people is a progressive and unique step, not just in this province, but within Canada and in democracies elsewhere. (Nova Scotia 1992, p. 13)

The boundaries commission met with Mi'kmaq leaders from all over Nova Scotia in early

1992 in a two-day conference to discuss the issue of Mi'kmaq representation in the House of Assembly. Mi'kmaq leaders expressed interest in the concept but required more time to reach consensus. (Nova Scotia 1992, p. 129)^{xxxiii} The issue was whether an electoral district for the Mi'kmaq would "preserve and protect the interests of all Mikmaq people." (p. 136) Of interest at this conference was the point raised by former Manitoba MLA Elijah Harper that the Meech Lake Accord would have passed in the Manitoba legislature if Aboriginal representatives were non-voting members. (p. 136)

Observations and Conclusions

It is suggested that, with a few isolated exceptions, there has been no meaningful Aboriginal representation in provincial legislatures. Nor has serious dialogue occurred to date with Aboriginal representatives on this subject. Where an olive branch has been extended, there has been interest and dialogue. Thus, there seems to be no reason in principle why Aboriginal electoral districts could not be created through ordinary legislation at the provincial level — or, for greater certainty, by amending a province's constitution — if so requested by an Aboriginal people.

In this regard, further study could be undertaken by the western provincial governments, particularly prairie governments, in co-operation with the Métis to examine opportunities for Métis electoral districts or for enhanced Métis influence and representation within the existing system of electoral district design. Certainly the precedent established in Saskatchewan bears further examination and consideration.

For members of First Nations and members affiliated with the Native Council of Canada, the notion of Aboriginal electoral districts bears further discussion, and opportunities exist for this to occur. The report of the New Brunswick Representation and Electoral District Boundaries Commission made no final recommendation on representation because of the complexity of the issues involved. However, the Commission recommended the creation of a four-person committee with 50 per cent Aboriginal representation to

- determine the degree of support among the Aboriginal community for representation in the legislative assembly,
- determine the form or structure that would provide best for representation of New Brunswick's Aboriginal people, and

- determine the mechanism for implementing the recommended form or structure. (New Brunswick 1992, p. 19)

In Nova Scotia, the question of whether Aboriginal people want to pursue establishment of their own electoral district(s) remains open. In its report the electoral boundaries commission stated that,

On the basis of the consultation process with, and at the request of, the Mi'kmaq community, the Provincial Electoral Boundaries Commission hereby recommends that the proposed Mi'kmaq seat in the Nova Scotia House of Assembly not be implemented at this time.

However, because the Mi'kmaq people have expressed an interest in a legislative provision of some kind, but are not prepared to make a final decision within the timeframe under which the Commission must report to the Legislature, the Commission recommends that the House of Assembly adopt a procedure, including an appropriate budget and tentative deadline, for further consultation with the Mi'kmaq people. (Nova Scotia 1992, p. 79)

It is suggested that the other Atlantic provinces — Prince Edward Island and Newfoundland and Labrador — test the waters with Aboriginal peoples in those provinces to determine the degree, if any, to which the concept of distinct representation may be of interest.

This leaves unanswered the question of representation for the Inuit and members of First Nations in the Quebec National Assembly. In 1991, the Quebec government expressed an interest in establishing an electoral district for the Inuit in northern Quebec, but not for members of First Nations, as they had expressed no interest in the concept. (*Gazette* 1991, p. 12) This idea appears not to have fallen on fertile ground.

Therefore, it is recommended that the Royal Commission on Aboriginal People undertake further investigation and study with interested national and provincial representatives of the Aboriginal peoples of Canada regarding distinct Aboriginal representation in provincial legislative assemblies.

Aboriginal Representation in the Senate

The debate on increased Aboriginal representation in the Senate has raised many of the same arguments as increased Aboriginal representation in the House of Commons. Of the 775 Senate appointments made since Confederation, only six self-identified Aboriginal people have been appointed to the upper chamber. As Table 4 indicates, there is room for considerable

improvement, especially with respect to Métis representation, as no Métis has ever been appointed.

On the other hand, two points should be made: first, the record of Senate appointments illustrates some acknowledgement of the need to give Aboriginal peoples a voice in national institutions; second, the percentage of Aboriginal representatives in the Senate at present is both higher than it has ever been and close to the Aboriginal share of the Canadian population.

The first real opportunity to consider Aboriginal representation in the Senate came during the 1983 hearings of the Special Joint Committee of the Senate and the House of Commons on Senate Reform. Despite interventions from the Native Council of Canada (NCC), the Métis National Council (MNC) and a number of their affiliates, as well as the Inuit Committee on National Issues, the final report dealt only minimally with the issue. (Canada, Parliament 1984)^{xxxiv}

Table 4
Self-Identified Aboriginal Senators Appointed Since Confederation

Senator	Province or Territory	Length of Service
James Gladstone (Indian)	Alberta	January 1958-March 1971
Guy R. Williams (Indian)	British Columbia	December 1971-October 1982
Willie Adams (Inuk)	Northwest Territories	April 1977-present
Len Marchand (Indian)	British Columbia	January 1984-present
Charlie Watt (Inuk)	Northwest Territories	January 1984-present
Walter Patrick Twinn (Indian)	Alberta	December 1990-present

Referring to the constitutional conferences between Aboriginal representatives and first ministers then in progress, the committee noted that Senate reform would be discussed as part of the range of constitutional matters affecting Aboriginal peoples. Therefore, the committee recommended that no action be taken. The committee also noted that the Special Committee of the House of Commons on Indian Self-Government had recommended against special representation of First Nations in Parliament. (p. 13)

During the last round of constitutional negotiations, Senate reform became a dominant theme. There was clear agreement among participants that the Senate was not serving one of its

main purposes, that of a forum for representing the regions of Canada. It was agreed that there should be Aboriginal representation in the Senate. However, it has been suggested that participants did not seriously consider Aboriginal representation until late in the negotiation process. This is because the federal and provincial governments were locked in intensive discussion over long-standing issues such as what a reformed Senate should do, how members of a reformed Senate should be selected, what the tenure of senators should be, what powers a reformed Senate should have, and how seats in a reformed Senate should be distributed. Supporters of Senate reform made a Triple E Senate — equal, elected and effective — the theme of reform.

Because no concrete shape was given to Senate reform until late in the negotiating process, the details of Aboriginal representation were not a priority. Section 9 of the final text agreed on by participants indicated, nevertheless, that substantive progress had been made:

Aboriginal representation in the Senate should be guaranteed in the Constitution. Aboriginal Senate seats should be additional to provincial and territorial seats, rather than drawn from any province or territory's allocation of Senate seats.

Aboriginal Senators should have the same role and powers as other Senators, plus a double majority power in relation to certain matters materially affecting Aboriginal people. These issues and other details relating to Aboriginal representation in the Senate (numbers, distribution, method of selection) will be discussed further by governments and the representatives of the Aboriginal peoples in the early autumn of 1992. (Canada, Consensus Report 1992, p. 4)

What options are available to determine numbers, distribution and method of selection? It is easy to say that the distribution of seats in a reformed Senate needs to be flexible enough to accommodate Aboriginal representation, but what about specifics? Since Aboriginal people constitute about 3.5 per cent of the Canadian population, one option would be to allocate 3.5 per cent of the seats in the current Senate to the three Aboriginal peoples. Seats could be distributed as follows: the Inuit and Métis could each be allocated one, with the substantially larger population of First Nations guaranteed two.

Assuming for the moment a base of four senators, how would these senators be selected — like other senators, or would traditional modes of selection be suitable, particularly in the case of members of First Nations? Would the seat allocated for the Métis overlay the entire country, or would it be 'assigned' to western Canada? Would the criteria used to define Métis in an enumeration process be that adopted by the Métis National Council or the Native Council of Canada when the selection process takes place?

This raises the question of efficacy of representation: would such minimal numbers truly effect change or constitute meaningful reform? To have more impact the number of seats could be doubled to eight, for example. This might be problematic if seats are allocated according to the formula devised at Charlottetown: 62 elected senators with ten per province and one each to the two territories. The number of seats allocated to the provinces and territories will have a direct impact on this issue.

On the other hand, it might be warranted to take 10 per cent of the seats allocated to the provinces (six seats) and allocate that same amount for Aboriginal representation. The 10 per cent figure is derived from the Charlottetown Accord, which would have allocated 10 per cent of the seats (for a total of six) to each province. Under this approach, the Aboriginal interest would be treated as equal to that of any province. And why not, since the entire Aboriginal population exceeds that of the four Atlantic provinces? Seats could be distributed among the three Aboriginal peoples based on population, taking into account the need for adequate representation of the Inuit.

A further option would be to increase the number of senators, with a trade-off in the powers they might exercise. However, as noted earlier, the Royal Commission on Electoral Reform and Party Financing refused to countenance two classes of representation in the House of Commons. Nevertheless, it is not unfair to consider whether two classes of representation in the Senate might be an appropriate solution.

Questions pertaining to the cost of elections and additional staff for such large senatorial districts are of a minor technical nature. As explained by the RCER regarding Aboriginal electoral districts, such technical considerations would not be difficult to resolve.

Finally, another option would be to challenge the notion of Aboriginal representation in the Senate. Instead, a constitutionally entrenched provision creating a third house, the House of the First Peoples, advocated by the Native Council of Canada and discussed earlier, with suitable levels of representation and meaningful power and authority, would make guaranteed Aboriginal representation in the Senate unnecessary.

But all this now appears academic with the death of the Charlottetown Accord. One sure-fire (interim) method to improve representation would be for the federal government to adopt a deliberate policy of Aboriginal appointments. This would depend on the goodwill of the government of the day. The Senate appointments made by former Prime Minister Brian

Mulroney before he left office, none of which involved Aboriginal people, gave no indication that such a policy will ever be adopted or implemented. As long as Aboriginal appointments remain the prerogative of the government in power, and without the benefit of a consultative appointment policy to ensure representation from the three Aboriginal peoples of Canada, Aboriginal appointments may be little more than happenstance or individual good luck. Nevertheless, given the interest expressed in enhanced Aboriginal representation in the Senate by all participants during the last round of constitutional negotiations,

It is recommended that the Royal Commission on Aboriginal Peoples undertake further study on the issue of Senate reform. Areas for study could include the number and methods of selection of senators, their roles, powers and tenure, and the distribution of seats among the Aboriginal peoples of Canada.

Aboriginal Representation on Federal Boards and Commissions

Research conducted by the Committee for Aboriginal Electoral Reform revealed some 3,000 appointments made by the federal government to boards and commissions. Some appointments are of significant importance, such as appointments to the board of Air Canada or CN. Many others offer very little in the way of remuneration, although they may offer some prestige.

Committee members could not recall more than a handful of appointments of Aboriginal people to any federal board or commission. Indeed, the appointment of commissioners of Aboriginal ancestry to the Royal Commission on Aboriginal Peoples likely constitutes the most significant number of Aboriginal people appointed to a board or commission at any time in Canada's history.

If it is determined that this matter should receive attention, what are the required elements of a new strategy? One approach could see the development of a strategy founded on a new consensus and direction for reform developed with the full and active collaboration, participation, and co-operation of Aboriginal peoples.

Any such strategy must envision a revitalized leadership role for the federal government.^{xxxv} The federal government — not the private sector, not the charitable and religious sectors, and not the trade union sector — must take this leadership. The federal government, it

can be argued, has a duty to advance the common good and to address any imbalance in society. And, in that regard, no clearer imbalance exists than that of Aboriginal representation on federal boards and commissions. Therefore, it would not be inappropriate for the federal government to take action.

One method that would produce more Aboriginal appointments is policy change — creating, nurturing and fostering a sensitive climate and a new culture in which appointments would be made. A new policy framework could set goals, targets and/or quotas. An appointment equity program could also be implemented. Alternatively, federal legislation designating quotas could be introduced. Such legislation would be legal if construed as an affirmative action program under section 15 of the *Canadian Charter of Rights and Freedoms*.

However, this discussion raises red flags. Aboriginal peoples do not seek the charity of affirmative action. Similarly, any scheme basing appointments on individual ancestry reinforces the notion that Aboriginal peoples belong to a disadvantaged racial minority whose plight requires redress. An appointments program must not be seen to be inconsistent with Aboriginal peoples' status as political communities with recognizable claims to collective rights.

Aboriginal peoples seek recognition of their status within the fabric of Confederation, a status that makes it more appropriate to consider Aboriginal appointments as a right rather than as a means of redressing disadvantage. In this regard, and at a minimum, it is suggested that Aboriginal peoples have a right to more opportunities for participation in federally appointed institutions.

Therefore, it is recommended that the Royal Commission on Aboriginal Peoples consult with the Aboriginal peoples of Canada to determine the desirability and feasibility of developing an appointment equity program for federal boards and commissions.

Aboriginal Appointments to the Judiciary

If anything begs for reform, it is the judicial system. Aboriginal peoples have long been unhappy with a judicial system they see as insensitive to their culture and values and that fails to respect their Aboriginal and treaty rights. There is a compelling need to reorient the judicial system so it can truly stand as the moral conscience of a nation that prides itself on its rich legal pluralism.

Aboriginal peoples need a judicial system with inclusive values to respect and promote their inherent rights so that these rights are no longer misunderstood, ignored or devalued. Calls for reform have echoed on a number of fronts during the last decade.

During the 1983 constitutional conference on Aboriginal affairs, the Métis National Council recommended creation of a new federal court of law and equity to resolve disputes pertaining to the Métis. (MNC 1983) The federal government could establish a court of this nature under section 96 of the *Constitution Act, 1867*. However, nothing materialized from this proposal.

Two recent commissions of inquiry have underscored the need to reform the justice system as it affects Aboriginal peoples. The Task Force on the Criminal Justice System and its Impact on the Indian and Métis Peoples of Alberta reported that

Aboriginals are often at the receiving end of what appears to be a foreign system of justice delivered to a large extent by non-Aboriginals." (Alberta, Task Force 1991, p. 1)

The Task Force also reported that "the imposition of the majority's justice system on the Aboriginal minority results frequently in unfairness and inequity." (p. 2)

The report of the Public Inquiry into the Administration of Justice and Aboriginal People in Manitoba concluded that "the justice system has failed Manitoba's Aboriginal people on a massive scale." (Manitoba 1991, p. 1) Commissioners concluded that "Canada's treatment of its first citizens has been an international disgrace." (p. 674)

A decidedly less ambitious review of the justice system in Saskatchewan was "aimed at the specific problems enumerated by Indian people and the agencies of the Saskatchewan justice system." (Impey 1992, p. 393) As such, the report of the Saskatchewan Indian Justice Review Committee has been criticized as narrower in focus than the Manitoba report. In fact, one writer questions whether the recommendations "have gone beyond mere cosmetic changes." (p. 400)

There are options for improving the judicial system that require further discussion and debate. They include the following:

- advisory councils of elders to sit with judges to help them understand Aboriginal cultures, including their traditions of justice and punishment. Such councils could be established by policy or created by federal legislation;

- Aboriginal courts on Aboriginal lands. Such courts could be created by federal legislation or through constitutional amendment (recognizing such a court structure as an inherent Aboriginal right under section 35 of the *Constitution Act, 1982*). These courts could have exclusive jurisdiction over Aboriginal laws and laws enacted by Aboriginal governments;
- Aboriginal courts to determine issues pertaining to Aboriginal and treaty rights and interpretations of section 91(24) of the *Constitution Act, 1867* or section 35 of the *Constitution Act, 1982*. Such courts could be established pursuant to section 96 of the *Constitution Act, 1867* or through constitutional amendment;
- establishment of a policy by the federal government to consult representatives of Aboriginal peoples on judicial appointments; and
- Aboriginal representation on the Supreme Court of Canada. This representation could be achieved through policy or through a constitutional guarantee (see, for example, Canada, Continuing Committee 1992, pp. 2-3).

The text of the agreement reached by the parties during the 1992 constitutional negotiations placed this subject on the agenda for a future first ministers conference on Aboriginal issues. (Consensus Report 1992, p. 7) The parties also agreed that

Provincial and territorial governments should develop a reasonable process for consulting representatives of the Aboriginal peoples of Canada in the preparation of lists of candidates to fill vacancies on the Supreme Court.

Aboriginal groups should retain the right to make representations to the federal government respecting candidates to fill vacancies on the Supreme Court.

The federal government should examine, in consultation with Aboriginal groups, the proposal that an Aboriginal Council of Elders be entitled to make submissions to the Supreme Court when the court considers Aboriginal issues. (p. 7)

As the subject of Aboriginal justice will be considered in great depth by others in studies for the Royal Commission on Aboriginal Peoples,

At a minimum it is recommended that the Royal Commission on Aboriginal Peoples develop, in co-operation and consultation with the Aboriginal peoples of Canada and the government of Canada, a consultative appointment process to provide for more Aboriginal appointments to the

courts, with the Supreme Court of Canada being a priority; and, furthermore,

Develop, in co-operation and consultation with the Aboriginal peoples of Canada and the government of Canada, a workable proposal for an Aboriginal Council of Elders to work with the Supreme Court of Canada when the court considers Aboriginal issues.

Conclusion

Aboriginal peoples have a special position within the fabric of Confederation, but uncertainty pervades the essence of this special position. Aboriginal and treaty rights have been constitutionally recognized and affirmed, though not thoroughly defined through judicial interpretation. Four first ministers conferences with Aboriginal representatives in the 1980s attempted, but failed, to provide greater constitutional certainty.

This leaves in limbo two aspects of the role of Aboriginal peoples within Confederation. One aspect relates to non-interference in the internal affairs of Aboriginal nations and communities by the settler state. The other relates to the external relations of Aboriginal nations with the settler state. Both involve the issue of power sharing and raise the question of whether settlement of the first aspect must happen before settlement of the second can occur.

The last of the four first ministers conferences dealt with the question of internal Aboriginal self-regulation, or self-government. The leading proponents of self-government were the First Nations, although representatives of the Inuit and Métis soon came to embrace this struggle. Within this struggle, representatives of First Nations and the Inuit expressed the most divergent views. The Assembly of First Nations (AFN) sought strong, constitutionally protected governments with sweeping authority and secure fiscal funding arrangements. The Inuit Committee on National Issues sought a public form of government in a new territory, Nunavut, in which the Inuit were a numerical majority.

As the parties became locked in their quest for a solution to the self-government issue, wider questions regarding external relations with the settler state were not addressed by the negotiating parties. Paramount among these was representation in Parliament and in legislative assemblies, advocated by representatives of the Native Council of Canada (NCC) and the Métis

National Council (MNC). Both organizations had raised this issue early in constitutional negotiations in the 1980s, but did not pursue it. Instead, these organizations followed the AFN lead and adopted self-government as their priority issue. Resurrection of the issue of representation national institutions came with recent attempts at electoral reform.

The starting point for a review of this subject is the work of the Committee for Aboriginal Electoral Reform. The committee sought the creation of Aboriginal electoral districts to represent the Aboriginal community of interest in the House of Commons. As can be expected, the committee's work received the strongest support from the membership of the NCC and the MNC. The conviction on the part of committee members that Aboriginal people were Canadian citizens sparked an important debate at the community level. Expression of a contrary viewpoint was strongest among citizens of First Nations. Notwithstanding this, the consultation process did reveal an interest in some First Nations communities in enhanced representation in Parliament, although it clearly was not a priority issue. Self-government alone was the priority issue.

Certainly, the Committee for Aboriginal Electoral Reform saw no contradiction between enhanced representation in the House of Commons and self-government. The Committee sought to achieve a balance, with a scheme for proportional representation in the House of Commons without prejudicing self-government and other rights and freedoms. The Royal Commission on Electoral Reform and Party Financing listened to the committee and acted on its advice and recommendations. The RCER stated in clear and unequivocal language the desirability, necessity and logic of a scheme of proportional representation for Aboriginal peoples in the House of Commons. The RCER also stated that such representation is not a substitute for Aboriginal self-government and other rights and freedoms. Neither the committee nor the RCER saw the pursuit of self-government and enhanced representation in the House of Commons as mutually exclusive; rather, they saw these as complementary efforts.

The proposals advanced by the committee and the RCER were limited to the self-imposed mandate of the RCER; that is, to make recommendations that Parliament alone could implement. Other constitutional options could be pursued, but they have the disadvantage of requiring provincial consent. Pursuing them would mean adding another item to the uncompleted constitutional agenda. The addition of constitutional proposals to reform Parliament could stretch the limited time and resources of Aboriginal representatives and could detract from other negotiations. Worse, dealing with these issues in the same process poses a danger that the issues

could be linked and that progress in one area would be seen to require a concession in another.

Critics of the committee and the RCER point to the failure of both parties to move beyond a scheme in which individual ancestry is the basis for electoral reform. These critics suggest that such a scheme reinforces the notion that Aboriginal peoples are disadvantaged 'racial minorities' whose plight requires redress. These critics suggest further that this approach does not address the legitimacy of the exercise of state power over Aboriginal peoples; these issues must be addressed before debate on issues such as increased Aboriginal representation in the House of Commons can advance.

Nevertheless, the issue of representation in the House of Commons is worthy of pursuit. The constituencies of the NCC and the MNC remain interested. Furthermore, this interest has spawned renewed interest in the issue of representation in provincial legislative assemblies, particularly among the membership of these organizations. Because of interest on the part of MNC affiliates, further study could be undertaken by the western provincial governments, particularly the prairie governments, in co-operation with the Métis, to examine opportunities for Métis electoral districts or for enhanced Métis influence and representation within the existing electoral system. Further study could also be undertaken in Atlantic Canada with NCC affiliates and with interested First Nations to examine opportunities for representation, particularly in New Brunswick and Nova Scotia.

Negotiations leading to the Charlottetown Accord opened a new door between Aboriginal peoples and the settler state. Aboriginal representatives were welcomed by first ministers as full and equal participants in the negotiating process. Moreover, in the discussions about a new constitutional order for Canada, the issues of non-interference in the internal affairs of Aboriginal nations and communities (self-government) and external relations with the settler state were debated meaningfully for the first time. The details of the resulting constitutional package displayed agreement on constitutionalizing self-government, support for the work of Parliament in reviewing the recommendations of the RCER, agreement on the need for Aboriginal representation in the Senate, and agreement on the need for Aboriginal input in compiling lists of candidates to fill vacancies on the Supreme Court of Canada.

The failure of the Canadian public to ratify the constitutional package agreed on at Charlottetown may have put a temporary halt to this process. The Charlottetown Accord was, however, a serious effort — at least a beginning — to address the role of Aboriginal peoples in

Confederation in a concrete way. The arguments advanced on behalf of this effort can be boiled down to this: the parties sought measures to include descendants of the original inhabitants of this land in federal decision-making structures while recognizing their inherent right to govern themselves. This would have allowed Aboriginal peoples to make a contribution to the larger society while governing their own affairs.

The Charlottetown Accord may be in ashes, but the final text, and the negotiations leading to it, foreshadows another examination of these issues in the future, one in which the parties will build on their efforts to date through imaginative solutions rather than tinkering with preceding efforts. This could include serious consideration of a third house of Parliament — a House of First Peoples, proposed by the Native Council of Canada — as an alternative to increasing Aboriginal representation in the House of Commons and the Senate. Certainly, a focused discussion between Aboriginal peoples and federal, provincial and territorial leaders on the subject of power sharing would provide a context for discussion of these issues.

Other less critical issues remain, such as a consultative appointment equity process to ensure the appointment of Aboriginal people to federal boards and commissions, to the Senate, and to the judiciary. If seen as interim measures, they need not await the recommencement of constitutional negotiations and could be implemented immediately through policy changes. Otherwise, a longer process will be required to bring about a satisfactory resolution.

But one thing is certain: the argument for assimilation of Aboriginal people into the mainstream of Canadian society is finally dead. Debate has moved to meaningful inclusion of Aboriginal peoples in Confederation. Events leading to the agreement at Charlottetown appear to presage a more sensitive and sensible approach to issues of power sharing with the Aboriginal peoples of Canada.

Recommendations — A Summary

This study suggests courses of action that the Royal Commission on Aboriginal Peoples may wish to consider. The recommendations made throughout the study are repeated here in summary form. In conclusion, I have recommended that:

1. The Royal Commission on Aboriginal Peoples consult with the Aboriginal peoples of Canada to determine whether further study should be undertaken regarding the creation of Aboriginal electoral districts.

2. Any such study must recognize that the creation of Aboriginal electoral districts is but one component in a comprehensive overhaul of Aboriginal-government relations.
3. Furthermore, any such study must ensure that electoral reform to the House of Commons is not a substitute for self-government and must not derogate from the Aboriginal and treaty rights and other rights and freedoms of the Aboriginal peoples of Canada.
4. The Royal Commission consult with the Aboriginal peoples of Canada to determine whether further study is warranted regarding the creation of a House of the First Peoples.
5. Any such study should consider issues such as the number of representatives, methods of selection, accountability of representatives, and their roles, powers and tenure.
6. The Royal Commission undertake further investigation and study with interested national and provincial representatives of the Aboriginal peoples of Canada regarding distinct Aboriginal representation in provincial legislative assemblies.
7. The Royal Commission undertake further study on the issue of Senate reform. Areas for study could include the number and methods of selection of Senators, their roles, power and tenure as well as the distribution of seats among the Aboriginal peoples.
8. The Royal Commission consult with the Aboriginal Peoples of Canada to determine the desirability and feasibility of developing an appointment equity program for federal boards and commissions.
9. The Royal Commission develop, in co-operation and consultation with the Aboriginal peoples of Canada and the government of Canada, a consultative appointment process to provide for more Aboriginal appointments to the courts, with the Supreme Court of Canada being a priority.
10. The Royal Commission develop, in co-operation and consultation with the Aboriginal peoples of Canada and the government of Canada, a workable proposal for an Aboriginal Council of Elders to work with the Supreme Court of Canada when the court considers Aboriginal issues.

Notes

During my tenure as Aboriginal Research Co-ordinator at the Royal Commission on Electoral Reform and Party Financing, I had the pleasure and opportunity to work with an extremely able, competent and insightful colleague — Daniel Arsenault. When I was approached to write this paper, I immediately called upon Daniel's assistance. I am very grateful for his research and comments, and also for his patience in fulfilling my innumerable requests for information.

And what paper can succeed without the help of a sharp and critical eye? I gratefully acknowledge Terri Harper, for her skilful editorial assistance.

Lastly, I wish to thank my partner, Judy Cavanagh, for sustaining me with her ongoing, uncompromising and loving support.

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iFor a wider discussion of these issues, see Rcer volume 1, chapter 1 and chapter 3, pp. 93-121; see also the discussion on representational deficits and the proposed equity fund for women at pp. 268ff; and Megyery 1991a and 1991b.

iiThis provision could be abolished legislatively at any time by simple majority.

iiiSee also Ncc 1983a, p. 51; Ncc 1983c; Bruyère 1987, p. 107; and McCormick 1990, p. 45.

ivSee New Brunswick Association of Métis and Non-Status Indians 1983.

vSee also Mnc 1983a, p. 14; Mnc 1983b, pp. 4-5.

viSee Manitoba 1983, p. 11; Association of Metis and Non-Status Indians of Saskatchewan 1983; Louis Riel Metis Association of British Columbia 1983; Metis Association of Alberta 1983.

viiBecause of this, the ncc and the mnc chose not to pursue the issue of guaranteed representation in Parliament after the initial first ministers conference on Aboriginal matters. These organizations joined the struggle for self-government led by the Assembly of First Nations.

viiiSee also Favel 1990; Dakota-Ojibway 1990; Mercredi 1990, p. 179; Richardson 1991.

ixOne important factor leading to the recommendation by the Royal Commission was the bond of mutual trust and respect that developed between Senator Marchand and Pierre Lortie, who chaired the Royal Commission. Their backgrounds were strikingly dissimilar — one was an Aboriginal westerner, a three-time member of Parliament, a former cabinet minister, now a senator, the other, a bilingual Québécois and successful entrepreneur and business person. Through their dedicated efforts, Senator Marchand and Pierre Lortie advanced the debate pertaining to the necessity of, and the right to, Aboriginal participation in the House of Commons and, by extension, to Parliament and other federal institutions.

xThe committee members were Gene Rheaume, former mp for the Northwest Territories, Jack Anawak, mp for Nunatsiak, Ethel Blondin, mp for Western Arctic, Senator Len Marchand, and Willie Littlechild, mp for Wetaskiwin. Two former ndp mps — Wally Firth and Cyril Keeper — were approached but were unable to join the committee.

xiAs a result of a 1975 constitutional amendment, the Northwest Territories was henceforth to be represented by two mps. Since 1979, there have been two constituencies, both of which have Aboriginal majorities.

xiiThis analogy is a bit of a stretch. In the European Community, the various states recognize the legitimacy of other sovereign governments. This is hardly comparable to the relationship between Aboriginal peoples and Canada.

xiiiSee, for example, the remarks of Sinclair 1990, p. 122, and Norton 1990, p. 20.

xivSee Eagles 1991 for an explanation of Canadian boundaries readjustment practices and Roach 1991 for an explanation of Canadian constitutional standards for redistribution and electoral boundaries readjustment.

xvSmall 1991 offers an excellent examination of opportunities for enhanced Aboriginal influence and representation within the existing system of electoral district design.

xviThis provision remained in force until 1970, by which time none of these ridings had had an English-speaking majority for many years.

xviiAll references in the next few pages are to the commission's 1991 report.

xviiiFor more discussion on how to encourage greater Aboriginal electoral turnout, an interesting perspective is offered in Alia 1991. Alia examined media coverage of the 1988 federal election and provincial campaigns from the period 1987-1991.

xixSee, however, Dobrowolsky and Jenson.

xxSee Fleras 1991; Gibbins 1991; New Zealand, Royal Commission 1986.

xxiBefore too much effusive praise is heaped on Canada as a nation, it is important to note that two provinces — Nova Scotia and Ontario — had legislative provisions "intended to segregate blacks from whites for school purposes. The relevant statutes were abolished in Nova Scotia in 1954 and in Ontario in 1964." (Marchant 1982, p. 45)

xxiiThe question is to what degree a province's share of seats would increase. In addition, the question of proportionality in provincial representation in the House of Commons has never been subject to the rigour of strict mathematical accuracy. Therefore, it is suggested that some straying from this principle can be accommodated under section 52.

xxiiiFleras suggests that "if the events at Oka and Akwesasne have taught us anything, it is an awareness that Aboriginal commitment to Canadian society is brittle and amenable to rupture. Fine-tuning the existing system through electoral add-ons may not be enough in the post-Oka era. Imaginative and bold proposals must be articulated and debated..." (Fleras 1991, p. 99)

xxivThere are no accurate census data for the Saami population. Estimates range from a low of 30,000 to a high of 75,000.

xxvThe Samething was preceded by a consultative committee — the Norwegian Saami Council — which was created in 1964.

xxviThe Canadian Advisory Council on the Status of Women was abolished in the budgetary cuts of 1995.

xxviiComparisons of specific representation for ethnic minorities in other countries generally do not assist this study and are of limited relevance to Canada, whether because of the type of regime (e.g., the former USSR and Yugoslavia); because the socio-cultural circumstances are too different (Africa, South Pacific countries such as Papua-New Guinea and Western Samoa); or because population and territorial considerations are significantly different (e.g., large, territorially concentrated linguistic minorities in Finland, Belgium and Switzerland; the Scottish, Welsh and Northern Irish in Great Britain). (Marchant 1982, p. 38)

xxviiiCertainly part of this debate must be directed to the degree to which Canadians genuinely want to make constitutional accommodations for Aboriginal peoples, as opposed to adopting measures to improve socio-economic conditions among Aboriginal people and in Aboriginal communities. Perhaps it is wrong to characterize these viewpoints as disparate — there may be a great deal of confluence between them.

xxixSupport for electoral reform was expressed most strongly by the Métis National Council during constitutional negotiations. See Métis National Council 1992a and 1992b; and Pacific Métis Federation 1992.

xxxSee Electoral Boundaries Commission Act, Stat. Sask. 1986-87-88, c. E-6.1. The boundaries of the 66 electoral districts were established under provisions of the Representation Act, Stat. Sask. 1989-90, c. R-20.2.

xxxiIn a written submission to the Royal Commission on Aboriginal Peoples, the British Columbia School Trustees raised another issue. Under the School Act, elected trustees are required to swear or affirm an oath of allegiance to the Queen. The Trustees Association noted:

In essence, there are two major issues reflected within this concern. The first has to do with sovereignty. Many First Nations groups do not consider themselves to be subjects of the Queen, arguing they never relinquished their sovereignty. The second related issue has to do with the deemed consequences of swearing allegiance to the Queen. The fear is that swearing allegiance to the Queen amounts to an admission of her sovereignty over them, and therefore might jeopardize any land and other related claims that might currently be in question. Within the education community, these concerns may have the effect of discouraging First Nations peoples from seeking office as school trustees. (British Columbia School Trustees 1993, p. 2)

xxxii'Micmac', 'Mi'kmaq' and 'Mikmaq' all refer to the same people. The term is spelled in various ways in the literature. Spellings are reproduced here as they appeared in the original texts.

xxxiiiA lengthy summary of the meeting with the Mi'kmaq community is in Appendix D of the 1992 report of the provincial electoral boundaries commission.

xxxivThe Assembly of First Nations made no intervention before the Special Joint Committee.

xxxvIt would be dangerous to conclude that a leadership role should be narrowly confined to federal appointments to federal boards and commissions. Certainly, there are areas where provinces can develop new relationships. Such new relationships could include the private sector. Perhaps the best example is the Report of the Task Force on Native Forestry in British Columbia. Consisting of four representatives of First Nations, two registered professional foresters and one provincial government representative, the Task Force's mandate was to recommend ways to increase Aboriginal participation in the forest sector. (British Columbia 1991, p. 1) Among its 20 recommendations was one to establish a First Nations Forestry Council to assist Aboriginal people, the forest industry and the province in implementing the Task Force recommendations. The First Nations Forestry Council was established on 21 January 1993 with 12 representatives from First Nations and 7 representatives from the forest industry. The Council's mandate is to increase First Nations involvement in all areas of forestry and to work toward implementing the recommendations of the Task Force. (British Columbia 1993a, p. 1)

As noted by the Hon. Andrew Petter, then minister of Aboriginal affairs, "This is an important development for First Nations, government and industry. We have an opportunity now to begin serious dialogue and to achieve common solutions." And, as noted by the Hon. Dan Miller, then minister of forests, "By sharing ideas and developing partnerships, I believe we can create lasting economic opportunities that will directly benefit Aboriginal and non-Aboriginal communities."

Beyond this, the province has established a joint stewardship policy whereby processes and procedures for natural resource planning, management and allocation within the traditional territory of a First Nation can become the subject of a formal agreement between the province and a First Nation.