The Government of Quebec and Aboriginal Self-Government

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Executive Summary

Our mandate in this paper was to examine relations between the government of Quebec and Aboriginal peoples in Quebec in the context of Aboriginal self-government and against the background of Quebec's current constitutional jurisdiction.

The objectives of the study were to

- paint a clearer picture of past and current Quebec government interventions that have had an impact on Aboriginal self-government;
- identify new ways of conducting relations between the government of Quebec and Aboriginal peoples that will promote Aboriginal self-government; and
- contribute to educating people in Quebec and Canada about Aboriginal issues.

Relations between the government of Quebec and Aboriginal peoples is an area of research that has not been explored extensively to date. This is, to our knowledge, the first attempt to examine Quebec's relations with Aboriginal peoples in the context of Aboriginal self-government. Our research was to be restricted to this perspective, but in concentrating on this topic, we had to exclude consideration of several interesting government initiatives. Thus we believe there is room for a more thorough analysis of some aspects of Quebec policy, such as the Quebec summit on justice, the task force on the administration of justice in the North, the agreements between Hydro-Québec and various Indian bands, the system of beaver preserves, and the ad hoc wildlife agreements (hunting, fishing and trapping, and the commercialization of game).

In view of the extremely tight deadlines and slim resources available for this research project, we decided to paint a general picture of government actions. We did not compile an exhaustive list of government programs and actions that have or might have an impact on Aboriginal self-government. Nor did we analyze in detail all government interventions in every area of government activity. Instead, we attempted to determine where this issue fits within government priorities, how it fits into the government decision-making process, and how it is taken into consideration when government policies are implemented. Finally, we identified several questions that will continue to be core issues in relations between the government and Aboriginal peoples in Quebec and that will influence these relations in the future.

The Government of Quebec and Aboriginal Self-Government

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Introduction

This research report fulfils a mandate assigned to us by the Royal Commission on Aboriginal Peoples. The commission decided to conduct research into relations between governments in Canada (federal, provincial and territorial) and Aboriginal peoples with respect to issues of self-government. At the commission's request, this study includes the period before 1969, but its main focus is the late 1960s to the present.

Our mandate was to examine relations between the government of Quebec and Aboriginal peoples in Quebec in the context of Aboriginal self-government and against the background of Quebec's current constitutional jurisdiction.

The objectives of the study were

- to paint a clearer picture of past and current Quebec government interventions that have had an impact on Aboriginal self-government;
- to identify new ways of conducting relations between the government of Quebec and Aboriginal peoples that will promote Aboriginal self-government; and
- to contribute to educating people in Quebec and Canada about Aboriginal issues.

The commission formulated three main questions for consideration in the study:

1. the Quebec government's involvement in Aboriginal issues and, more specifically, the government agencies with which Aboriginal peoples have to deal, the role of agencies in the structure of government, and how their mandates have developed;
2. the historical direction of Quebec's policies and practices with respect to Aboriginal self-government and, more specifically, the major government actions or initiatives with respect to self-government, including the identification of any specific cases;
3. constraints and opportunities created by the government of Quebec with respect to self-government and lessons to be drawn from actions to date.

Another part of the terms of reference was to examine the effects of Quebec's policies and practices on three groups of special interest to the commission: women, youth and Aboriginal people in urban settings. Our analysis did not lead us to conclude that government

policies have had specific effects on these three groups. This does not mean that there have not been special policies directed to one of the groups. For example, a pre-1985 policy of the provincial government exempted from income tax Indian women who had married non-Indians, thus losing their Indian status and tax exemption under the *Indian Act*. After the *Indian Act* was amended in 1985, such women regained both their status and their income tax exemption. But any such review goes beyond our mandate and in any event will be covered in other research for the Royal Commission.

General Approach

Relations between the government of Quebec and Aboriginal peoples is an area of research that has not been explored extensively to date. This is, to our knowledge, the first attempt to examine Quebec's relations with Aboriginal peoples in the context of Aboriginal self-government. Our research was to be restricted to this perspective, but in concentrating on this topic, we had to exclude consideration of several interesting government initiatives. Thus we believe there is room for a more thorough analysis of some aspects of Quebec policy, such as the Quebec summit on justice, the task force on the administration of justice in the North, the agreements between Hydro-Québec and various Indian bands, the system of beaver preserves, and the ad hoc wildlife agreements (hunting, fishing and trapping, and the commercialization of game).

Another useful area would have been an analysis of whether relations between Quebec and Aboriginal peoples have been affected by linguistic issues: what is the status of the government's relations with the Hurons or the Atikamekw, whose first or second language is French, and the Cree or the Mohawk, whose first or second language is English? And what about the Algonquins, where some communities speak French as a second language while others speak English? The same question could be examined from the perspective the religion ─ Protestant or Catholic ─ adopted by the various groups after contact. An attempt could also be made to determine whether the combined factors of language and religion have had an impact on these relations.

Nor could we have anticipated the emerging need for a complete rewrite of Canada's history to date. The unilateral version of history found in the textbooks, written from the perspective of the Europeans that came to North America and settled here, is being questioned, and not only by Aboriginal people. Although there are many difficulties involved in rewriting

history from an Aboriginal perspective without primary sources, it would now appear that the historical documents that served as primary sources for existing histories in fact lend themselves to interpretations other than those given them to date.[i]

In view of the extremely tight deadlines and slim resources available for this research project, we also decided to paint a general picture of government actions. We did not compile an exhaustive list of government programs and actions that have or might have an impact on Aboriginal self-government. Nor did we analyze in detail all government interventions in every area of government activity. Instead, we attempted to determine where this issue fits within government priorities, how it fits into the government decision-making process, and how it is taken into consideration when government policies are implemented. Finally, we identified several questions that will continue to be core issues in relations between the government and Aboriginal peoples in Quebec and that will influence these relations in the future.

Methodology

Given this relatively untouched research field, we found few general or specialized theoretical works covering the subject area and a great many administrative documents on various topics. After discovering this, we made a methodological decision dictated partly by the educational role of the Royal Commission and partly by our own experience with Aboriginal issues over the past 20 years.

In the current context, in which issues being raised by Aboriginal peoples are fundamental to the future of Quebec and Canada, it is imperative to understand what has shaped relations between the government of Quebec and Aboriginal peoples thus far. This is why we refer often to the political and legal documents that constitute a backdrop for these issues. Knowing what they contain is essential if we are to understand the issues now being raised, particularly with the coming referendum on Quebec sovereignty.

In keeping with the commission's general methodology, we reviewed the general literature and government documents, including Quebec statutes relating to Aboriginal peoples. We analyzed submissions by Aboriginal groups to various Quebec parliamentary committees. We analyzed some forty briefs submitted by Aboriginal and non-Aboriginal groups in Quebec to the Royal Commission on Aboriginal Peoples during the commission's public hearings in 1992 and 1993. We studied reports from various working groups, commissions and government

committees dealing in whole or in part with Aboriginal issues. We analyzed the annual reports of various Quebec government departments, as well as the *Quebec Year Book*. We also prepared a chronology of key events related to the subject of our study (see Appendix 1).

We conducted interviews with government representatives and representatives of various Aboriginal groups. We used a semi-structured interview approach based on questions formulated by the commission.

We did not restrict the interviews to government actors directly involved in Aboriginal issues; we met with a variety of people working in policy and administration who hold or have held senior positions in government for 30 years or more: ministers, parliamentarians, deputy ministers, and presidents of functionally decentralized agencies.

In addition, we interviewed representatives of various Aboriginal groups with the aim of reflecting the diversity of Aboriginal views on the issues. We also met people who work for or have worked for Aboriginal organizations in various capacities since the 1960s: provincial spokespersons of national associations, tribal council presidents, local community chiefs, and consultants and professionals working in Aboriginal organizations.

Use of the Term `Aboriginal Peoples'

There is by no means unanimity in Canada, whether among English-speakers or French-speakers, about the terms that should be used to refer to Aboriginal people. Terms used in the past have been discredited as pejorative, but consensus has not yet been reached on what should replace them. `Savages' or `Natives' became `Indians' and then `Amerindians'; some `Indian' people now refer to themselves as First Nations; the "Indian, Inuit and Métis peoples" are referred to as the "aboriginal peoples of Canada" in the *Constitution Act, 1982*, and a 1985 resolution of the Quebec National Assembly (discussed later in this paper) refers to the "Aboriginal nations". Such differences are indicative of current political upheavals and new issues for Canadian and Quebec society being brought to the forefront by Aboriginal peoples.

The use of the term `Aboriginal peoples' in this paper stems from the Royal Commission's mandate and does not reflect the author's personal choice. Likewise, use of the terms `Aboriginal people', `Aboriginal peoples', `Aboriginal nations' and `Indian bands' reflects their use in official legal, political and administrative documents. Finally, it should be noted that international documents use the terms `Indigenous peoples' and `tribal peoples' to refer to groups

usually referred to as Aboriginal peoples in Canada.

Use of the term Aboriginal people requires a word of caution. We tend to consider Aboriginal people as a sociologically homogeneous group. In Canada, however, there are at least three distinct Aboriginal peoples: Indian peoples, Inuit and Métis people. Each of the groups is a separate entity with its own special characteristics and considers itself distinct from the other two, but none of the groups is a homogeneous entity. Indian peoples, for example, include more than ten linguistic families, each of which has sub-groups that are further divided into local communities. Thus the Montagnais of La Romaine on the Lower North Shore belong to a sub-group of the Montagnais, who in turn are part of the Algonquin family.[ii]

The Concept of Self-Government

There is as yet no commonly accepted definition of Aboriginal self-government. Nor is there political or legal consensus on the content and scope of the concept.

During the 1960s and '70s, the concept was used administratively by the federal department of Indian affairs to respond to the desire of some bands for more latitude with respect to the application of the *Indian Act*, which they felt was too restrictive.

After the passage of the *Constitution Act, 1982*, which recognizes and confirms the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada (that, Indians, Inuit and Métis), the concept of self-government spilled over into politics. This newly acquired constitutional protection generated high hopes among Aboriginal people. From that moment on, they claimed that constitutional recognition included recognition and affirmation of their inherent right of self-government. Federal and provincial governments initially opposed this view, treating it instead as a conditional right ─ that is, recognition was conditional on the signing of negotiated agreements between governments and Aboriginal peoples.

In 1992, government positions appear to have changed radically, because the Charlottetown Accord, signed by first ministers and representatives of Aboriginal peoples, included constitutional recognition of an inherent right of self-government, even though it was subject to a number of federal and provincial statutes and dependent on future negotiations for implementation.

We therefore decided to adopt a broad definition of self-government for purposes of this study, including in it any situation in which an Aboriginal community has been given powers or

institutions that enable it to manage its own affairs, at least in part, even though these powers or institutions may remain subject, to a greater or lesser degree, to the government of Quebec within the current constitutional framework.

The Current Situation of Aboriginal People in Quebec

Before analyzing relations between the government of Quebec and Aboriginal peoples, we begin with a brief overview of the status of Aboriginal peoples in Quebec. We identify the Aboriginal nations and review a number of their demographic, social and economic characteristics.

Demography

Statistical data on Aboriginal people in Canada must be viewed with circumspection. There are no fully reliable data on the Aboriginal population, whether Indian, Inuit or Métis. There is no official register of the Métis population, and the Indian Register, though it is a useful database, has gaps that make it less reliable than it might be.[iii] To be registered, and thereby to obtain Indian status, a person must meet criteria set out in the *Indian Act* and apply for registration to the federal Department of Indian Affairs and Northern Development (DIAND). The Indian Register does not contain the names of everyone entitled to be included, however, but only those who have applied and whose application has been accepted. Births, deaths and moves are also not necessarily registered automatically. Since 1985 in fact, the number of `status' Indians listed in the Register has not always matched the actual number of members of a band, because each band can adopt a band membership code that uses different (and more flexible) criteria than those set out in the *Indian Act* for acquiring Indian status. Thus a person can be a member of a band without having Indian status. The Indian Register therefore does not include all of Canada's Indian population.

In addition, governments (federal and provincial) conduct censuses of Aboriginal populations on the basis of programs or services provided to them. Because the eligibility criteria vary from one program or service to another, the resulting statistics are difficult to compare.

As for census information collected by Statistics Canada, it is helpful to know that some Aboriginal communities have refused to allow census takers onto their reserves. This is particularly relevant in Quebec, where the three Mohawk bands (Akwesasne, Kahnawake and Kanesatake) and the Huron-Wendat did not participate in the 1991 census or in the subsequent

Aboriginal Peoples Survey (APS) based on census data. These four communities are among the largest Aboriginal communities in Quebec, and they are located close to major urban centres. Thus their participation might well have influenced the results, even if the difference would have been marginal in statistical terms. Finally, statistical data are compiled on the basis of self-identification by Aboriginal people. Aboriginal people are asked to specify which category they belong to: North American Indian, Inuit or Métis. Although the APS requested additional details from those identifying themselves as North American Indian, this was not done for the other groups. Moreover, because the concept of Métis has never been defined, people in the category may be completely heterogeneous, given the lack of precise criteria to make further distinctions within it.

Bearing in mind these caveats, the total Aboriginal population of Quebec on 31 December 1993 was 61,824, that is, 7,541 Inuit enumerated by the Quebec department of health and social services and 54,283 `status Indians' registered by DIAND.[iv] This excludes the 7,766 Akwesasne Mohawks, whose reserve straddles the Quebec/Ontario border and falls under the administrative jurisdiction of DIAND's Ontario regional office. In 1993, Quebec estimated the number of Mohawks living in the Quebec portion of the reserve at 3,081.[v]

The 1991 census and the APS showed that more than one million persons in Canada reported full or partial Aboriginal descent in 1991, that is, 3.7 per cent of the total population, an increase of 1 per cent over the proportion identifying themselves as Aboriginal in the 1986 census. This increase was particularly significant in Quebec (128 per cent) and in the Northwest Territories (78 per cent).

In fact, 470,615 persons said they were of full Aboriginal descent in 1991, an increase of 26 per cent over 1986. In addition, 532,060 persons reported that they were of partial Aboriginal descent, an increase of 57 per cent over 1986. The constitutional debates, the Oka crisis, and the higher public profile of Aboriginal issues appear to explain the increase, at least in part.[vi]

The APS showed that in Quebec, 1 per cent of the population reporting Aboriginal descent identified as Aboriginal. Aboriginal people in Quebec accounted for 9 per cent of the total Aboriginal population of Canada. According to Statistics Canada data, self-identified Aboriginal people of full and partial Aboriginal descent amounted to some 137,615 persons in Quebec — 8,485 Inuit, 19,475 Métis, and 112,590 Indian persons, with men accounting for 48 per cent and women 52 per cent of the total (see the table in Appendix 2).[vii] Thus `Indians' are by far the

largest Aboriginal group in Quebec. The data also show that 80 per cent of Inuit and 44 per cent of `Indians' reported being of full Aboriginal descent (Inuit or Indian respectively).

It is clear that the statistics are compiled on the basis of criteria that vary from one agency to another, with the result that the data do not match exactly and are difficult to compare.

Socio-Cultural Data

The Indian population of Quebec is distributed among 10 nations (in the sense of ethnic groups, not nation-states). The Huron, Malecite and Naskapi peoples consist of a single band each. The other nations comprise several bands: the Abenaki (2 bands), the Algonquin (9 bands), the Atikamekw (3 bands), the Cree (9 bands), the Mi'kmaq (3 bands), the Mohawk (3 bands), and the Montagnais (9 bands), for a total of 39 bands in the province. The accompanying map shows the location of Indian and Inuit communities in Quebec and their dispersal across the province.

Population varies considerably from one band to another. The 213 Montagnais of Pakuashipi on the Lower North Shore of the St. Lawrence constitute the smallest band, while the 7,878 Mohawk of Kahnawake are the largest band in Quebec. Table 2 in Appendix 3 shows the location and population of Indian bands and Inuit communities in Quebec.

The Inuit are distributed among 15 communities. The smallest Inuit community, at Chisasibi, consists of 64 people. The Kuujjuak community is the largest, with a population of 1,202.

The adoption of a more sedentary lifestyle by Inuit is a recent phenomenon and one that was accelerated, from the middle of this century on, by the development of federal services in northern Quebec. Whereas there were 50 Inuit camps in Northern Quebec in 1950, there were by 1964 only 20. At this time, the Inuit tended to concentrate at Poste-de-la-Baleine and Fort Chimo, where there were Canadian and American defence facilities: the mid-Canada line radar station from 1956 on and a U.S. base from 1942.

It is very difficult to estimate the number of Métis in Quebec, given that there is no group definition, even though Métis were recognized as one of the Aboriginal peoples of Canada in the *Constitution Act, 1982*.

Today, the Aboriginal peoples of Canada are divided into ten major linguistic families. The languages spoken by the various peoples within a given linguistic family would appear to have grown out of a single language or from related dialects. Three of these families of

languages are represented in Quebec: the Algonquin family, the Iroquois family and the Eskimo-Aleut family.

The Abenaki, Algonquin, Atikamekw, Cree, Malecite, Mi'kmaq, Montagnais and Naskapi peoples belong to the Algonquin family of languages. The Huron and Mohawk belong to the Iroquois family. The Inuit are part of the Eskimo-Aleut family.

Most nations still speak their language, but some have lost it, for example the Huron-Wendat. The use of Inuktitut, the language spoken by the Inuit, is still widespread. Given the small size of most of these nations, it is felt that only the Cree and Inuktitut languages have a chance of survival.

Socio-Economic Data

Indian bands can be found in every region of Quebec. There are six bands in urban environments near major cities. Most bands live in a rural setting, more or less remote from major urban centres. Fully one-third of them (12) live in isolated locations that are inaccessible by road.

Indian bands live on Indian reserves or settlements. Reserves are parcels of land set aside and administered by the federal Crown for the use and benefit of the bands. Generally speaking, title to the lands belongs to the provincial Crown, which delegates administration to the federal government. In some instances, the federal government owns the land, and occasionally, the band itself is the owner. Indian settlements are provincial Crown lands occupied by an Indian band, but that have not been designated as reserves by the federal Crown. Indian reserves are subject to the legal regime established by the *Indian Act*.

Inuit communities all live in isolated villages in Northern Quebec, where they constitute the majority of the population. These villages are located on provincial Crown lands that do not have reserve status.

The issue of employment among Aboriginal people is a serious one. Data on employment indicate very difficult circumstances resulting from several factors: lack of training, limited job opportunities, the remoteness of communities, and so on. According to 1991 census data, 67 per cent of Aboriginal people in Quebec believe that the lack of jobs is the principal obstacle to employment, while 36 per cent mention training and 11 per cent the fact that they are Aboriginal as obstacles to employment.[viii]

The same data show that whereas 57.4 per cent of the population of Quebec over 15 years

of age has a job, only 30.7 per cent of Indians living on-reserve have a job and only 45 per cent of Quebec Inuit have a job; this is similar to the overall picture for Aboriginal people across Canada.

Overall, 6 per cent of Aboriginal people in Quebec operate a business, but only 2 per cent of Indians who living on-reserve do so.

The unemployment rate for Aboriginal people in Quebec is 24.1 per cent, which is comparable to the rate for Aboriginal people across Canada (24.6 per cent). The lowest unemployment rate among Aboriginal people is in Ontario (17.1 per cent), followed by Quebec. The 24 per cent figure for Quebec is an average ─ the rate is in fact 31.9 per cent among Indians living on-reserve and 16.3 per cent among Inuit.

These data should be analyzed in the light of other indicators from the 1991 census. More than half the Indians living on-reserve (54 per cent) and somewhat less than half the Inuit in Quebec (46 per cent) are considered not to be in the labour market (neither employed nor looking for work), whereas one-third of Quebeckers fall into this category.

The unemployment data correspond directly with income data. The income of Aboriginal people in Quebec is generally comparable to that of Aboriginal people in other parts of Canada. Only 5.8 per cent of Aboriginal people in Quebec have an income of more than $40,000, compared to 11 per cent of Quebeckers and 15 per cent of Canadians. The 5.8 per cent figure is an average that conceals differences in income levels among the various Aboriginal groups: 1 per cent of Indians living on-reserve, 5 per cent of Inuit, 9 per cent of Indians off-reserve and 8 per cent of persons who identify as Métis have incomes over $40,000, showing clearly the disparity between on-reserve Indians and Inuit on one hand and off-reserve Indians and Métis on the other.

The income of one Aboriginal person in five in Quebec is in the $20,000 to $40,000 range, whereas for other Quebeckers, the proportion is one in three.

In the $10,000 to $20,000 income range, the proportions are the same for all groups. Whether Indian, Inuit or Métis, 22 per cent of Aboriginal people and the same proportion of Quebeckers fall into this income range. This also corresponds to the average for Aboriginal people in Canada. On the other hand, 11 per cent of Aboriginal people earn this income from a job, whereas 15 per cent of Quebeckers do so.

One Aboriginal person in three, compared to one Quebecker in five, falls in the $2,000 to $10,000 income range. Within this range, 16 per cent of Aboriginal people earn their income

from a job, compared to 13 per cent of Quebeckers. In addition, 22.7 per cent of Aboriginal people in Quebec have a total income below $2,000, compared to 15.9 per cent of Quebeckers.

Finally, relatively fewer Aboriginal people 15 years of age and over reported receiving welfare in 1991 ─ 22.9 per cent of Aboriginal people in Quebec, compared to 28.6 per cent for Canadians generally. Among Indian people on-reserve, one in three is on welfare, as is one Quebec Inuk in five.

Education and Health

According to the 1991 census, one Indian person in four and one Inuk in five over 15 years of age in Quebec reported suffering from a chronic illness such as diabetes, emphysema or arthritis.[ix]

The census also showed that more than 40 per cent of Inuit and Indian people on-reserve (ages 15 to 64) have less than nine years' education, compared to 15 per cent of the Quebec population.

The proportion of Indian persons with a high school diploma is comparable to the figure for all Quebeckers: four in ten. This percentage is slightly below the average for Canada's Aboriginal population as a whole. But only three Quebec Inuit in ten have a secondary diploma, which is also the national average for Inuit.

Only 8 per cent of Indians on-reserve and 9 per cent of Inuit have a post-secondary degree, which is well below the 21 per cent of Quebeckers with such a degree and below the 12 per cent national average for Indian people and 13 per cent national average for Inuit.

There are no data on university education among Quebec Inuit. For Indian people, 0.8 per cent of those on-reserve and 5.3 per cent of those off-reserve have a university degree, which is well below the 11 per cent figure for all Quebeckers.

Aboriginal Groupings

Indian people are grouped into bands. These bands are local entities from both a political and an administrative standpoint. They elect a chief who, with the help of a band council, acts as a political spokesperson for his community and administers DIAND programs and services. Power is basically centralized in the person of the chief, who can be elected according to either traditional procedures or the rules set out in the *Indian Act*. The lack of a structure public

participation in community affairs leaves many communities subject to the authority of the chief, with the result that it becomes important to support the chief if one is to find a job, be awarded a contract or receive a grant from DIAND, or even obtain a house. It is not unusual for the chief to assume numerous functions in the community, yet most communities lack internal mechanisms to deal with arbitrary or unfair decisions should they occur. This point was made by numerous interveners at public hearings of the Royal Commission on Aboriginal Peoples across Canada.

> It is desirable to have decentralization of decision-making powers in a situation of self-government. Decentralization would foster greater participation of our members in community and national matters. What seems of utmost importance, however, is to establish an appeal system, for cases where individuals feel that their rights have been infringed.[x]

This band, chief and council system was introduced more than a century ago by the government of Canada and remains in force. It is difficult to imagine citizens of Quebec or Canada being willing to be governed under such a system.

It is in this context that the increasingly firm opposition of Aboriginal by women's organizations must be considered. They have taken complaints to the national level because there is no way for them to be expressed in the local context. In a petition to the courts during the constitutional negotiations surrounding the signing of the Charlottetown Accord in 1992, a national Aboriginal women's association decried the fact that they were being kept out of the constitutional negotiations and were not being represented directly. They argued that this lack of direct representation left them at the mercy of national organizations and Indian bands, who opposed equality rights and practised discrimination against women.[xi] Briefs submitted to the Royal Commission on Aboriginal Peoples by Aboriginal women's organizations stated these concerns clearly. Non-Aboriginal women's organizations also testified before the Commission in support of the Aboriginal women's position.

It is interesting to note that this opposition by Aboriginal women was considered a feminist breakthrough among Aboriginal women. It is indeed easier for both governments and Aboriginal politicians to see it as such, because this obviates the need to treat it as a political opposition movement demanding democracy and human rights (the right of women to be equal to men) in Aboriginal communities. It is remarkable that Aboriginal women should have invoked the *Canadian Charter of Rights and Freedoms* in defence of their rights, while Aboriginal political authorities (or at least the Indian leadership) deny that the Charter applies to them,

seeing it as another expression of colonialism.

In several cases where an Aboriginal nation includes several bands, bands have pooled resources to establish a `nation' council (known as a `tribal' council elsewhere in Canada), such as the Atikamekw Nation Council and the Grand Council of the Crees of Quebec. For Inuit, the Makivik Corporation ─ which succeeded the Quebec Northern Inuit Association following the signing of the James Bay and Northern Quebec Agreement ─ fulfils this role. Bands have assigned mandates or delegated authority to these councils or corporations, whose purpose is to take action on common political or administrative matters. As the product of combined resources, the councils can deliver services such as health and social services, infrastructure, consulting engineering, and so on more effectively than any individual community could do on its own. However, there is often political tension between bands, which want to guard their own authority, and councils, which tend to develop their own power. The result can be power struggles between band chiefs and nation council authorities.

Nations can also combine forces, as, for example, in the Atikamekw and Montagnais Council (known by its French acronym, CAM). Begun as a federation of 12 bands (three Atikamekw and nine Montagnais bands), CAM became a federation of two nations. But the organization was subject to the tensions just described, with the added dimension of tension between the two nations, and this led to its dissolution in December 1994.

The Assembly of First Nations (AFN), a national federation of status Indians, has a vice-chief position for Quebec. The vice-chief heads a federation of the chiefs of Quebec bands (and the Labrador Innu chiefs), called the Assembly of First Nations of Quebec and Labrador. The Secretariat of the Assembly of First Nations of Quebec and Labrador succeeded the Confederation of Indians of Quebec, which in turn had succeeded the Indians of Quebec Association following the signing of the James Bay and Northern Quebec Agreement. The break-up of the Quebec Indians association at that time left Indian people in Quebec divided. These divisions have never really been resolved, which weakens the AFN of Quebec-Labrador.

Moreover, there are other groups with more specific goals. The Quebec Native Women's Association, which is involved in the national women's movement, acts as a political group for the promotion and respect of women's rights, and in matters related to family violence and shelters for women who are victims of violence.

L'Association des Métis et Indiens hors réserve du Québec and the Native Alliance of

Quebec are two organizations representing non-status Indians or Indians living off-reserve and Métis.

The Changing Relationship Between the Government of Quebec and Aboriginal Peoples

We turn now to the changing relationship between Aboriginal peoples and governments. To understand the current situation, it is necessary to take a look backward, for the various regimes that have held power since the arrival of the first Europeans have marked our history and our legal system, leaving traces to this day. Canadian and Quebec society have tended to forget them, but Aboriginal peoples want governments to live up to the obligations created by each successive regime.

Moreover, as a Canadian province since 1867, Quebec inherited imperial French and English policies toward Aboriginal peoples. This legacy, left behind by the enforcement of the successive imperial policies on Quebec territory, makes the Quebec situation rather different from that of the western provinces, for example, which were created much more recently. A distinction must therefore be made between government action before 1867 in Quebec and Quebec government action since 1867 over the same territory.

Background

The history of relations between governments and Aboriginal peoples goes back to the time of first contact between the Europeans who explored North America and the Aboriginal peoples who were there already. Although there is still scientific speculation about the origins of Aboriginal peoples, it is recognized that when Europeans arrived in the Americas, Aboriginal peoples had been there for thousands of years ─ though just how many thousands of years is not known. What is indisputable is that it was a genuine discovery for the Europeans.

> From 1492 to 1608, France, England, Spain and Portugal sent navigators across the Atlantic to an unknown continent...
>
> The main reasons for this European expansion were financial and political. The sovereigns of the four Christian western powers closely watched their respective undertakings, afraid of missing out on their fair share of the world, then being carved up under the aegis of the papacy. Through action — the discoveries — and by invoking the law, they attempted to justify their claims to these faraway lands.[xii] [translation]

The result was that the Europeans discovered peoples previously unknown to them ─ the Indigenous peoples of the Americas ─ who in turn discovered the Europeans. Our knowledge of these peoples' cultural, social, political and economic organization at the time is very fragmented, and it may be impossible for us to reconstruct what these societies were really like, because little information remains, and not all of it is reliable. It is, for example, very difficult to estimate the size of Aboriginal populations at the time of first European contact.[xiii] On the other hand, historical reports by the Europeans who came to the Americas at various periods do reveal at least some information.

When he returned from his first voyage to America, Jacques Cartier brought with him two young Amerindians from the Gaspé.[xiv] Beginning with his first voyage, Cartier entered into trade relations with the Indians he met.

The French regime

By the late fifteenth century, European fishermen were plying the seas and coasts of America. Fishing had begun some time before the voyages made by explorers with financing from European countries.

But it was only in the seventeenth century that France attempted to establish a real settlement. Under the command of Du Gua De Mons, Champlain settled in and founded Quebec City in 1608. He frequently met and traded with a number of Indian peoples. Settlement nevertheless expanded very slowly. Various companies with commissions from the King of France made greater efforts to trade with the Indians than to populate the colony ─ the Compagnie des Cent Associés, the Compagnie de la Nouvelle-France and the West India Company, for example. The population grew from 270 in 1640 to about 3,000 in 1663, when France established royal government there.

Throughout the French regime, the French made alliances with the Indians. These alliances were made for several reasons. The French agreed to be allies to Indians in their wars with rival tribes.[xv] The 1701 Peace of Montreal, between the Five Nations Iroquois Confederacy and France and its allies, the Indiens des Nations d'en-haut, is one such example.[xvi] Efforts were also made to secure the Indians' neutrality with respect to the English, so as to permit colonization of the territory and pursuit of the fur trade.[xvii] The French, the English and the Dutch attempted to use the Indians in their wars against one another for supremacy in North

America. This is what General Murray wrote to his superiors in London in 1762 about the alliance between the French and the Hurons of Lorette:

> ...Indeed it has ever been the policy of the French Government to make them retain that and as much of their ancient customs as possible, that they might prove of greater use to them in case of war with other nations, at the same time they endeavour'd to attach them to their interest by every tie...
>
> They seem to be full well satisfied with the change of Masters, and were so particularly pleased at their Village having been spared during the Winter 1795, tho' forced by the French to abandon it, that they never could prevail on them to act with any degree of vigor against us.[xviii]

It did not take long, moreover, for the Europeans to notice that there were wars between the Indian tribes.[xix] The alliances of the Europeans with various Indian tribes changed the course of warfare between these tribes.

> The arrival of the Europeans had a decisive influence on political relations between all these nations. It completely changed their destinies. The proud Iroquois appeared to be headed toward dominance over all the lands along the St. Lawrence and the Atlantic. The French stopped them and protected their foes, until the Iroquois and the others disappeared, like their forests, before the advancing civilization that was gaining dominion over this land without a past.[xx] [translation]

The Jesuits sent to convert the Indians established the first reserve or *réduction* at Sillery, near Quebec City, in 1637.

The French regime was marked by battles between the French and English for the control of these regions. The decisive battle in 1759 gave England the victory at the Plains of Abraham in Quebec City. The capitulation of Montreal followed a few months later, on 8 September 1760.

While the wording of the Capitulation of Quebec does not mention it, the text of the Capitulation of Montreal provided the following article in response to a request from the French:

> The Savages or Indian allies of his most Christian Majesty shall be maintained in the Lands they inhabit; if they chuse to remain there; they shall not be molested on any pretence whatsoever, for having carried arms, and served his most Christian Majesty; they shall have, as well as the French, liberty of religion, and shall keep their missionaries.[xxi]

The English also agreed to ensure that the Indians could not enter the cities following the surrender and that they not insult His Majesty's subjects.

Until recently, the prevailing view of Canadian governments was that during the French regime, France had not wanted to give express recognition to the collective rights of Aboriginal

people. According to this view, the establishment of French sovereignty and the colonization of New France were incompatible with the survival of sovereignty or specific rights for Aboriginal people. This opinion has been disputed by Aboriginal peoples, and the courts will be called upon to rule on the issue in the near future, as judgements of the Quebec Appeals Court in cases concerning the French regime and Quebec lands will likely be pursued to the Supreme Court of Canada.

The British regime

England had a presence in America long before its conquest of New France. It disputed French claims in several areas of the Americas. In the territory that is today Quebec, Henry Hudson had discovered Hudson Strait and Hudson Bay in 1610 in the name of the King of England.

The King of England had also granted the Hudson's Bay Company a trading monopoly and a number of government powers over Rupert's Land, which had been ceded to England, along with Newfoundland and Acadia, by France in the Treaty of Utrecht in 1713.

The Treaty of Paris, signed on 10 February 1763 by England, France and Spain after the conquest of New France by England, thus acknowledged England's domination over the New World.

As part of discussions in England on establishing a civil government in lands ceded to Great Britain by the Treaty of Paris, on 5 May 1763 Lord Egremont addressed the Lords of Trade, who were responsible for advising the King, as follows:

> The Second Question, which relates to the security of North America, seems to include Two Objects to be provided for; The first is; the Security of the whole against any European Power; The next is the Preservation of the internal Peace and Tranquility of the Country against any Indian Disturbances. Of those Two Objects, the latter appears to call more immediately for such Regulations & Precautions as Your Lordships shall think proper to suggest &C.
>
> Tho' in order to succeed effectually in this Point, it may become necessary to erect some Forts in the Indian Country, with their Consent, yet His Majesty's Justice and Moderation inclines Him to adopt the more eligible Method of conciliating the Minds of the Indians by the Mildness of His Government, by protecting their Persons & Property & securing to them all the Possessions, Rights and Privileges they have hitherto enjoyed, & are entitled to, most cautiously guarding against any Invasion or Occupation of their Hunting Lands, the Possession of which is to be acquired by fair Purchase only;...[xxii]

In their response of 8 June 1763 to Lord Egremont's request, the Lords of Trade remarked

that in addition to exclusive control over North America, the Treaty of Paris gave England a variety of other advantages. One obvious advantage of the cession, according to them, was the trade in fur and skins with Indians throughout North America, which had previously been controlled by the French. The French were able to do this by establishing numerous trading posts and by building enough forts to "both place the savages of this immense continent in submission and to supply them". According to the Lords of Trade, it was essential to have a strong enough military presence at these locations not only to protect them from incursions by the `savages', but also to defend them against European attacks.

General Gage's report to the Lords of Commerce on the state of government in Montreal in 1762 strengthened the perception that a significant military presence was still needed to counter possible attacks by Indians.

> The Indians have been treated, on the Same principles of Humanity, They have had immediate Justice for all their Wrongs...
>
> As to the Fortifications, except Fort Wm Augustus, which may at present be in a good state of Defence, the rest having only been calculated to repel sudden Invasions of Indians, are of Course, of small Consideration.
>
> ...The Insolence of the Indians will be checked, by the Presence of the Troops. The Tricks & Artifices of the Traders to defraud the Indians will meet with Instant Punishment which cannot fail to make the Indians conceive, the highest Opinion of Our Integrity & His Majesty's good Inclination towards them, and by these means, all Disputes and Quarrells with the Savages will be prevented.[xxiii]

They felt, moreover, that England would eventually derive profit from trade in European products that would be sold by English tradesmen to the Indians, an area of endeavour that had been almost exclusively the preserve of the French to date.

Following the advice of the Lords of Trade, King George III authorized a royal edict, the Royal Proclamation of 7 October 1763, which established the form of government for England's new possessions.[xxiv] Traces of this proclamation, which was adopted by royal prerogative, can be found today in Canada's Constitution. Under section 25 of the *Canadian Charter of Rights and Freedoms*, the Charter cannot abrogate or derogate from any Aboriginal rights recognized by the *Royal Proclamation of 1763*.

The *Royal Proclamation of 1763* established four colonies: Quebec, Eastern Florida, Western Florida and Grenada. The English sovereign had the power to legislate for England's colonies, which did not have legislative assemblies.

The proclamation also established that the Indians would continue to occupy their lands within the new colonies which, having been neither bought nor ceded, were reserved for them as hunting lands. It also set aside for their use a territory between the new colony and Rupert's Land. It prohibited the direct sale of Indian lands to colonists without prior authorization from the government. From this time on, Indians could no longer sell their lands rights except to the government.

Today, more than two centuries later, the nature and scope of the Aboriginal rights recognized in the proclamation, along with the extinguishment or surrender of such rights, the boundaries of the land to which such rights applied, and the peoples to which they are available, are still being debated.

Although there are few judicial decisions on the issue, the Supreme Court of Canada's 1990 decision in *Sioui* established that the *Royal Proclamation of 1763* reserved two categories of lands for the Indians: the lands outside the territorial boundaries of the colony of Quebec in 1763 and settlements authorized by the government within the boundaries of the colony of Quebec.[xxv] This was the first decision concerning Quebec land and the second decision by the Supreme Court of Canada that recognized the merits of a pre-Confederation treaty, i.e., a document signed by the British Crown before Confederation in 1867.[xxvi]

The *Sioui* decision is also notable because it establishes that a document signed by General Murray a few days before the capitulation of Montreal ─ that is, when the French were still masters of New France ─ was equivalent to a treaty within the meaning of the *Indian Act*. Since the *Indian Act* protects treaty rights from the application of provincial laws, the judgement meant that provincial law does not apply to the Hurons when they exercise a right protected by the Murray treaty of 1760. The court accepted the Hurons' argument that they were carrying out ancestral customs and religious rites when they cut trees, camped and built fires in a park.

As the Murray treaty refers explicitly to the freedom of the Hurons to practise their customs, it will be interesting to see how it is interpreted. Is their right to practise their customs under the treaty protected by the Canadian Constitution? Is this right an attribute of the right of self-government? If so, does the right still exist or has been extinguished by successive federal laws on Indians? If it has not been extinguished, to what extent is it subject to federal legislation? Is it subject to provincial statutes? These are a few of the questions that will no doubt be asked concerning the indirect impact of the Supreme Court decision in *Sioui*.

The text signed by General Murray reads as follows:

> THESE are to certify that the CHIEF of the HURON tribe of Indians, having come to me in the name of His Nation, to submit to His BRITANNICK MAJESTY, and make Peace, has been received under my Protection, with his whole Tribe; and henceforth no English Officer or party is to molest, or interrupt them in returning to their Settlement at LORETTE; and they are received upon the same terms with the Canadians, being allowed the free Exercise of their Religion, their Customs, and Liberty of trading with the English:─recommending it to the Officers commanding the Posts, to treat them kindly.
>
> Given under my hand at Longeuil, this 5th day of September, 1760.
>
> By the Genl's Command,
> JOHN COSNAN,
> JA. MURRAY
> Adjut. Genl.

In the aftermath of the *Royal Proclamation of 1763*, royal instructions were transmitted to the various governors of Quebec. Governor Murray's instructions that same year referred to the many Indian nations or tribes who lived in and owned the province of Quebec and with whom it would be opportune to cultivate good relations, gradually leading them to become good subjects of His Majesty.

Between 1768 and 1775, Governor Carleton's royal instructions enjoined him to take the steps necessary to establish, with the agreement of the Indians, accurate boundaries for the lands that could be set aside for them and on which all colonization would be prohibited.

This was England's policy for dealing with the Indians when it wanted to settle new lands in its colonies. Like France, England did not consider these treaties or alliances with Indian tribes to be international treaties signed with other sovereign nations. The treaties stated moreover that the Indians were His Majesty's subjects. From 1680 to 1862, England signed such treaties, referred to as treaties of peace and friendship, with various nations in eastern North America.

The purpose of these alliances was to obtain, if not military support from the Indians against the French, at least their neutrality, their recognition of English authority, or the release of English prisoners. The treaties gave the Indians a number of guarantees in return, including military protection, the freedom to hunt and fish and to sell their catch, the provision of foodstuffs, and annual gifts. Unlike those signed later, these treaties did not ask the Indians to cede their rights over the territory.

The treaties of cession, on the other hand, provided that the Indians ceded their rights over immense territories in return for ammunition, financial compensation, farm equipment and the granting of defined lands called "reserves". The reserves were "kept and held in common" by the chiefs and their tribes for their use and benefit, while remaining the property of His Majesty. In general, reserve lands were distributed on the basis of one square mile or 640 acres per family of five.

Some treaties guaranteed Indians the right to fish, hunt and trap on lands unoccupied by the Crown. These guarantees were generally subject to subsequent laws on wildlife conservation.

But troubles persisted in the colony, and England had to agree to the changes enshrined in the *Quebec Act* of 1774. The act stated that English criminal laws (whose "clarity and gentleness" had been "felt" by Canadians in Quebec since 1763) would continue to apply, but French civil law was restored, as well as the right to practise the Catholic religion, and the Test Oath was abolished.

In addition, the *Quebec Act* stated expressly (section 3) that it neither cancelled nor altered "any Right, Title, or Possession, derived under any Grant, Conveyance, or otherwise howsoever, of or to any Lands within the said Province, or the Provinces thereto adjoining; but that the same shall remain and be in Force, and have Effect, as if this Act had never been made". The section left intact the rights of Aboriginal people recognized in the *Royal Proclamation of 1763*.

The *Constitution Act, 1791* divided Canada into two provinces, Upper Canada and Lower Canada (present-day Ontario and Quebec), and introduced a representative parliamentary system.

During this period, in 1796, the province of Lower Canada ratified a friendship, trade and navigation treaty between Great Britain and the United States, signed in London in 1794 ─ the Jay Treaty. The treaty stated that "No duty of entry shall ever be levied by either party on peltries" crossing the border; it also exempted from any taxation or duty the Indians' "own proper goods and effects of whatever nature", except for "goods in bales, or other large packages, unusual among Indians".

In 1803, the jurisdiction of the criminal courts of Upper and Lower Canada were extended to Indian territories beyond the boundaries of the colonies, and in 1821 this jurisdiction was extended to Rupert's Land.

Trade with Indians was also regulated by the fact that only the King could grant

monopolies for trade with Indians in the lands located between Rupert's Land and the boundaries of Upper and Lower Canada or the United States.

It was in 1830 that the system of Indian reserves as we know them today was introduced. Reserve legislation was passed in both Upper and Lower Canada, and anyone entering a reserve without authorization was subject to sanctions.

The political troubles that persisted in both Upper and Lower Canada, culminating in the rebellion of 1837-38, led England to pass the *Act of Union*, uniting the two provinces.

In 1850, measures were passed to protect the Indian lands and property in Lower Canada.[xxvii] Legal criteria were also established for obtaining Indian status, the criteria being different for men and women. As had occurred in Upper Canada in 1839, the post of Commissioner of Indian lands in Lower Canada was established, with ownership of the land that had been set aside for the use of the Indians of the province. That same year, two treaties for the cession of lands were signed with Indians in Upper Canada; the treaties ─ the Robinson-Superior Treaty of 7 September 1850 and the Robinson-Huron Treaty of 9 September 1850 ─ were to become a model for subsequent treaties in Canada after 1867.

In 1851, up to 230,000 acres of land were set aside for the Indians of Lower Canada, and an annual rent, not to exceed one thousand current louis, was to be paid and distributed among a number of tribes designated by the governor general in council. Eleven Indian reserves were created in Quebec under this act.

Various concepts were advanced during this period concerning the future of the Indians: some were in favour of direct contact between Indians and colonists, while others believed it necessary to begin by isolating the Indians to `civilize' them before allowing contact with non-Aboriginals.

The Canadian regime

As successive regimes found themselves unable to end political strife, the provinces of Canada, Nova Scotia and New Brunswick decided in 1864 to form a federation. England took action to do its colonies' bidding and passed the *British North America Act* in 1867, the act that was the basis for today's Canadian Constitution.[xxviii]

England adopted a federal system for Canada, dividing legislative authority between Parliament and the provincial legislatures. Each order of government had the authority to enact

laws in its areas of exclusive jurisdiction. But the residual power, which applied to all areas not listed in the 1867 law, was assigned to Parliament, which had the authority to intervene in areas of provincial jurisdiction in certain instances.

After 1867, Canada pursued British imperial policy, which consisted of signing treaties with the Indians whereby they ceded their land rights. Based on the model established by Great Britain, Canada was to sign a series of treaties (the numbered treaties 1 to 11 and the two Williams treaties) between 1871 and 1923. These treaties covered the land from Ontario west to the British Columbia border. None of the treaties covered Quebec, the Yukon, the Atlantic provinces or British Columbia.

Section 91(24) of the *British North America Act* gave Parliament exclusive jurisdiction over "Indians, and Lands reserved for the Indians". (Note that "Lands reserved for the Indians" is a broader category than Indian reserves.) Neither of the categories is defined in the act.

Section 91(24) is the legal authority on which subsequent federal actions with respect to Aboriginal people have been based. The Canadian constitutional system was designed in such a way that, initially, sole responsibility for Indians and their lands rested with Parliament and the federal government. This ground rule of Canadian federalism has never been disputed: the federal government has occupied its field of exclusive jurisdiction. It is therefore no surprise to find that there were virtually no relations between the provinces, including Quebec, and the Indians during the period following Confederation.

In 1870, an imperial order in council transferred Rupert's Land to Canada after the territory had been surrendered by the Hudson's Bay Company. The order in council decreed that any compensation to be paid to the Indians for land required for colonization would be paid by Canada and the imperial government, thus freeing the Hudson's Bay Company from any obligation in this regard.

As was the case in Ontario, this provision was used again in 1912 in the law that extended the borders of Quebec by annexing a portion of Rupert's Land.[xxix] Canada transferred to Quebec its obligations toward the Indians: Quebec would recognize the rights of the Indian inhabitants of the territory and would negotiate any surrender of those rights in the same way Canada had to that point ─ by treaty. The province was also to cover any fees and expenses attached to such treaties. The transfer of rights would nevertheless have to be approved by the federal government, which retained a trust relationship with the Indians and responsibility for

administering all lands set aside for their use.

It was on this provision that the Indians of Quebec Association based their challenge to Quebec's plans for hydro-electric development at James Bay in 1972. As discussed later in this paper, the case was settled out of court, with the signing of the James Bay and Northern Quebec Agreement.

In 1931, the *Statute of Westminster* gave Canada independence by recognizing full legislative powers. The law would henceforth prevent the British Parliament from legislating for a dominion unless asked to do so and unless the dominion had consented to the contents of the proposed law. It is worth remembering, however, that Canada became fully independent from British legislative authority only when the Constitution was repatriated in 1982. Indeed, as they could not agree on a constitutional amending formula in 1867, Canadians chose to leave authority to amend the Constitution with the British Parliament.

From 1906 to 1910, the federal government conducted scientific and administrative expeditions in the territory, including expeditions to take official possession of Baffin Island and Melville Island in northern Quebec. Beginning in 1922, patrols went regularly to the eastern Arctic for a variety of reasons, including medical care for the Inuit. In 1936, the federal government set up a Royal Canadian Mounted Police post at Inukjuak, where its representative performed policing and administrative duties.

An Indian trusteeship system: In 1876, Parliament consolidated various earlier laws concerning Indians by passing the *Indian Act*, which established a trusteeship system ─ roughly the same system that still prevailed in 1993.[xxx] The system placed Indians (both individuals and communities) and reserve lands under the trusteeship of the federal government.

Under the system, Indians are considered minors under the care of the federal government, which determines such things as Indian status, rules concerning wills, the political structure of band councils, the administration of reserves, and tax exemptions.

Beginning in 1951, the federal government added an important element to the system by declaring that provincial laws applied under certain conditions to Indians on-reserve, although federal statutes or by-laws passed by a band would continue to take precedence. In exercising its jurisdiction, the federal government thus chose to subject Indians to provincial legislative authority, a move that Indian peoples are still challenging.

On the other hand, band councils have regulatory authority, delegated by Parliament, but

it remains subject to the federal government's power of disallowance. Bands can make by-laws that apply within a reserve in areas listed in the *Indian Act*, such as health, maintaining the peace, planning and taxing band members.

The regulatory authority of bands covers areas of provincial jurisdiction, placing them in competition and creating, in the minds of the citizens at least, confusion that is difficult to dispel. With respect to highway safety, for example, three superimposed systems apply at the same time: federal regulations on traffic on Indian reserves (which include parts of provincial highway safety codes), the provincial highway safety code, and band by-laws on highway safety.

The situation of the Inuit in Quebec: Following the extension of Quebec's boundaries in 1912, a dispute arose between the government of Quebec and the government of Canada with respect to constitutional responsibility for the Inuit. Canada claimed that its jurisdiction was restricted to Indians, as set out in the Constitution. Because the 1912 act provided that care of the Indians would remain its responsibility, the federal department of Indian affairs paid welfare benefits to both Indians and Inuit until 1929. After that, Quebec reimbursed the federal department of the interior for welfare paid to Inuit, but after a few years, Quebec refused to continue the reimbursements.

In 1935 the federal government asked the Supreme Court of Canada to rule on the matter, and it concluded that `Eskimos' were the responsibility of Parliament. According to the Supreme Court, the term `Indian' in section 91(24) included `Eskimos'.[xxxi] On the other hand, Parliament did not include Inuit in the *Indian Act*, with the result that there is no reserve system for Inuit or the tax exemptions that accompany it.

In 1949, the federal government began to provide health and education services to Inuit in Quebec, opening a school and a nursing station at Port Harrison and Fort Chimo.

The federal department of northern affairs and national resources was established in 1953. The first minister was Jean Lesage, the future premier of Quebec. During this period a number of federal services were extended to Inuit. By 1964, there were 80 federal employees in New Quebec. It would appear, however, that Lesage believed life was too harsh in the North and that Inuit could not survive as a distinct people.

The 1969 white paper: The 1969 publication of a white paper on Indian policy by the federal minister of Indian affairs, Jean Chrétien, was a turning point in relations between governments and Aboriginal peoples in Canada. The minister's plan was to solve the "Indian

problem" by encouraging their complete assimilation into Canadian society on an equal footing with other Canadians. The integration was to proceed through a transfer of responsibility for Indians and their reserves to the provinces. The federal government wanted to relinquish its jurisdiction, eliminate the department of Indian affairs, repeal the *Indian Act* and put an end to reserves and the category of status Indians.

In Quebec the publication of the white paper led to the establishment of an Indian affairs negotiation board.[xxxii] The provincial government's talks with the minister, Jean Chrétien, had revealed that the federal plan would involve most provincial government departments. The board, established in July 1970, was to work in co-operation with the various departments.

The board's mandate was first to conduct negotiations with the Indians of Quebec Association and the federal government with respect to any responsibilities Quebec may have had for Indians in Quebec and/or Indian affairs. The board was also to recommend to the government a single policy on Indian affairs and the means to implement it. Eight ministers were to appoint senior representatives of their departments to the Board. The government ended the board's work abruptly when the Indians of Quebec Association took legal action against the government's plans for a hydro-electric development at James Bay.

The publication of the white paper generated massive and vehement opposition to the federal proposal. Even though they were very critical of the federal regime, Indian people did not want the federal government to shirk its constitutional obligations. They were also afraid that their claims would be weakened if they had to deal with a variety of provincial parties.

From this time on, Indian people claimed that any eventual transfer of federal jurisdiction would have to benefit them. The Indian organizations that obtained government funds to take part in the consultation process conducted by the federal government at the time became spokespersons and lobbyists on Indian issues, both in political forums and in the courts.

The publication of the white paper channelled Indian dissatisfaction with the federal government and gave new life to Indian nationalism in Canada. Faced with unanimous opposition, the government withdrew its proposals, the net effect of which was to promote unity among Indian peoples. Indian nationalism has continued to grow ever since.

Land claims negotiations policy (1973): Until the early 1970s, the federal government considered that Aboriginal land claims to Canadian territory had no basis in law and refused to discuss them. The Nisga'a Indians of British Columbia therefore decided in 1973 to ask the

courts to rule that their Aboriginal rights over the land of that province continue to exist.

A majority of the justices of the Supreme Court of Canada rejected the Nisga'a claim.[xxxiii] Three judges were of the opinion that the rights had been extinguished. Three others believed, on the contrary, that they still existed in 1973. The seventh judge denied the claim on a procedural issue. However, the six judges who ruled on the substance of the issue agreed on one point that proved decisive: the rights of Aboriginal people with respect to Canadian territory existed simply because they had occupied and used the territory before the Europeans, independent of any form of recognition by successive regimes. Hence Aboriginal people could hold rights with respect to Canadian territory on the basis of their prior occupation of it, even though no legal text has recognized them.

This judgement prompted a radical change in the federal government's attitude toward land claims. That very year, it adopted a statement of principles on contemporary Indian land claims. It had intended originally to continue the British colonial policy, which Canada had followed until 1923, of requiring the Indians to cede their rights by means of treaties, but the federal government was now prepared to recognize the legitimacy of claims based on the *Royal Proclamation of 1763*, which acknowledged Aboriginal land rights to territories they had occupied in the eighteenth century. The purpose of the 1973 policy was to clarify the federal Crown's title to all of Canada, by obtaining from Aboriginal people the surrender of their land rights over parts of Canada that had not been covered by treaties before 1923. Although the current policy no longer speaks of surrender, but rather of an exchange of undefined rights for defined rights, the objective has remained the same.

If a claim concerns land that belongs to a province, the new policy requires the province to engage in a tripartite process to negotiate and reach an agreement. In practice, the federal government will not negotiate a claim if the provincial government concerned does not agree to take part in the negotiations. This explains in part why no agreement has been reached under the new policy on land claims involving a province, with the exception of the James Bay and Northern Quebec Agreement. As we will see, that agreement had its origins in earlier events and was reached under exceptional circumstances.

Constitutional recognition of Aboriginal rights: We saw earlier that Canada's Constitution contained an anachronism: until 1982, England retained the power to amend it. In 1980, the federal government attempted to deal with this by setting in motion a process to

repatriate the Constitution. At the time, some Indian groups threatened to appeal to the Queen if recognition of Aboriginal rights was not part of the government's constitutional proposals. Pointing to treaties signed with the British Crown, other Indian groups went before the English courts to obtain a ruling to the effect that England still had responsibilities toward them and that it could therefore exercise authority over Canada in this respect. The courts concluded the opposite — the Indians were under the exclusive authority of Canada, and England no longer had any responsibility for them.

These pressure tactics led to the inclusion in the *Constitution Act, 1982* of recognition and affirmation of "existing aboriginal and treaty rights of the aboriginal peoples of Canada". Also established was a procedure for constitutional conferences to define more precisely what Aboriginal and treaty rights consist of. For the first time in Canada, Aboriginal peoples gained the right to participate in constitutional discussions, usually reserved for first ministers.

The constitutional conferences held between 1983 and 1987 led to two major amendments: one concerning equality of the sexes ("aboriginal and treaty rights...are guaranteed equally to male and female persons"), and one providing constitutional protection for contemporary land claims agreements.

The equality of the sexes provision was included at the insistence of governments, despite formal opposition from Indian peoples' official representatives. The Indians saw this as government interference in matters of Indian citizenship, an area relevant to self-government.

Governments also agreed to protect rights arising from modern land claims agreements as if they were treaty rights ("`treaty rights' includes rights that now exist by way of land claims agreements or may be so acquired").

Aboriginal people criticized governments, however, for failing to give explicit constitutional recognition to their inherent right of self-government. This claim was supported in a 1983 report to the House of Commons from the Special Committee on Indian Self-Government (the Penner Report). While it did not elaborate on the nature of this right, the committee recommended that the right of self-government be entrenched and affirmed in the Constitution, such that Indian governments would form a separate order of government with its own fields of jurisdiction.[xxxiv] Such a provision was in fact included in the Charlottetown Accord, which was later rejected by a majority of Canadians, Quebeckers, and Aboriginal people in a 1992 referendum.

Quebec Government Action

We turn now to the significant actions of the government of Quebec with respect to Aboriginal self-government. We examine Quebec's attitude and actions on this matter in the current constitutional framework, under which the federal government has responsibility for Aboriginal people.

Presence in the North

It was only in the late 1950s that the government of Quebec began to develop a direct interest in its northern territory. It had had a geographical survey of the Ungava district done in 1913, one year after its borders had been enlarged by annexing the territory, and numerous scientific research expeditions on the physical environment were carried out from 1947 on.

In 1964, the Quebec minister of natural resources, René Lévesque, later premier of Quebec, presented a bill on mining development in New Quebec. But the first indication of Quebec's permanent presence in New Quebec dated to 1960, when a Quebec provincial police officer was assigned to Poste-de-la-Baleine.

Creation of the New Quebec branch

In 1960, as minister of natural resources, René Lévesque submitted a brief to cabinet advocating development for Aboriginal people in the North rather than moving them to the south. Jean Lesage, by then premier of Quebec and a former federal minister of northern affairs, was not convinced that this was a viable option. The government's decision to do something with respect to Aboriginal people in northern Quebec was a facet of Quebec's process of appropriating its northern territory.

Another government agency, the Eastern Quebec Development Bureau, recommended and then carried out the closing of several dozen villages in eastern Quebec, moving the people from these villages to neighbouring urban centres. By contrast to this approach, Lévesque proposed to develop northern Quebec by leaving the Aboriginal people in place and involving them in the development process. The proposal was accepted, and Lévesque's recommendation to create a New Quebec Branch (the Direction générale du Nouveau-Québec, or DGNQ) within his own department was approved.

The minister's recommendation was to create a branch to co-ordinate government

activities. But Premier Lesage decided instead to create an authority responsible for all activities. His experience with the federal department of northern affairs had given him first-hand experience of the limitations of co-ordination: when the minister of health suggested keeping the Inuit in igloos, the department of public works built them matchstick houses, apparently believing that they were being housed temporarily before being moved south. Lesage therefore believed that one agency should be responsible and rejected the notion of a co-ordinating body.

The agency was to be temporary ─ to last until Quebec's northern territory was organized. The premier assigned responsibility for the DGNQ to Lévesque, who asked Éric Gourdeau to become its first head. According to Gourdeau, the authority of the DGNQ was completely unheard of before in Quebec governmental organization: a variety of sectoral departments had their authority for part of the province removed and assigned to a branch of another sectoral department.

In 1961, René Lévesque made an official visit to Fort Chimo. This was the period when a centre for northern studies was established, with provincial funding, at Laval university. The immediate consequence of the visit was that in 1962 ten Quebec officials were sent to the area, with instructions to learn about the customs and language of the Inuit and to study the problems of the region. These officials were the first employees of the DGNQ, which was established in the department of natural resources in April 1963.

The government of Quebec negotiated with Ottawa for transfer of federal responsibility for the Inuit. An agreement was signed in April 1964, giving the DGNQ the authority to organize services for the Inuit of northern Quebec. In September 1964, there were 30 employees in the branch: 20 administrative positions (distribution of allowances, monitoring the territory, etc.) and 10 teaching positions (teaching non-Inuit residents, kindergarten classes for Inuit, and technical training for adult Aboriginal people).

The government of Quebec then gave the DGNQ responsibility governance in northern Quebec, except for the administration of justice and lands and forests. The DGNQ's mission was to prepare a development plan to effect the integration of the territory with the rest of Quebec. Indian people and Inuit in the region were settled at 15 posts.

> The intent of the New Quebec Branch is to help the inhabitants of New Quebec administer themselves and create municipal structures analogous to those elsewhere in Quebec.[xxxv] [translation]

While awaiting the establishment of governing structures, the government took two initiatives. First, it supported the establishment and management by Aboriginal people of co-operatives in the northern posts. It also consulted Inuit chiefs formally for the first time at Fort Chimo in July 1964 to obtain their opinion on government policies and any changes they might wish to see introduced.

> All these initiatives, whether to do with education, adult education or consultation of Indigenous people, is to prepare the way for the introduction in northern Quebec of administrative services and the growth of a certain type of local government well suited to the outlook and needs of the Aboriginal people.[xxxvi] [translation]

For the first time since the government began its publication, the *Quebec Yearbook, 1964-1965* devoted a long section to New Quebec: the physical environment, demography, Aboriginal culture, government administration and education, health and justice services.

> For some years now, the awakening of Quebec consciousness shed new light on the problem of administration for the Eskimos by reviving interest in the development of the whole territory from the St. Lawrence valley to Hudson Strait. Public opinion and government authorities rediscovered the importance of the North and the need to affirm a global and continuing presence there through government services and the resurgence of research in New Quebec.[xxxvii]

While action by the Quebec government on the behalf of the Inuit in northern Quebec was proceeding, the government of Quebec did not really enter into relations with the Indians of Quebec, who continued to be the responsibility of the federal government.

Creation of a secretariat for Indian and Inuit government activities

The minister of energy and resources (whose department had succeeded the department of natural resources) was still responsible for the DGNQ in 1977. He had also inherited responsibility for the James Bay and Northern Quebec Agreement co-ordination office, whose mandate was to implement the agreement signed with the Crees and the Inuit in 1975 but that had still not managed to involve all departments implicated in the agreement.

Meanwhile, Aboriginal spokespersons had asked the minister, Mr. Bérubé, to persuade the provincial government to act on behalf of other Indians, not only those who had signed the James Bay agreement.

When he became premier of Quebec, René Lévesque asked Éric Gourdeau, by then the

deputy minister to the secretary of state for economic development, to co-ordinate all projects involving Aboriginal people that had to be submitted to cabinet, a responsibility he assumed while keeping his deputy minister functions. In December 1977, the four ministers of state, then considered the senior ministers of the government, agreed to recommend a co-ordination secretariat structure under the responsibility of the premier.

Premier Lévesque accepted their proposals in 1978, established the Secrétariat aux activités gouvernementales en milieu amérindien et inuit (secretariat for government activities in the Indian and Inuit milieu, known by its French acronym, SAGMAI), and asked Éric Gourdeau to head the body. Interestingly, these were the same people who had been involved in 1960 ─ the minister of natural resources, René Lévesque, had become the premier, and the first head of the New Quebec Branch, Éric Gourdeau, became the first head of SAGMAI.

The former minister wanted to keep responsibility for Aboriginal issues and raised it higher in the power structure by placing it in his own department, the executive council. He gave Éric Gourdeau the task of administering the new secretariat, as he had asked him to set up the DGNQ. What was formerly a branch of a sectoral department became a co-ordinating structure within the executive council, with the former director general as the associate secretary general, the equivalent of deputy minister to the executive council.

Éric Gourdeau was to remain the head of SAGMAI until after the defeat of the Parti québécois in 1985. Because he was seen as Premier Lévesque's right-hand man on Aboriginal issues, the Liberal government replaced him in 1986 with Gilles Jolicoeur, who had been the under-secretary general of SAGMAI since 1978. Jolicoeur remained in the post until the end of 1991, when he was replaced by André Maltais, who still holds the position.

It is important to note that Aboriginal issues were centralized in the executive council in 1978. But also striking is the fact that these issues were dealt with, both politically and administratively, for a long time by the same people ─ René Lévesque and Éric Gourdeau to begin with, then René Lévesque, Éric Gourdeau and Gilles Jolicoeur. There can be no doubt that this had an impact on the government's activities. Moreover, the other people involved recall that Gourdeau's mere presence at meetings of deputy ministers gave Aboriginal issues a visibility they had never had before.

SAGMAI, which proved to be a pipeline to the government for Aboriginal people, had a twofold mandate at the outset. It was to co-ordinate the actions of the various departments and

make it easier for Aboriginal people to have access to these departments, and it was responsible for developing Aboriginal policy for recommendation to the government.

When the Liberals returned to power in 1985, Premier Robert Bourassa changed the name from SAGMAI to the Secrétariat aux Affaires autochtones (Aboriginal affairs secretariat, or SAA), but it remained attached to the executive council.

Its mandate was changed to add two new areas of responsibility: government information for Aboriginal people and Aboriginal information for the government and responsibility for negotiations on land claims or self-government. From that point on, the SAA oversaw general negotiations on land claims and provided a support structure for departments engaged in sectoral negotiations. The SAA's activities in negotiations have grown considerably in recent years. It would also appear that the information component now includes some public relations: familiarizing the rest of Quebec with Aboriginal issues.

The Dorion commission on Quebec's territorial integrity

In November 1966, the government of Quebec established a commission chaired by Henri Dorion to investigate the territorial integrity of Quebec. His mandate was to study and formulate recommendations to the government on how to assure Quebec's territorial integrity.

The mandate covered both external issues ─ that is, Quebec's borders ─ and internal aspects, including federal property in Quebec such as Indian reserves. In its briefs to the Quebec government, the commission also examined the issue of land claims made by the Indians of Quebec Association.

> The Premier of Quebec, in a letter to the Indians of Quebec Association on 21 April 1969 responding to a brief submitted by the Association a few weeks earlier concerning Indian land rights, said that he was waiting until he had received the report of the Commission d'étude sur l'intégrité du territoire du Québec before coming commenting on the issue.[xxxviii] [translation]

This is how the commission came to examine the issue in greater detail than its mandate had originally provided for. The commission submitted the six volumes of the fourth part of its report, entitled *Le Domaine indien*, to the government on 5 February 1971.

In its report, the commission stated that it had to deal with a "sensitive problem that could all too easily become politicized". It said that it had attempted to formulate solutions

> not within the narrow framework in which the problem was set by the Indians themselves (that is, as a debt contracted in the past, or recently set forth and

specified in texts, and of compensation to extinguish it), but in the broader framework of an integrated and comprehensive policy.[xxxix] [translation]

Fifty paragraphs in the report's conclusion concern a legal analysis of Indian title. One of the conclusions was that Indians and Eskimos had certain recognized rights with respect to parts of Quebec territory and that these rights stemmed from various documents (paragraphs 2 and 3).

This conclusion led the commission to formulate 33 recommendations, including several to the effect that the government of Quebec should honour obligations, stemming from the 1912 federal and provincial laws extending Quebec's borders, by signing an agreement with the Indians of Quebec covering the whole territory of Quebec without any distinction in terms of the origin of Indian title, thereby extinguishing any debt that Quebec might have to Aboriginal peoples (recommendations 1 to 4).

Believing that Indian opposition to the federal government's 1969 white paper was attributable in part to "some equivocation about the intent of the parties", the commission also recommended that the government of Quebec immediately initiate discussions with the federal government concerning implementation of the white paper and the immediate transfer to Quebec of jurisdiction for Aboriginal people in the province (recommendation 5).

The commission also recommended a provincial umbrella law on Amerindians (recommendation 6), the immediate grant to Aboriginal peoples of clear property title on their current settlements (recommendation 13), that Amerindian municipalities, with special protection measures, replace Indian reserves (recommendation 11), and that Amerindians elect an Amerindian MNA to the National Assembly from an electoral district consisting of all Amerindian municipalities (recommendation 31). The commission published summaries of its conclusions and recommendations in Cree, Inuktitut, Iroquoian and Montagnais.

The James Bay and Northern Quebec Agreement

The James Bay and Northern Quebec Agreement (JBNQA) was signed on 11 November 1975 by the government of Canada, the government of Quebec (and its agents, Hydro-Québec, the James Bay Development Corporation and the James Bay Energy Corporation) on the one hand and the Cree Indians (the Grand Council of the Crees), the Inuit of Quebec and the Inuit of Port Burwell (Northern Quebec Inuit Association) on the other hand.[xl]

The 483-page document has 30 chapters on subjects as varied as the land management

regime, education, justice, health, wildlife resources, hydro-electric development, the environment and financial compensation. In return for surrender of their land rights, the Aboriginal peoples received compensation of more than $235 million. The signing of the agreement enabled Quebec to consolidate its authority over the Inuit and to acquire jurisdiction over the Crees (and later the Naskapi). In fact, virtually all the institutions created by the agreement now fall under Quebec authority.

The James Bay and Northern Quebec Agreement is a key event in several respects. It is the sole agreement signed concerning Quebec territory in the context of the federal framework for negotiating the settlement of contemporary land claims by Aboriginal peoples. There has been no other settlement of land claims involving a province since the adoption of the policy in 1973. The negotiation of claims concerning the territory of other provinces has been unproductive to date, primarily because the provinces have refused to participate.

The agreement was the result of legal proceedings initiated for the first time Indians in Quebec with a view to having their land rights recognized. It propelled the Indians to the forefront of the Quebec political scene when they opposed political plans to develop northern Quebec with the intent of creating jobs for Quebec workers. It was possible only because of the exceptional circumstances under which it was signed, but all parties were left with the impression that the price to be paid was very high indeed.

The premier, Robert Bourassa, had publicly announced his government's intention to proceed with a hydro-electric megaproject in northern Quebec that would generate more than 100,000 new jobs.

The Liberal premier's political will was countered by the opposition of Quebec Indians. Several years earlier, the Indians of Quebec Association (AIQ) had begun talks with the provincial government in hopes of negotiating a settlement of claims by all Indian peoples on Quebec territory. The AIQ, which included all of Quebec's Indian bands, had submitted a brief to the government on their hunting and fishing rights in 1967 and another brief on their land rights in 1969.

The AIQ requested an interim injunction against the government of Quebec in 1972. The request was allowed in the first instance by Judge Albert Malouf but dismissed by the Court of Appeal, which ruled that the balance of disadvantages was on the government side and that the interests of some 6,000 Aboriginal people were not enough to outweigh the interests of all

Quebec citizens. It is important to note that Judge Malouf had allowed the injunction solely on behalf of the Cree bands, because he deemed that the AIQ did not possess the interest required by the law in this case. It must not be forgotten that class action suits were not yet permitted under Quebec law. After the Indians appealed the case to the Supreme Court of Canada, the government of Quebec offered to negotiate a settlement of the dispute with the Crees and Inuit (who had joined in the proceedings), excluding any possibility for negotiating and settling the claims of the other Indians on Quebec territory. This was how the tripartite (federal, provincial, Aboriginal people) negotiating process, which culminated in the signing of the James Bay and Northern Quebec Agreement, began.

This was not without repercussions for the AIQ which, having originated the whole affair, found itself suddenly shunted aside. The association was quick to remind the Crees that had it not been for the AIQ, they would not have been able to take the action they did to have their rights recognized. The Crees were criticized for negotiating on behalf of themselves alone and for keeping other Indian peoples out of the process. This led to the breakup of the AIQ, which was later reconstituted in the form of the Confederation of Indians of Quebec (CIQ).

In February 1975, the government of Canada and the government of Quebec invited the Montagnais and the Naskapi of Schefferville to join the negotiations. These two bands had been left out of the process initially, even though they lived in the territory under negotiation.[xli]

The Montagnais wanted the government of Quebec to agree to negotiate the claims of eight other Montagnais bands not living in the James Bay territory at the same time. When the government refused, the Montagnais of Schefferville refused to sign an agreement for their own benefit, out of solidarity with the other Montagnais.

The Naskapi agreed to take part in the negotiations and in 1978 signed a subsidiary agreement to the JBNQA, the Northeastern Quebec Agreement. Indeed the JBNQA was amended to include the Naskapi.

Parliament ratified the agreement in a statute that extinguished the rights of all Aboriginal peoples (those who had signed and those who had not signed the agreement) on the territory of Quebec covered by the JBNQA. Non-signatory groups tried in vain to prevent passage of the law, which extinguished their rights unilaterally and without compensation. Many Aboriginal groups criticized the Crees for giving up their rights to their traditional lands in return for financial compensation and for agreeing to extinguishment without compensation for groups that had not

signed the agreement.

The version of the JBNQA published by the Quebec government is preceded by the text of a speech given by John Ciaccia when the agreement was tabled for ratification in the National Assembly. Ciaccia had been appointed by Premier Bourassa as his special representative in charge of negotiations in November 1973. Two years later, he presented the agreement that had been signed as an unprecedented "historic event" that history would see as a major milestone in North America. According to Ciaccia, the JBNQA made it possible for the government of Quebec to meet its contractual obligations to Aboriginal peoples while affirming the its presence in all the territory contained by the province's boundaries.

> [The Aboriginal peoples] are inhabitants of the territory of Quebec. It is normal and natural for Quebec to assume its responsibilities for them, as it does for the rest of the population... The government of Quebec has taken the opportunity presented by these negotiations to reorganize the territory, and to set up the institutions and structures that will give substance to the role that it intends to fulfil. The native communities will have local administrations, substantially in the manner of local communities throughout Quebec...[xlii]

The two guiding principles of the agreement are based on Quebec's need to use the resources on its territory for the benefit of the whole provincial population and on recognition of the needs of Aboriginal peoples, whose culture and lifestyle differ from those of other Quebeckers. Refusing to see it as "just a money-and-land settlement", Ciaccia described the objectives of the agreement as objectives that would

> Enable...the native peoples to become full participants in the life of Quebec while safeguarding their distinctive culture...[and] would establish once and for all, Quebec's authority to dispose of the territory in accordance with the dictates of public interest and of Quebec's national policy.[xliii]

Eight years after the agreement was signed, Billy Diamond, the spokesman for the Crees, described it as a Cree Charter of Rights and reminded everyone that his people had been very much involved in formulating the agreement, which, under the circumstances and given the forces arrayed against the Crees at the time, constituted a compromise that was acceptable to them.[xliv] Fifteen years later, in 1993, the Crees condemned the agreement, which they felt they had signed under duress.

In the eyes of government authorities of the time, the JBNQA appeared to be Quebec's first true comprehensive policy with respect to the Aboriginal peoples living on its territory.

I call it a true policy because on the one hand it was formulated in great detail by

> the parties involved, and on the other hand, it established mechanisms for implementation and for making any future corrections or adjustments.[xlv] [translation]

It was the initiative of the Indians of Quebec Association in taking legal action against the government of Quebec that ultimately led the government to negotiate and sign the JBNQA.[xlvi]

Both the federal and the provincial government believed that the agreement would settle, satisfactorily and permanently, the claims of at least those Aboriginal people who had signed it. But fifteen years later, the Crees condemned the agreement before the courts, considering it null and void because they felt that governments had not met their commitments. The government of Quebec has just received a report from its special representative charged with preparing revisions, together with the Crees, to the implementation provisions of the agreement.

In fact, relations between the Crees and the government of Quebec had always been difficult after the signing of the JBNQA. There had been vacillation between the negotiation and the signing of ten subsidiary agreements that amended the text of the agreement, and legal proceedings had proliferated over the years.

The 15 principles adopted by the Quebec cabinet in 1983

In 1978, an historic meeting took place between Premier Lévesque and some of his ministers on one hand and the chiefs of Quebec on the other. This first official meeting was to spearhead the normalization of relations between Quebec and Indian peoples.

Following the meeting, the Atikamekw-Montagnais Council asked the government of Quebec to negotiate the Atikamekw and Montagnais land claims on the basis of 11 principles. The government replied that it would agree, among other things, not to require the extinguishment of Aboriginal rights as a precondition of signing an agreement. We will see later that this question still lies at the heart of unresolved issues in Quebec.

The Canadian Constitution was repatriated in 1982 without Quebec's consent. Initially, the Supreme Court of Canada advised the federal government that there was no doubt about the legality of the repatriation plan, but that the support of a significant number of provinces would be required to give the plan political legitimacy. This led to discussions with the provinces, culminating in an agreement between the federal government and nine provinces in November 1981. The government of Quebec tried in vain to stop the process. In response to a request from Quebec, the Supreme Court of Canada concluded that Quebec did not have a veto over the

process initiated by the federal government.

Since then, the government of Quebec has consistently condemned an action it considers illegitimate and has said frequently that it does not feel bound by the *Constitution Act, 1982*, which gave the force of law to the Constitution of Canada. Whatever one's opinion of the Constitution, the fact remains that it binds Quebec, even though Quebec never accepted it and the final discussions surrounding its approval took place in Quebec's absence.

Quebec's position had a direct impact on its relations with Aboriginal peoples. Having refused to endorse repatriation, and although it remains subject to the Constitution, Quebec refused to participate actively in the constitutional conferences that were to define the rights of Aboriginal peoples. Quebec attended the first conference in March 1983 ─ but refused to sign the constitutional accord that resulted from the meeting ─ and attended the three subsequent conferences between 1984 and 1987 only as an observer.

It was in this context that the government of Quebec responded to Aboriginal peoples in February 1983, one month before the March 1983 constitutional conference. An informal group of spokespersons for Quebec Indians asked the government to support a statement of 15 principles that they wanted to see incorporated in the Canadian Constitution.[xlvii]

The reply from the Quebec cabinet ─ also formulated as 15 principles ─ was as follows:

1. The government of Quebec is ready to enshrine Aboriginal rights as part of a made-in-Quebec process, but not in the Canadian Constitution;
2. the formal recognition of Aboriginal rights must occur within the framework of Quebec law;
3. Quebec's commitments have nothing to do with the results of constitutional conferences because Quebec does not recognize the validity of the Constitution after 1982.

The government of Quebec asked Aboriginal peoples to work outside the constitutional process because, according to the government, the process that had humiliated Quebec would inevitably humiliate Aboriginal peoples as well. If necessary, recognition in Quebec law could be amended more easily than any form of constitutional recognition, even a more limited form of recognition. In addition, Quebec was assuming the prerogative of defining the rights of Aboriginal people, something it does not have authority to do under the existing Constitution.

Without going into great detail, we will examine three fundamental principles.[xlviii]

Aboriginal peoples were asking that the Constitution recognize "that the Indigenous peoples of Quebec are nations with a right of self-determination within the Canadian federation...and a right to their own identity, culture, language, customs and traditions". [translation] The government's response was that "Quebec recognizes that Indigenous peoples are distinct nations with a right to their customs and traditions, as well as the right to direct the development of their distinct identity themselves". [translation]

A reading of these two statements shows that the government agreed to begin discussions with Aboriginal peoples using the terms they themselves used ─ `Indigenous peoples' and `nations' ─ albeit somewhat nuanced. In addition, self-determination within the Canadian federation as advocated by Aboriginal peoples was restricted to distinct nations within Quebec.

Aboriginal peoples also asked that the Constitution recognize "the right to full title to lands that are under their exclusive jurisdiction", [translation] which refers to their claim to establish a third order of government in Canada, without stating, however, whether such a government would have jurisdiction over everyone ─ Aboriginal and non-Aboriginal ─ on these lands. According to them, the Aboriginal order of government must be autonomous within its areas of jurisdiction and free of provincial jurisdiction. The lands over which an Aboriginal government would have authority would also, therefore, be removed from provincial ownership.

In its response, Quebec recognized that Aboriginal nations, have, "within the framework of Quebec law, the right to possess and control the lands assigned to them. These rights are to be exercised within Quebec society and could not as a consequence involve sovereignty rights that could be prejudicial to Quebec's territorial integrity". [translation] While it was ready to recognize the right to have land, Quebec was not necessarily ready to grant title to it.[xlix] These lands would be strictly those that Quebec agreed to grant to Aboriginal peoples. Finally, Quebec would make Aboriginal control over lands subject to Quebec law and expressly exclude the possibility of such rights being prejudicial to Quebec's territorial integrity.

The recognition offered by Quebec is more explicit than the recognition given in the Constitution, which recognizes Aboriginal and treaty rights without defining them further. On the other hand, it would subject Aboriginal peoples to Quebec government authority. In the current context, Indian bands have the right to establish their own institutions, although they are subject to the federal government. Aboriginal peoples therefore saw Quebec's response as a further constraint, in that they would be subject to the provincial government as well as remaining

subject to the federal government.

In reply, Quebec explained that existing constitutional protection of rights extended to rights specified in land claims agreements. It also considered the JBNQA and the Northeastern Quebec Agreement to be treaties. As it happened, Aboriginal peoples were trying to have this specified in the Constitution ─ in fact they succeeded one month later in the 1983 constitutional accord. Although Quebec did not participate in the process that led to the signing of the accord, several provinces were indeed ready to grant such protection to land claims agreements.

While Aboriginal peoples were requesting constitutional protection for the rights recognized by the *Royal Proclamation of 1763*, Quebec said it was ready to consider recognizing them explicitly in law. Here again, Quebec was restricting the scope of its recognition to the laws over which it had control. If these rights were recognized in the Constitution, Quebec could no longer control them, because they would be sheltered to a degree from Quebec law.

This analysis of some of the principles set out in the Quebec cabinet decision leads us to conclude that Quebec's plan was to leave the Canadian constitutional framework aside and to shift any rights on which agreement was reached with Aboriginal peoples to Quebec's own domain.

It is interesting to note that the principles just analyzed contain all the questions that remain at the centre of constitutional discussions with respect to Aboriginal peoples: the inherent right of self-government, a third order of government with exclusive jurisdiction, the nature and scope of jurisdiction, and the right title to land. In this sense, the debate goes well beyond the Quebec context. And these discussions outside Quebec inevitably have a direct impact on what happens in Quebec, if only with respect to the `national' positions developed by Aboriginal peoples.

This cabinet decision constituted the first glimmer of government policy and the first official position taken by the government of Quebec on the subject. It was the first statement in which the government of Quebec explicitly recognized Aboriginal peoples' right of self-government. The right was to be exercised, however, under delegated authority from Quebec in accordance with terms defined in agreements, with the federal government continuing to assume at least some of the cost.

As was the case for the JBNQA, it was an Aboriginal initiative that led to this statement of principles by the government of Quebec.

In November of that year the committee on the presidency of the council and the constitution heard from Aboriginal organizations invited convey their needs and aspirations to the committee.

Emphasizing that this unique meeting marked the 20 years since the creation of the DGNQ, Premier Lévesque addressed Aboriginal peoples in these terms:

> The fact that Aboriginal populations have lived in this territory since the distant past, and that they were here long before we were, gives them specific status and rights that should be entrenched ─ if we can agree on doing so ─ in the fundamental laws that govern Quebec society...
>
> This leads me to note that it is no longer possible to believe that it is sufficient to establish ─ whether out of an impulsive generosity or even a bit of historical bad conscience ─ programs that more or less meet their needs. These are rights that must from now on be recognized and that must from now on be agreed upon.[1] [translation]

The Quebec-Kahnawake Mohawk Council Agreement

The cabinet decided to put its declaration of principles into action the following year, when agreement was reached between the government of Quebec and the Kahnawake Mohawk Council. The government acceded to a request from the chief of the Kahnawake band to finance the building and operation of a hospital on the reserve, after the federal government refused to do so.

The agreement between Quebec and the Mohawks, reached in 1984, set a precedent in Quebec. Medical services for Indian people on an Indian reserve are a matter of federal jurisdiction. Yet the government of Quebec agreed to finance a new hospital on the Kahnawake reserve and to provide an operating budget for the hospital to be managed by the Mohawks. In return, the Mohawks agreed to report annually to the Quebec minister of social affairs (rather than through the administrative control structure for other hospitals in Quebec). The agreement also provided that Quebec laws concerning health would apply to the new hospital.

Efforts appear to have been made to surround the signing of the agreement with some protocol. Signed by the provincial minister and the chief of the band, the agreement was presented as an act between two governments, ratified by their respective laws. The agreement was also noteworthy in that it was negotiated and prepared by SAGMAI rather than by the line department responsible. In fact it would appear that Premier Lévesque asked the minister to sign the agreement only after it had been concluded.

In addition to financing the hospital, Quebec obtained legislative and administrative authority over its operations, though the Mohawks managed it. The agreement represented a gain for Quebec in the sense that, with the consent of the Mohawks, Quebec's jurisdiction was extended to an area from which it was constitutionally excluded.

A few months before the agreement was signed, Chief Joe Norton had told the Quebec government that the Mohawks were taking a new direction ─ no longer would they do the bidding of governments or see themselves as the wards of any government. The Mohawks of Kahnawake were part of the Mohawk Nation, Chief Norton said, which had never surrendered its right of self-determination.

> Legally, we never signed any document that revoked this right. We failed to exercise it, and the time has now come, as complex and difficult as it may seem, to begin to exercise it again. That is where we enter into conflict with the province, whether in the fields of education, justice or health.[li] [translation]

Those in the government who supported the agreement saw a concrete application of the decision on principles made by the cabinet in 1983. For them, it was a concrete demonstration that Quebec was ready to give Aboriginal peoples self-government in an area where Quebec had no obligation toward them. This appeared to them more significant than the James Bay agreement, which was the result of a legal obligation. According to them, it was simply Quebec's desire to meet the needs of the Mohawks in the health field that led the government of Quebec to sign the agreement.

Motion by the Quebec National Assembly (1985)

Reflecting its desire to remain outside the Canadian constitutional process, the government of Quebec attended the third constitutional conference on Aboriginal issues in April 1985 as an observer. At the conference Premier Lévesque tabled a motion passed by a majority of the National Assembly on 20 March 1985, just one month earlier.[lii] The Liberal opposition had voted against the resolution as formulated.

The Quebec government was under attack from Aboriginal peoples and from first ministers. Lévesque's decision to attend the 1983, 1984 and 1985 conferences as an observer was seen as a nearly insurmountable obstacle to a constitutional amendment favourable to Aboriginal people. Given the constitutional amending formula, Quebec's support was necessary if the amendment was to pass. The premier, who was aware of this, tabled the text of the National

Assembly's motion as evidence of his government's good faith and its willingness to recognize the rights of Aboriginal peoples in Quebec.

The motion referred to the 1983 cabinet decision responding to the principles formulated by Aboriginal peoples. It "urged" the government to sign agreements with Aboriginal nations to define their "right to autonomy within Quebec", their "right to hunt, fish and participate in wildlife resource management" and their "right to participate in economic development in such a way as to enable them to develop as distinct nations with their own identity and to exercise their rights in Quebec".

The motion clearly established that rights included in future agreements would be exercised within Quebec. In this, it used the same terms as those used in the 1983 cabinet decision, its logical predecessor. Like the cabinet decision, the National Assembly motion constituted a form of recognition that was more limited than constitutional recognition.

For the government of Quebec, this general motion would allow any kind of negotiations that Aboriginal peoples might desire. The only limit ─ the application of Quebec law ─ appeared to stem from the fact that Quebec wanted to avoid being criticized for going beyond its jurisdiction. Whether or not this was the intent, the fact remains that the limitation was not well received by Aboriginal people.

At the time, Aboriginal people saw the motion as a new expression of Quebec's desire to extend its jurisdiction and at the same time to paint a positive picture of Quebec's treatment of Aboriginal people. Significantly, Aboriginal people still perceive it this way.

Once again, Quebec's action came in response to an external exigency, this time the constitutional process.

Immediately following the constitutional conference of May 1985, the government of Quebec summoned Quebec Aboriginal representatives to inform them of the proposed new constitutional accord that it planned to present to Canada.

There was a prerequisite to the proposal: constitutional recognition of the Quebec people and redefinition of Quebec's powers within Canada. The only reference to Aboriginal peoples in the proposal was in the section on recognition of Quebec's pre-eminent responsibility with respect to rights and freedoms. The proposal claimed full responsibility in language matters and stated that the people of Quebec consisted not only Francophones but also an English-speaking community, cultural communities and the Aboriginal nations with individual rights and the

"more general right to benefit from all the resources made available to them by society". [translation]

Aboriginal people responded to the proposal by asking the government of Quebec to recognize officially that its constitutional claims did not affect their own claims. They also told the government that the veto right being claimed by Quebec would prevent the adoption of the constitutional amendments needed to establish genuine Aboriginal governments. They also protested the government's reference to them as a minority group on a par with the Anglophone and Allophone minorities.

The Quebec cabinet reiterated its constitutional position in 1986 to the effect that it would support a constitutional amendment recognizing Aboriginal peoples' right of self-government, with the scope of self-government to be defined in agreements negotiated between the government and Aboriginal peoples. This support for a future constitutional amendment could not be translated into concrete terms, however, until Quebec's constitutional issues had been dealt with to its satisfaction.[liii]

The minister responsible for mines and Aboriginal affairs, Raymond Savoie, also put forward Quebec's position once again at the last constitutional conference on Aboriginal issues, held in 1987. Quebec favoured recognition self-government but made it subject to three principles: that its scope and substance be determined through negotiated agreements, that the funding method be acceptable to Quebec (including federal funding), and that Aboriginal self-government be exercised within the Canadian constitutional framework.

This proposal for a new constitutional accord led to the signing of the Meech Lake Accord in 1987, which went nowhere because of a lack of support in provincial legislatures.

The Quebec government wanted to follow up on the National Assembly motion by presenting an umbrella bill that would automatically give effect to any agreement signed with an Aboriginal nation. This government initiative was intended to speed up the process for ratifying agreements; otherwise, each agreement would require a special statute to come into force.

The minister, Raymond Savoie, wanted to provide additional protection for any future agreements by stipulating that the act could not be amended without consulting Aboriginal peoples. The bill included a precedence clause to enable the government to give agreements precedence over other Quebec laws. After being criticized by a variety of political and administrative sources within government, the minister finally withdrew the bill in the face of

opposition from Aboriginal peoples.

The Current Relationship

Having examining how the relationship between the government and Aboriginal peoples has changed and analyzed the various forms of government activity with respect to Aboriginal self-government, we turn now to the factors that appear to have affected the relationship positively and negatively.

Limits, Constraints and Opportunities

Relations between the government of Quebec and Aboriginal peoples are affected by a variety of factors. Some are structural, others have to do with the parties involved at any given time, and still others are indicative of the attitudes and perceptions of the various players and Quebeckers in general. We will examine the factors that can foster the relationship, as well as those that can be harmful to it. Not everyone we interviewed identified the same factors. Interestingly, however, some of the factors identified by people in government found counterparts among those identified by spokespersons for Aboriginal peoples. As most of those questioned are knowledgeable about the field, the picture painted by the Aboriginal spokespersons appears to be a mirror image of that painted by the government players. Their respective visions of the situation may be completely different, but their analyses of the facts coincide.

Limitations and constraints

We begin by examining the limitations and constraints on the government of Quebec and Aboriginal peoples with respect to Aboriginal self-government.

Federal jurisdiction: According to government participants, one of the major limitations on Quebec intervention with respect to Aboriginal self-government is related to the very nature of Canada's constitutional system. Indeed we saw earlier that federal government has had exclusive jurisdiction over Aboriginal peoples and their lands since 1867. For a province like Quebec, exclusive federal jurisdiction constitutes a limit on its capacity to deal with some of the people living within its boundaries. And before 1867, of course, the colony of Quebec, the former province of Lower Canada and United Canada, had exercised authority over Indians. Federal jurisdiction prevents the establishment of comprehensive bilateral agreements between Quebec and Aboriginal peoples with regard to self-government.

In addition, the experience of the past 30 years has demonstrated that there are significant grey areas between federal and provincial jurisdiction, for example, with respect to education and social services for Aboriginal people. This has created and is still creating problems in negotiating services for Aboriginal people. This overlap of jurisdictions creates the appearance of federal-provincial competition in relations with Aboriginal people, a situation that can be perplexing to Aboriginal people, who tend to perceive the Canadian state as a single entity.

The system often involves the negotiation of tripartite agreements. This type of negotiation generates a dynamic that creates a special form of constraints. Changes are introduced more slowly because of the cumbersome nature of the federal machinery of government. Moreover, the federal concern about symmetry in its national policies is a constraint that makes it difficult for individual communities to deal with specific conditions in a given situation.

The government participants' view is that Quebec is distinct from the other provinces in this area. It wants to deal direct with Aboriginal peoples without having to go through the federal government. Unlike the other provinces, Quebec is dissatisfied with the Constitution and is claiming more powers within Confederation. It is therefore more immediately concerned with constitutional recognition for Aboriginal peoples. For example, the Charlottetown Accord would have given Aboriginal people a non-derogation clause with respect to Aboriginal culture, whereas the distinct society clause for Quebec that had been included in the Meech Lake Accord was watered down considerably in the Charlottetown Accord. The other provinces do not have the same concerns as Quebec on such issues.

Likewise, Quebec was concerned that the federal government might negotiate bipartite agreements on the introduction of Aboriginal government institutions without Quebec's participation. Even if they operated only on reserves, Aboriginal government institutions would eventually intervene in areas of provincial jurisdiction without being subject to Quebec's authority. The determination of Aboriginal peoples to maintain an exclusive relationship with the federal government constitutes an additional constraint for Quebec and appears to contradict official statements by Aboriginal peoples demanding self-government.

The co-ordination structure: More than fifteen years after it was established, the co-ordination structure, the Secrétariat aux Affaires autochtones (SAA), provokes various reactions. The structure is both a co-ordinating mechanism and a constraint. The SAA has obvious

prestige because it is attached to the executive council, which is at the top of the political and administrative hierarchy, but like all similar agencies, it is restricted by its function ─ co-ordination ─ and has no operational authority over departments. This leaves the SAA somewhat at the mercy of the political will of the government of the day. The actions and influence of the SAA will depend on whether the premier has clear intentions concerning Aboriginal peoples.

Without questioning the need to co-ordinate government action, Aboriginal peoples appear to perceive the SAA co-ordinating function as a limit on their own actions, because the SAA has no real authority over the sectoral departments, particularly as departments have no specific mission with respect to Aboriginal peoples. The SAA is therefore restricted to the role of an agent of the government keeping an eye on Aboriginal people. Goodwill on the part of SAA authorities does not solve the problem of its lack of authority over departments in discussions with Aboriginal people.

The intrusion of the SAA into departments, in the form of departmental co-ordinators for Aboriginal affairs, also appears to raise questions. Several co-ordinator positions report direct to deputy ministers, that is, the top of the administrative hierarchy. The authority of a co-ordinator appears to depend, however, on the department to which he or she belongs. Limitations on co-ordinators' scope to act resemble the limits inherent in the SAA's function.

Moreover, government players outside the SAA saw the secretariat as a structure that interferes with departmental authority and that has a tendency to take over departments' managerial function rather than co-ordinate government action. Its role as a spokesperson for Aboriginal people to departments was often misunderstood. Finally, there was no understanding of departments' obligation to submit proposals to Aboriginal people when there was no political or administrative consensus within government.

Perceptions: The perceptions of Aboriginal people and government actors, who reflect society, determine the quality of relations between the government and Aboriginal peoples.

Aboriginal people doubt whether governments genuinely have the will to recognize their right of self-government and question whether the legitimacy of their governments is respected. Many Aboriginal people believe that the government of Quebec does not really intend to establish a partnership with them.

There is also a sense among Aboriginal people and some government representatives that

there will be no clear government will on this matter, at least not as there was in 1985, when the National Assembly passed the motion on Aboriginal rights.

Aboriginal people note that the motion was not ratified in a statute, which would have made it mandatory and binding on the government. Nor was there any reference to it in public pronouncements or any government-to-government discussions as had occurred under Premier Lévesque. The level of discussion had dropped down a few notches and been relegated to piecemeal negotiations with sectoral departmental administrative branches, which have no political authority. This led a number of Aboriginal groups to conclude that they had no other option but to ask the courts what they were ready to recognize following constitutional recognition of Aboriginal rights in 1982.

Throughout Canada, including Quebec, it became clear that Aboriginal peoples were determined to establish government-to-government relations with the federal government, which represents the Canadian state in a way that provinces are not perceived to do. From this perspective, some bluntly rejected Quebec's presence. The position expressed in December 1994 by the chief of the Mohawks of Kanesatake is clear in this matter. According to him, the discussions that had just resumed with the federal government on Mohawk self-government were to be conducted on a strictly bilateral basis (federal-Aboriginal), because in his view Quebec had no place in such negotiations. In other instances, relations with Quebec were seen as an opportunity to obtain more than the federal government might be willing to give, but Quebec was not necessarily seen as an essential party. For its part, Quebec appeared not to understand clearly why Aboriginal peoples wanted to maintain a link with the federal government at all costs. This position is often perceived as a rejection of Quebec. On the other hand, some people in Quebec are aware that the Indian nations that signed treaties long ago are much more anxious to maintain the link and are placing enormous pressure on other nations to maintain solidarity on this issue.

Both government and Aboriginal observers see a contradiction between what national Aboriginal spokespersons say and what local community chiefs say. Local Aboriginal authorities often publicly repudiate their representatives and appear to be more pragmatic and concerned about finding concrete solutions. National leaders are criticized for having a higher profile among non-Aboriginals than among their own people. Aboriginal people recognize that disunity weakens their cause and serves the government cause, something that governments will naturally take advantage of. Disunity occurs not only in national/local relations but sometimes within a

single nation as well.

Participants on both sides also believe that official positions taken by national Aboriginal leaders with respect to Aboriginal women weakens the overall cause of Aboriginal people. Because Aboriginal women represent a threat to Aboriginal political leaders, they do everything they can to exclude them. Until now, opposition from women's groups has been treated as resulting from feminist influence. It has not been analyzed in political terms. Aboriginal women now represent the only nationally and locally organized political opposition to arbitrary decisions and unfairness in many communities.

For Aboriginal people the prospect of Quebec sovereignty is worrisome. It is not so much sovereignty itself that concerns them, because they believe that this is a matter for Quebeckers and Canadians. Rather they are concerned about the effects of sovereignty on their status and rights. They see the federal government increasingly moving away from its responsibilities toward Aboriginal people. They believe that the federal government has reached the goal it set for itself in its 1969 white paper. Although the prime minister, Jean Chrétien, was the minister responsible for the white paper, he has said that he is ready to recognize their inherent right of self-government; yet concerns remain that the government's intention is to eliminate the department of Indian affairs and transfer everything to the provinces. This, they believe, would water down the inherent right and subject them to provincial authority. In this context, they are determined to take whatever action is necessary in Canada and internationally to defend their interests.

The government side generally believes that the constitutional process has generated unrealistic expectations among Aboriginal people by fostering the illusion that a constitutional amendment recognizing an inherent right of self-government will solve everything. In this view, the prospect of a constitutional amendment has devalued other negotiating processes or agreements like the JBNQA. The net result has been to delay discussions on lands. Today, it is felt, Aboriginal people are not in a hurry to settle anything, because they are anticipating future constitutional gains.

The perceptions of government and Aboriginal representatives are also shaped by specific situations that take on symbolic value. Quebec, for example, believes that the bad publicity it has received beyond its borders as a result of incidents such as opposition to hydro-electric developments and the Oka crisis is undeserved. Government actors point out that Quebec is one

of the few provinces to have recognized Aboriginal rights, at least in theory, and that all that remains is to put this recognition into practice.

In another area, the efforts of Indian communities to create regional partnerships with Quebec institutions or private companies have been fraught with mistrust. Until now, bands were consumers of services provided by suppliers outside their communities. As they organize themselves to provide their own services, bands have become competitors. According to Aboriginal people, now that they are seen as competitors, there is a great deal of political and administrative pressure to obstruct band development projects.

Attitudes: Of course attitudes influence the perceptions of both government and Aboriginal people. The mutual lack of knowledge between Aboriginal people and the rest of Quebec's population contributes to constraints. Public opinion is generally poorly informed about the true circumstances of Aboriginal life.

Many cliches are propagated, particularly by the media. The fundamental issues affecting Aboriginal people and their claims are not discussed very much in the media. When they are, they usually involve short descriptions of the facts, if not reproduction of negative cliches about Aboriginal people. Some work has been done to take the cliches out of school textbooks, but they have not been replaced by a more accurate picture of Aboriginal people.

The president of the Centrale de l'enseignement du Québec [a teachers' group] commented on this situation in testimony before the Royal Commission on Aboriginal Peoples:

> Our two peoples deserve better than the numerous prejudices that both have been subject to and that divide us. We must recognize that since the Oka crisis in 1990, relations between the Québécois and Aboriginal peoples have seriously deteriorated, that some prejudices have solidified and some misunderstandings have become even deeper.[liv]

Aboriginal people continue to be somewhat isolated and inward-looking in their communities. They seem to have neither the will for rapprochement with the non-Aboriginal population nor an awareness of the need to do so and therefore appear unready to make the effort. This is at least what appears in presentations from Aboriginal organizations at the public hearings of the Royal Commission on Aboriginal Peoples in Quebec and elsewhere in 1992 and 1993.

The James Bay and Northern Quebec Agreement also created two categories of Aboriginal people in Quebec: those that signed the JBNQA, referred to in the bureaucracy as the

`agreement' groups, and the `non-agreement' groups that did not sign. This situation has created imbalances from several perspectives between the two categories. The former are considered privileged by comparison with the others. They receive bigger budgets and more services from Quebec. Even among them, an imbalance is felt between those who `acceded' to the JBNQA and the others.

The mutual lack of familiarity engenders significant communication problems in relations between the government of Quebec and Aboriginal peoples. They constitute two different worlds. The two cultures function in parallel and have not easily bridged the gap between them. Neither side seems to be willing to move beyond the stage where they see each other as either `exploiters' or `parasites'.

There is a range of attitudes among Aboriginal people. Some groups speak aggressively, if not with open hostility, both within Quebec and abroad, which makes the search for solutions more difficult. Others take a pragmatic approach and are more willing to work toward solutions in the current context, even if they are not fully satisfied with it. This leads to a mutual mistrust that will require a great deal of effort to overcome. There is no indication at this time that the will to do so exists on either side.

Government representatives claim that Aboriginal political discourse intrudes constantly in the administrative realm. Administrative institutions are used to score political points. This lowers the credibility of the message being delivered by spokespersons for Aboriginal peoples and those charged with speaking on their behalf within government.

Aboriginal people's public pronouncements outside Quebec ─ claims that Quebec is committing genocide or statements about the Oka crisis ─ have contributed to a hardening of attitudes among the people of Quebec. Popular support for self-government has declined as a result.

Lack of Aboriginal resources and training: Aboriginal people and governments are aware that even if Aboriginal people had full self-government, the issue of resources would remain an important one. They depend totally on government subsidies and do not have the means to be independent. A territorial and economic base appears essential to overcome this situation.

The lack of Aboriginal personnel with the training required to provide services and run institutions is serious in most areas of activity. The signatories of the JBNQA, for example, still

depend greatly on non-Aboriginal consultants and other employees hired fifteen years ago who are still working for them.

Opportunities

Whereas the constraints are numerous and easy to identify, the opportunities are more difficult to pinpoint. What some people see as a gradual disengagement of Aboriginal people from the federal government is perceived as an opportunity for Quebec to develop its relations with them. A number of factors have also made Aboriginal people increasingly willing to negotiate with Quebec. They appear resigned to the federal government phasing out its commitment to them. They are aware that the deficit has led the federal government to the view that it no longer has the financial resources to act on its own and intends to place them under provincial jurisdiction. And Aboriginal people must bow to the evidence that the territory of the province belongs to Quebec under current constitutional arrangements. Many among them believe that their development requires a territorial base or at least territorial rights, which they cannot obtain without negotiating with Quebec. And Quebec has noticed that some Aboriginal groups see the province as a legitimate party with which to negotiate.

Aboriginal people also believe that the expression of a clear political will to recognize their rights will foster the development of more harmonious relations between the two parties. Some even go so far as to say that it is a precondition of any agreement.

Finally, they believe that the more the two parties speak to one another, the better they will learn to understand one another. Indeed, the general belief is that a genuine political dialogue with Aboriginal peoples has just begun and that it must continue if positive results are to be achieved.

Toward a New Relationship

The government of Quebec is having to deal with an increasing number and variety of issues involving Aboriginal people. Several factors may explain this development. It is partly the result of Quebec's desire to exercise as many areas of jurisdiction as possible with respect to Aboriginal people because they are residents of the province. The federal government's desire to withdraw from administering Aboriginal matters ─ if not in law then at least in practice ─ also explains a great deal. By affirming their will for change ever more strongly, Aboriginal people are creating

situations that force governments to intervene; the fact is that Quebec is intervening more willingly than other provincial governments to deal with these situations.

Pending Questions

Several questions underlie the government's concerns and these may well remain problematic, at least in the short and medium term.

The land claims of the Conseil des Atikamekw-Montagnais

We have seen that the government of Canada decided in 1973 to negotiate contemporary land claims with Aboriginal people. It was under this policy that it agreed in 1979 to negotiate the claims submitted by the Conseil des Atikamekw-Montagnais (CAM), on condition that Quebec participate and sign the agreement eventually reached.

This negotiation is the only land claims negotiation currently in progress in Quebec. If the claim is settled, it will be only the second agreement reached on a contemporary land claim in Quebec, the first being the JBNQA.

The negotiation began in 1979 and has progressed very slowly since then. It was interrupted on several occasions, but intensive discussions got the parties together again in December 1992, with the government of Quebec having sent out signals that it was willing to move forward with talks.

We saw earlier that the Montagnais of Schefferville had refused to take part in negotiations leading to the JBNQA because governments refused to negotiate the claims of other Montagnais bands at the same time.

It should also be remembered that the rights of the Atikamekw and Montagnais over the land covered by the JBNQA were extinguished by Parliament, unilaterally without compensation for those that did not sign the agreement. On the other hand, even though it had no legal obligation to do so, the Quebec government agreed to negotiate "any claim they [non-signatories] may have concerning the territory" covered by the JBNQA (article 2.14). Will this article be used as a basis for negotiating self-government for the Atikamekw and Montagnais? Including an agreement on self-government within the framework of a land claims settlement appears to be the way federal government is leaning at this time.

The Atikamekw and Montagnais land claim covers land in Quebec and land in Labrador,

which is part of Newfoundland. The government of Canada therefore agreed in this instance to conduct two tripartite negotiations: the first involving the governments of Canada and Quebec and the CAM and the second involving the governments of Canada, Newfoundland and the CAM (on behalf of the Montagnais only).

In practice, the only negotiation under way concerns Quebec territory, because the government of Newfoundland refused to participate until it had settled the claims of Aboriginal people residing in its territory, and this is unlikely to occur for several years.

After more than 14 years of more or less sustained negotiations, the parties have not yet reached agreement in principle. A framework agreement defining the work plan was signed; an agreement on interim measures followed, but it expired at the end of its term and was not renewed. The tripartite negotiating process has indeed proved arduous thus far. In fact no other land claims involving a province have been settled since the adoption of the 1973 federal policy, with the exception of the JBNQA, and as we have seen, exceptional political circumstances led to the signing of that agreement in 1975.

The federal policy had one unexpected effect, and one that had an impact on the tripartite negotiations involving Canada, Quebec and the CAM. Under the policy, the federal government agreed to negotiate a series of claims with groups in various parts of the country. As talks proceeded, the Aboriginal groups got together, usually informally, from time to time to share their experiences and concerns. A movement was thus created and has fought ever since against the requirement in the federal policy that all agreements be final and require Aboriginal peoples to surrender their Aboriginal rights, which were subsequently to be extinguished by the federal statute ratifying the terms of the agreement. Except for the agreements between the federal government and Aboriginal peoples in the Yukon and Northwest Territories, all negotiations have stumbled at least on this major point.

The federal government attempted to counter opposition to its extinguishment policy by changing the wording, which now refers to exchanging vague and imprecise Aboriginal rights and title for more clearly defined rights written into the settlement agreement. As the final result nevertheless remains the extinguishment of Aboriginal rights, this semantic change has not yet succeeded in overcoming the reluctance of several groups, including the CAM. This aspect of federal policy lies completely outside the Quebec government's domain, making Quebec a party to a process over which it has no control. Thus even if the government of Quebec were to agree

not to demand the extinguishment of Atikamekw and Montagnais rights in return for an agreement, it can do little to change the federal policy. Some have said that the federal policy simply allows Quebec to get away with not having a similar policy, leaving the federal government solely accountable for it.

Constitutional recognition of Aboriginal rights from 1982 on is another significant factor in the conduct of land claims negotiations. This recognition increased the expectations of Aboriginal groups like the Atikamekw and Montagnais, who had never signed treaties surrendering their Aboriginal land rights.

Before 1982, Aboriginal people who had surrendered their Aboriginal rights by signing treaties with the Crown found themselves in a better position than those who had not. Until that time, indeed, Canadian courts had been ready to protect treaty rights but were very reluctant to recognize Aboriginal rights if they could not refer to a specific statute or treaty. Since 1982, Aboriginal people have felt that constitutionally recognized Aboriginal rights have special protection and that they can no longer be extinguished.

Without going into detail about areas of disagreement between the three parties to the negotiation, it must be admitted that these two factors complicate an already complex process. For example, there are disagreements not only between the government parties on the one hand and the CAM on the other but also between the federal and Quebec governments on matters of substance and form. In addition, differences between the Atikamekw and the Montagnais emerged during the negotiations and led the Atikamekw to withdraw the CAM's mandate to negotiate on their behalf in 1993, the second time this had occurred since 1979. Internal dissension eventually split the CAM into three sub-groups in December 1994, at the very time the Parti québécois government, which had taken power in September 1994, was bringing formal offers to the negotiating table. Negotiations now must continue with each of the sub-groups: the Atikamekw, the Central Quebec Montagnais and the Lower North Shore Montagnais. The government proposal was to convert the 12 reserves into `domaines', create zones for traditional activities and conservation areas, and pay $342 million in compensation.

In addition to the inevitable adjustments required by the involvement of three parties at the negotiating table, such negotiations cover subjects ranging from land allocation to education to economic development programs and wildlife resource management programs. The great diversity of subjects requires the intervention of a variety of line departments to negotiate

sectoral components of the agreement under the authority of the main negotiating table. As one might well imagine, this is a process that cannot yield results quickly, even under ideal conditions. Under existing conditions, we believe that the positions of the parties involved in the CAM negotiations are such that no issues will be settled in the short term. Nor would similar negotiations involving other provinces likely yield any better results.

On matters of substance, the former Liberal government had decided to include the issue of self-government in the negotiating process. Rather than develop a comprehensive policy on self-government, Quebec had decided to sign agreements for the implementation of self-government designed to suit the specific needs of individual groups and negotiated with them. Moreover, a cabinet decision refers explicitly to "the establishment of autonomous governments to which Quebec would delegate the exercise of powers related to the administration of lands, wildlife, education, health and social services...".[lv] [translation]

The PQ government has not indicated whether it intends to continue with the same approach.

Government policy on political autonomy

In 1991, the minister responsible for Aboriginal affairs, Christos Sirros, was given a mandate by cabinet to formulate a policy with respect to Aboriginal people in Quebec. In principle, the process set in motion by the minister was to lead to the adoption of a policy by the end of 1992.

It was to be a three-step process: preparation of a report on the current situation of Aboriginal peoples; development of and a choice among various policy alternatives; and approval of the policy.

The first step involved a tour of Aboriginal and non-Aboriginal communities in the spring of 1991, a survey to learn about the perceptions of Quebeckers, and the publication of reports summarizing the various points of view. Four regional symposiums were held in the fall of 1991, with a summary published in March 1992.

The process was interrupted by the government during the Charlottetown constitutional talks of 1992. After the accord was rejected by a majority of Canadians in a national referendum, the government of Quebec changed direction. Consultations carried out in the first step of the process generated considerable resistance. What is more, it appears that the Quebec government became aware, after Charlottetown's rejection, of the scope of the accord's provisions

recognizing self-government for Aboriginal peoples. The premier of Quebec had, to the surprise of many, supported the Charlottetown Accord, which recognized ─ albeit with some qualifications ─ an inherent right of Aboriginal self-government.

Rather than formulate a comprehensive policy that included a position on self-government, Quebec decided to proceed piecemeal, dealing with the issues as opportunities presented themselves in ad hoc meetings with individual groups. For example, negotiating the land claims of the Conseil des Atikamekw-Montagnais could give rise to an agreement on self-government for the Atikamekw and Montagnais communities. The new government elected in the fall of 1994 has not yet officially stated a new policy in this area. On the other hand, the draft bill on Quebec sovereignty tabled by the government in December 1994 states that the future constitution of a sovereign Quebec must recognize the right of Aboriginal nations to govern themselves on their lands.

The judicial route

After failing to have their rights recognized by means of constitutional or political talks, Aboriginal peoples in Quebec, like others in Canada, now appear to want to go before the courts, asking them to specify the nature and scope of their rights, including rights recognized under the Constitution since 1982. Whether concerning Aboriginal or treaty rights, they appear to want to put pressure on politicians by having the courts rule on the contents of their rights.

We have seen that the Supreme Court of Canada rendered a judgement in 1990 in *Sioui*, in a case in which the Hurons of Lorette had been charged with breaking Quebec wildlife laws. Calling on a document signed by the English general, James Murray, a few days before the capitulation of Montreal in 1760, the Hurons claimed that it was a treaty, which placed them beyond the reach of provincial law because of a provision of the *Indian Act*.

In its judgement, the Supreme Court set out criteria to be met for a document to qualify as a treaty, and it decided to recognize the document signed by General Murray as a treaty binding the British Crown with respect to the Hurons. It added that the treaty is still in force and that the *Indian Act* protects it from the application of provincial statutes. The Court also concluded that the provincial wildlife conservation act could not prevent the Hurons from cutting trees as part of their spiritual rites, because the Murray treaty guaranteed them the freedom to practise their religion freely, and the exercise of this right was not incompatible with the use of the land by the

Crown. The judgement also recognized that Aboriginal peoples (not only the Hurons) have rights under the *Royal Proclamation of 1763*.

As this was the first contemporary judgement to recognize the rights of Aboriginal peoples on Quebec territory, it is likely to generate further proceedings. Indeed, this judgement has nothing to do with recognition of rights protected in the *Constitution Act, 1982*. In another decision rendered one week after *Sioui*, the Supreme Court affirmed that section 35 of the *Constitution Act, 1982* provides an excellent basis for Aboriginal peoples to negotiate with governments.[lvi]

Other cases involving Aboriginal peoples in Quebec are currently before the Supreme Court of Canada. It is therefore to be expected that Aboriginal peoples will have recourse to the courts in the absence of political talks with governments and will increasingly challenge provincial statutes that Quebec may want to apply to them, particularly with respect to wildlife resources.

Negotiations for Inuit self-government in Nunavik

In June 1991, the government of Quebec signed an agreement with the Nunavik Constitutional Committee under which Quebec committed itself to negotiating a form of self-government for the residents of Nunavik. The preamble to the agreement refers to the will of the "residents of Nunavik to establish a new relationship with Quebec to enable both parties to continue to develop in harmony". [translation]

The agreement states specifically that the purpose of the negotiation is to create a form of self-government for the residents of Nunavik within Quebec. Among other things, the discussions were to cover the three fundamental options of the Inuit: a non-ethnic or public government, a regional-territorial government and a centrally-financed government. The Inuit were to be consulted about the shape of this future government.

In October 1991, the government of Quebec signed another agreement, this time with Makivik Corporation, under which both parties agreed jointly to review implementation of the James Bay and Northern Quebec Agreement. We saw earlier that Makivik Corporation succeeded the Northern Quebec Inuit Association, which had signed the JBNQA on behalf of the Inuit. The Corporation is both the political voice of the Inuit and the agent of Inuit economic and social development, as well as administering compensation monies paid to the Inuit under the

JBNQA.

The October 1991 agreement provides that any review of implementation of the JBNQA must give due regard to the negotiations currently under way with the Nunavik Constitutional Committee concerning Inuit self-government.

A framework agreement signed in July 1994 between the Inuit and the government of Quebec provides for the creation of a political body in the spring of 1995 in the territory of Nunavik, i.e., the territory north of the 55th parallel, which constitutes one-third of Quebec. Negotiations are continuing toward a final agreement that would make this, the first project of its kind, possible. An elected assembly and a government would govern the residents of the territory. This government would replace existing structures, introduced when the JBNQA was signed in 1975.

As the chair of the Nunavik Constitutional Committee said before the Royal Commission on Aboriginal Peoples, there is great confusion among the Inuit because of the multitude of parallel structures created under the JBNQA that operate without co-ordination and in accordance with their own priorities. One of the functions of a Nunavik government would consist precisely in making sure that a political direction and priorities were set for all activities in the territory.[lvii]

Inuit negotiations for self-government in Quebec naturally were influenced by the agreement signed by their neighbours, the Inuit of Nunavut (in the Northwest Territories), with the federal and territorial governments in 1992. The Nunavut agreement provides for the division of the Northwest Territories, the creation of a new territory, Nunavut, with a majority Inuit population, and the establishment of a new territorial government by April 1999. Nunavut will be a third federal territory and will be the first government in Canada constitutionally mandated to govern a territory where the majority of residents are Aboriginal people.

Inuit in Quebec have also been active in developing links among all the Inuit of the circumpolar region (from Canada, Arctic Russia and Greenland). The Inuit are thus increasingly linking their cause to that of Inuit elsewhere in the world.

Administering ad hoc agreements

For some years now, the governments of Quebec and Canada have been signing ad hoc agreements for the delivery of services to Aboriginal people in Quebec. The government of Canada reimburses Quebec for a variety of services that Quebec agrees to deliver to Indian

people in areas like education, health and social services.

In the 1970s, Indian people began to demand a degree of control over services being delivered to them. Until then, they had been considered and treated as beneficiaries of a service; they did not have any control, because they were not signatories to the agreements in question. Then, the federal government began to sign tripartite agreements with Quebec and the bands in question, a system that is still in effect.

Thus, for example, tripartite agreements have been signed for the provision of police services on a number of Indian reserves. These agreements provide a framework that maintains Canada's jurisdiction and fiduciary responsibility with respect to Aboriginal people, recognizes Quebec jurisdiction and responsibility for maintaining public order and safety within Quebec, and acknowledges band councils' jurisdiction over their territory. (Band councils have delegated authority under the *Indian Act* to make by-laws for the maintenance of law and order on-reserve.)

The most recent agreements include a preamble stating that they were signed to increase the autonomy of band councils in managing police services within the community. Structures are established under the authority of the band council but must operate in accordance Quebec law.

In the field of social services, since the 1980s Quebec has signed agreements directly with Aboriginal communities without the participation of the federal government. Of all Quebec public servants, those working in social services were under perhaps the greatest pressure from Aboriginal people to take over their own services. Several factors may have contributed to this. Those involved in social services showed more sensitivity than other public sector workers to Aboriginal peoples' aspirations. Indeed social services is an area where Aboriginal people have been demanding a greater say and where political rhetoric has focused attention for a number of years. In other respects, the development of community action on behalf of disadvantaged groups in the 1970s influenced the way Aboriginal people were dealt with.

Several task force reports, as well as departmental policy papers on social services produced since 1985, recommended granting more autonomy with respect to social services in the communities. Hence Quebec signed bipartite agreements with Aboriginal people under which the government gave individual bands responsibility for managing services and retained only functional authority.

In another area, Quebec signed several bipartite agreements with Aboriginal people for wildlife resource management. For example, agreements were signed with the Montagnais and

the Mi'kmaq to allow them to fish salmon for food and to participate in the management of the guiding and outfitting industry. Since the 1970s the issue has given rise to sometimes heated debate between Aboriginal people and the government of Quebec, and in the general population as well.

These ad hoc agreements produced a shift from a system of federal-provincial agreements under which the federal government purchased services from the government of Quebec for Aboriginal people under federal responsibility, to a system of agreements with direct Aboriginal participation that reflected, at least in their wording, Aboriginal peoples' determination to obtain a greater degree of self-government.

An analysis of spending by Quebec on delivering services to Aboriginal people provides information about the scope of Quebec's activities in recent years. The Aboriginal Affairs Secretariat has compiled an annual report on expenditures on Aboriginal people since 1987. The compilation is based on data supplied by government departments and agencies.

The data are collated on the basis of expenditures by department and program for each nation or community agency receiving funds. These disbursements also include administrative overhead, such as operating expenses for co-ordination on Aboriginal issues in each department, operating expenses for Aboriginal constables reporting to the Sûreté du Québec, legal services, direct grants to Aboriginal communities for the running of public services, operating grants to community agencies, and grants to individuals for social and cultural activities.

In 1994, the compilation indicated for the first time what share of Quebec expenditures were reimbursed by the federal government for the Cree and Naskapi and for the Inuit, and included a year-to-year analysis that makes it possible to track the evolution of expenditures since fiscal year 1986-87.[lviii]

Expenditures by departments and Hydro-Québec that were directly related to Aboriginal people have more than doubled since 1986, increasing from $208 million for fiscal year 1986-87 fiscal year to $517.8 million for 1992-93. Some of these expenditures were reimbursed by the federal government, but not all are accounted for. These amounts exclude funds paid to individuals under universal programs such as welfare and legal aid.

The Aboriginal people who signed the JBNQA (Cree, Naskapi and Inuit) receive more than 84 per cent of these funds. Thus out of the $517.8 million spent in 1992-93, $212.7 million went to the Cree, $8.5 million to the Naskapi, and $219.1 million to the Inuit. The eight other

Aboriginal nations of Quebec and a variety of Aboriginal community organizations shared the rest, i.e., 16 per cent of the total. The portion paid to the Cree, Naskapi and Inuit consists largely of commitments made by Quebec under the JBNQA, which accounted for 96 per cent of total expenditures in Quebec in 1986-87 and 84 per cent in 1992-93. Although this amount has declined slightly as a percentage of all spending, it remains by far the largest component of Quebec's expenditures on Aboriginal peoples. The federal government, of course, reimburses Quebec for a portion of its spending on the Cree, Naskapi and Inuit, i.e., $95.2 million (or 47 per cent) of Quebec expenditures on these three nations for 1992-93.

The department of education accounts for the largest share, with $134.3 million for the 1992-93 year, compared to $67.3 million in 1986-87. The major portion of these expenditures was paid out under the JBNQA; indeed, $128.7 million went to JBNQA beneficiaries.

The Société d'habitation du Québec provides partial funding for social housing programs for Inuit ($54.3 million in 1992-93) and for Indians off-reserve ($25.7 million). The federal government reimburses 55 per cent of costs for Inuit and 75 per cent of costs for Indian people.

Of the $85.4 million paid by Hydro-Québec in 1992-93, $73.6 million was paid to JBNQA beneficiaries. In the same year, Hydro-Québec also paid $6.3 million to the Atikamekw and $4.4 million to the Montagnais under special agreements with these two nations.

The income security program for Cree hunters and trappers cost $15.8 million in 1992-93, and Para-Judicial Counselling Services of Quebec received $984.3 million in 1991-92.

In addition to spending directed to Aboriginal nations, the government provides sustaining grants to a variety of agencies such as Aboriginal friendship centres, the Native Alliance of Quebec and the Alliance of Métis and Non-Status Indians.

Spending on Aboriginal people by the government of Quebec is thus devoted largely to commitments made in the JBNQA.

Future Questions

Recent political developments in Canada and Quebec will no doubt affect relations between that government of Quebec and Aboriginal peoples. The period of treating Aboriginal issues as fringe constitutional concerns appears to be over. Constitutional conferences devoted to Aboriginal issues between 1983 and 1987 barely scratched the surface of the issues surrounding Aboriginal self-government. The constitutional negotiations leading to the Meech Lake and Charlottetown

accords showed nevertheless that Aboriginal issues would henceforth be an integral part of constitutional talks in Canada.

The rejection of the Meech Lake Accord in 1990 and of the Charlottetown Accord in 1992 crystallized a widespread feeling among Quebeckers that English Canada was not prepared to recognize Quebec as a distinct society. This is the context in which the results of the 1993 federal election must be interpreted, an election in which Quebeckers showed massive electoral support for the Bloc québécois, a federal party that advocates Quebec sovereignty. The Bloc has been the official opposition in the House of Commons since the election.

Likewise, the fall 1994 election in Quebec, which returned a Parti québécois government, represents more than a straightforward desire by Quebeckers to get rid of a Liberal government devitalized by two successive terms in office. The newly elected government set in motion a process of consulting the people by tabling draft legislation in the National Assembly asking Quebeckers for their opinions on the sovereignty option. The draft bill provides for Quebec sovereignty once the bill has been passed into law, with the possibility of an agreement to maintain an economic association with Canada. The draft bill states that the constitution of a sovereign Quebec must include a Charter of Human Rights and Freedoms, must preserve the rights of the Anglophone community in Quebec, and must recognize the right of Aboriginal nations to govern themselves on their territory while respecting the integrity of Quebec territory.

Both the content of the draft bill and the consultation process were criticized by Aboriginal people in Quebec. All the Aboriginal nations of Quebec opposed the government's plans. The chief of the Assembly of First Nations asked the federal government to intervene to protect Aboriginal and treaty rights if Quebec were to declare sovereignty. The AFN also requested new constitutional offers to counter Quebec's sovereignty plans, a request the prime minister turned down. The Indian peoples of Quebec announced their intention to boycott the government consultation process and to conduct their own referendum.

The Inuit of Quebec publicly condemned the sovereignty plans and asked Ottawa to exercise its fiduciary responsibility toward them by defending their rights. According to the Inuit, the draft bill was prejudicial to their right of self-government. A resolution by Inuit community representatives described it as anti-democratic. This firm response by the Inuit was in contrast to the rather pragmatic approach they had taken to constitutional negotiations and negotiations for the establishment of Nunavik.

Part of the negative response from Aboriginal people can be attributed to a strategy to raise the stakes with respect to the sovereignty bill or to succeed in obtaining the federal government's intervention against it. But the negative response also indicates that the recognition clauses in the draft bill fell well below their expectations. Regardless of the outcome of the consultation process, the issue of recognizing Aboriginal people's right of self-government will remain at the forefront.

The direction taken by constitutional discussions will remain a key element in relations between the government of Quebec and Aboriginal peoples. It is obvious that Aboriginal peoples will closely monitor what happens constitutionally in Quebec and the action taken by the province, particularly with respect to the possibility of sovereignty. Similarly, Quebec will be interested in any constitutional talks having to do with Aboriginal rights, particularly with respect to their right of self-government.

Nationally, the concept of self-government has developed considerably in a short time. In the 1980s, governments treated it as a conditional right, reminiscent of the formula contained in the 1991 federal constitutional proposals, to be specified in agreements they were not particularly interested in signing. This position ran totally counter to the Aboriginal position, which claimed constitutional recognition of an inherent (unconditional) right of self-government. Since then, several agencies have said they were in favour of including the right of Aboriginal self-government in the Constitution.

The government of Ontario signed a political agreement with Indian peoples in Ontario in 1991, recognizing their inherent right of self-government within the Canadian federation. Although this political accord has no legal status, this was a first in Canada. Its symbolic value ought not to be underestimated, because it now represents a minimum position from which Aboriginal people will not want to retreat.

In two documents released in 1992 and 1993, the Royal Commission on Aboriginal Peoples took the position that section 35 of the *Constitution Act, 1982* recognizes Aboriginal peoples' inherent right of self-government. The Commission also recommended that any future amendments to the Constitution should state that this right is inherent, to clear up any possible confusion on this issue.

The Special Joint Committee on a Renewed Constitution (Beaudoin-Dobbie) also recommended in 1992 that the inherent right of Aboriginal self-government be included in the

Constitution.

The 1992 Charlottetown Accord was thus the natural outcome of the process. Among other things, it would have recognized the inherent right of self-government for Aboriginal peoples in Canada. The support given to the accord by the premier of Quebec, Robert Bourassa, surprised many people at the time, and not only in Quebec. To begin with, in many circles in Quebec, the Quebec clause of the accord was seen as a backward step compared to the 1987 Meech Lake Accord. What is more, the Quebec premier's agreement to entrench the inherent right in the Constitution ran counter to the political discourse that held sway in Quebec for several years.

Even though the Charlottetown Accord was rejected by the people of Canada, it is within this constitutional framework that Quebec should deal with self-government for Aboriginal people. The context has developed considerably in recent years, and it will continue to do so. It will also continue to take place marginally outside of Quebec in institutions where Quebec is not running the show. In fact, everything placed in the Constitution applies to Quebec and therefore conditions any opportunities for Quebec to intervene.

Whatever the result for Aboriginal self-government from a constitutional perspective, negotiating the land claims of other Aboriginal groups should also be an opportunity for discussing self-government for these groups. In addition to the Conseil des Atikamekw-Montagnais, other groups have filed claims with the federal government with respect to territory in Quebec.

The federal government has agreed to negotiate the Labrador Inuit claim, which will involve the government of Quebec for the portion of the claim that covers Quebec territory. On the other hand, the government of Quebec has made a commitment to the Quebec Inuit not to sign an agreement with the Labrador Inuit until the government of Newfoundland has recognized their rights within Labrador.

In several cases, the lands traditionally occupied by Aboriginal peoples before the current provincial boundaries were determined cover more than one province. There has been little consistency in the positions developed by the various provinces, however, making the negotiating process still more complicated. It goes without saying, for example, that the government of Newfoundland is not bound to any commitments with respect to Inuit residents of Labrador just because Quebec has signed an agreement with Quebec Inuit under the JBNQA.

Conversely, if there were negotiations with the Labrador Inuit, the government of Quebec would not be bound by any agreement between Labrador Inuit and the government of Newfoundland.

As for the Quebec Algonquin land claim, which concerns an immense area of western Quebec, it is currently under review by the federal and Quebec governments. Internal divisions between Algonquin communities have led the federal government to refuse for the moment to begin negotiating the claim. Some communities are opposed to negotiating under the existing land claims policy, because it is premised on extinguishment of their rights, whereas other communities believe that the negotiation is the only way for the Algonquin to have rights recognized in Quebec at present.

Finally, the Montagnais-Innu of Labrador have also filed a claim, and it too is currently under review by the federal government.

Added to all these land claims are additional negotiating processes being conducted by the federal government with Aboriginal peoples in Quebec. The current negotiations of plans for self-government for nations such as the Mohawk and Huron-Wendat are likely to have repercussions in Quebec. These nations are claiming more authority in areas like education, health and social services, justice and policing, which are areas of provincial jurisdiction. The negotiations are taking place with Quebec in attendance, because it insisted on a place at the table, but Quebec is not actively involved ─ a fact that does not sit well with the province ─ whereas Aboriginal participants are concerned that the federal government will take advantage of Quebec's presence to give the provincial government authority over them.

Likewise, the negotiation of `special' claims accepted by the federal government has consequences for the province. The federal government agreed to review the claims of Indian peoples concerning the poor administration of funds, reserve land or the failure to comply with old treaties. Some Indian bands lost part of their reserves through transactions that did not meet the requirements of the *Indian Act*. In Quebec, several bands filed special claims with the federal government, and these are now under review, with the government having agreed to negotiate their settlement. This is the case for the Huron-Wendat, the Mohawks, the Montagnais, and the Algonquins.

One major question that comes up in this context is how to compensate them for the loss of these lands. The federal government appears to favour financial settlements, but several bands would prefer new lands in compensation for those lost. As the territory belongs to the provinces,

they need to be involved if new lands are to be obtained. The situation is particularly sensitive where a reserve is surrounded by developed land in urban and other areas. Quebec will thus be asked to grant new lands to settle such claims.

The question of self-government will remain a crucial component of future discussions between the government of Quebec and Aboriginal peoples.

Conclusion

Quebec's policy on Aboriginal people has been evolving for 30 years. At the outset, in the early 1960s, the policy was marked by the government's desire to make the northern part of the province its own. This appropriation of space took the form of the exercise of government authority over Aboriginal populations. The action taken by Quebec vis-à-vis the Inuit population in northern Quebec at that time was part of this approach. Then, Quebec saw Indian people as both residents of its territory and subject to federal jurisdiction. This led the government of Quebec to consider that they should be subject to Quebec authority as residents of Quebec. On the other hand, the province saw its action as investing in federal land, to the benefit of the federal government. The government of Quebec can be said to have sought to extend its field of jurisdiction over Aboriginal peoples, even though constitutional arrangements assign jurisdiction to the federal government.

From the 1960s to the present, Quebec policy on Aboriginal peoples can be seen to have worked within two major parameters: the authority of the National Assembly over Aboriginal peoples and the preservation of Quebec's territorial integrity. These have been the givens of Quebec policy on Aboriginal peoples, no matter was in power over the years. Quebec is ready to recognize Aboriginal self-government under terms to be defined with Aboriginal peoples, provided these two requirements are met. This desire is accompanied, however, by Quebec's perception that anything conceded to Aboriginal peoples constitutionally removes something from Quebec.

Quebec policy has collided head-on, particularly since 1982, with Aboriginal claims for constitutional recognition. From the time their Aboriginal and treaty rights were recognized, Aboriginal peoples have been demanding that an inherent right of self-government be recognized constitutionally to shelter them from federal and provincial legislation. The gap between this position and that of the Quebec government is significant. It is worth remembering, however,

that the position is shared by all Aboriginal peoples in Canada, so that the situation is not peculiar to Quebec, and any closing of the gap cannot take place only in Quebec. Moreover, the progress of constitutional talks led to recognition of such a right, at least in theory. Even though the Charlottetown Accord never came into force, it is impossible to ignore its symbolic value.

The International Year of the World's Indigenous People in 1993 highlighted how important Aboriginal issues have become internationally. It must therefore not be forgotten that the status of Aboriginal peoples in Canada is evolving in step with their status internationally. The United Nations is currently developing a declaration on the rights of Indigenous peoples that recognizes their right of autonomy in a variety of areas. The work surrounding preparation of the declaration has been a catalyst in the emergence of a new international Aboriginal solidarity.

Quebec's policy of wishing to subject Aboriginal peoples to its authority at all costs should be reassessed in light of contemporary events such as the 1983 constitutional amendments recognizing Aboriginal rights. Not only have the federal government and the provinces raised Aboriginal peoples' expectations, but in doing so, they have attached to these rights a form of protection that limits their own authority to intervene with respect to recognized Aboriginal rights. There can be no doubt that both federal and provincial government players involved in repatriating the Constitution were aware of the implications of such recognition. Even though Quebec has never accepted repatriation of the Constitution, it is nevertheless legally subject to the Constitution, whether or not it believes it to be legitimate.

The isolated and inward-looking Aboriginal communities, dependent as they are on government action, are in a very difficult socio-economic position compared to the rest of the population of Quebec and Canada. Thus far, their spokespersons have been unable to break away from the discourse of official claims and have often been content with repeating cliches.

On the other hand, because of their responsibility toward the whole of the population, and because they hold power, governments must take action to encourage Aboriginal autonomy for those who wish to take control of the future of their communities. Otherwise, the situation of Aboriginal people will continue to deteriorate, and this could tend to foster action by a variety of radical movements.

A permanent forum for talks between governments and Aboriginal peoples should to be introduced. The two worlds have lived parallel to one another to date, and this mutual lack of familiarity has done nothing to help relations between them. Animosity on both sides has not

helped to reduce tension between Aboriginal people and the rest of the population, in Quebec or elsewhere in Canada.

Greater efforts must be made on both sides to develop better relations between Aboriginal peoples and Quebec and Canadian society. It this is to be possible, Aboriginal people and governments will have to go beyond statements of good intentions if discussions are to yield results that are acceptable, if not totally satisfactory, to all parties.

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Appendix 1
Chronology

1534	Jacques Cartier reaches Gaspé.
1608	Champlain founds Quebec.
1610	Henry Hudson discovers Hudson Strait and Hudson Bay in the name of the King of England.
1637	Jesuits establish the first reserve or *réduction* for Indians.
1670	Charter for Rupert's Land granted by the King of England to the Hudson's Bay Company.
1713	Treaty of Utrecht between France and England.
1759	Battle of the Plains of Abraham ─ Capitulation of Quebec.
1760	Signing of Murray Treaty (on behalf of the Lorette Hurons).
1760	Capitulation of Montreal.
1763	Treaty of Paris between England, France and Spain officially ceding New France to England.
	Royal Proclamation by George III.
1764	*Quebec Act*.
1791	*Constitution Act*.
1840	*Act of Union*.
1850	Act to provide better protection for Indian lands and property in Lower Canada.
1851	Law authorizing the setting aside of lands for the use of certain tribes in Lower Canada.
1867	British Parliament passes *British North America Act*, the statute establishing the Canadian federation.
1870	Imperial order in council transferring Rupert's Land to Canada (including it in the Northwest Territories, relinquished to the Crown by the Hudson's Bay Company).
1895	Creation by Canada of administrative divisions in Northwest Territories, one of which was called Ungava (including present-day New Quebec and the adjacent coastal islands).

1898	Act passed delimiting the northwestern, northern and northeastern boundaries of the province of Quebec (Statutes of the Province of Quebec, 61 Victoria, c. 6, 1898 and corresponding federal statute).
1912	Transfer from Canada to Quebec of a part of Rupert's Land (present-day New Quebec without adjacent coastal islands).
1913	Geographical compilation published by the Quebec Bureau of Mines (department of colonization, mines and fisheries).
1936	RCMP post established at Inukjuak.
1939	At Canada's request, the Supreme Court of Canada concludes that Eskimos are Indians within the meaning of the *British North America Act* and are therefore the responsibility of the federal government.
1942	Installation of an American military base at Fort Chimo.
1946	Quebec passes an act on mining development in New Quebec.
1947	From this year on, many scientific expeditions on the physical environment: research into iron and copper formations, research into rivers, etc.
1949	Beginning of federal health and education services for Inuit: school and infirmary at Port Harrison and Fort Chimo.
1953	Creation of the department of northern affairs and national resources whose first minister was Jean Lesage, future premier of Quebec. A variety of federal services organized during these years.
1956	First non-Aboriginal establishment created by Quebec in its northern territory at Schefferville.
1960	First indication of a permanent Quebec presence: a police officer from the provincial police located at Poste-de-la-Baleine.
1961	Visit by minister of natural resources to Fort Chimo for the creation of the Centre d'études nordiques at Université Laval, funded by the government.
1962	Ten Quebec officials go to Fort Chimo to learn about Inuit customs and language and to study the problems of the region. These were the first employees of the New Quebec Branch (DGNQ), created in April 1963 in the department of natural resources. Negotiations between Quebec City and Ottawa for transfer of federal responsibility for Inuit.
1964	Canada-Quebec Agreement, under which the DGNQ assumed responsibility for

organizing public, educational, medical and welfare services, as well as economic initiatives, in New Quebec.

The Quebec Geographical Commission (department of lands and forests) ask a linguist to report on the writing of New Quebec Inuit geographical place names. He recommended correcting spelling on the basis of rules specific to Inuktitut.

Eighty federal employees in New Quebec. The development of federal services accelerated the sedentarization of the Inuit. Where there were 50 Inuit camps in New Quebec in 1953, only 20 remained in 1964.

1966 Establishment of a task force on Quebec's territorial integrity (Commission d'étude sur l'intégrité du territoire du Québec).

1967 Briefs received from the Indians of Quebec Association on territorial rights, taxation and hunting and fishing rights.

1969 Publication of white paper by Jean Chrétien, federal minister of Indian affairs, recommending transfer to the provinces of federal jurisdiction over "Indians, and lands reserved for the Indians". The proposal was withdrawn following firm and unanimous opposition from Indian people.

1970 Quebec creates a committee to negotiate Indian affairs (Commission de négociation des affaires indiennes).

1971 Tabling of volume 4 ("Le Domaine indien") of the report of the Commission d'étude sur l'intégrité du territoire du Québec.

1975 Signing of the James Bay and Northern Quebec Agreement (JBNQA) by the government of Canada, the government of Quebec and the Crees and Inuit of Northern Quebec.

1976 Creation of the James Bay and Northern Quebec co-ordination office.

1978 Signing of the Northeastern Quebec Agreement by the government of Canada, the government of Quebec and the Naskapi of Schefferville (amendment to the JBNQA).

Creation of the Secrétariat aux activités gouvernementales en milieu amérindien et inuit (SAGMAI) within the executive council and elimination of the DGNQ and the JBNQA co-ordination office.

Gradual introduction in departments of a co-ordinator position responsible for acting as the departmental authority on Aboriginal issues.

Adoption of white paper on cultural development by government of Quebec.

Historic three-day meeting between the government of Quebec and the Indian chiefs of Quebec.

1980	Beginning of negotiations for the land claim by the Conseil Atikamekw-Montagnais (CAM). CAM files a text listing 11 principles on which the negotiation of a future agreement was to be based.
1981	Salmon crisis in Restigouche (Gaspé). Action taken by Sûreté du Québec riot squad against Mi'kmaq of Gesgepiegag, who were charged with fishing for salmon and selling it illegally. The government of Quebec reached agreements with the Mi'kmaq to guide their wildlife harvesting activities. Action by Sûreté du Québec against Mingan Montagnais on the Lower North Shore.
1982	British Parliament passes the *Canada Act*, resulting in repatriation of the Canadian constitution.
	Fifteen principles for the recognition of their constitutional rights submitted by an informal forum of Aboriginal peoples in Quebec.
1983	Response by Quebec cabinet to fifteen constitutional principles put forward by Aboriginal peoples of Quebec.
	Committee of National Assembly on fundamental Aboriginal rights and needs.
1985	Quebec National Assembly approves a motion on recognition of Aboriginal rights.
1987	Signing of the Meech Lake Accord which, among other things, provides for the inclusion of a clause recognizing that Quebec is a distinct society within Canada. The Accord also states that the clause is not prejudicial to the rights of Aboriginal peoples recognized in the *Constitution Act, 1982*.
1990	Meech Lake Accord fails because Manitoba and Newfoundland fail to ratify it, despite the commitment of the premiers of these two provinces. The premier of Newfoundland prevented its ratification by not submitting it to the Legislative Assembly. But Elijah Harper, the Aboriginal member who prevented Manitoba's ratification, appears to be the reason for the accord's failure because of his public stand in the Manitoba legislature.
	The Oka crisis, precipitated by a plan for development on land claimed by the Kanesatake Mohawks. The Mohawks occupied the land in question. An injunction was granted for the area to be cleared. The Warriors resisted. Police officers of the Sûreté du Québec intervened. One police office was killed. The Canadian Army intervened. Legal action was taken against the Mohawks. A coroner's inquest was conducted into the death of the police officer killed during the crisis. Political and administrative negotiations were held between the federal and Quebec governments and the Mohawks. These talks were broken off and bilateral negotiations began again in 1994 between the federal government and the Mohawks. The Mohawks refused to have Quebec present at these negotiations. The Mohawks refused to discuss the matter with the Quebec minister of public

security.

The government of Quebec establishes a non-partisan Commission on the Political and Constitutional Future of Quebec (Bélanger-Campeau), consisting of 36 members. Despite pressure from Aboriginal peoples, the government of Quebec refused to appoint an Aboriginal member. Public hearings were held and several Aboriginal groups submitted briefs to the Commission. The Commission heard more than 327 interventions, received more than 600 briefs and deliberated for two months.

Resolution by the European Parliament condemning the governments of Canada and Quebec for "confiscating" Mohawk land. Response by the Quebec minister responsible for Aboriginal affairs, John Ciaccia.

The prime minister establishes the Citizens' Forum on Canada's Future (Spicer Commission) with a mandate to consult Canadians on Canada's constitutional future.

The Parti québécois announces that Aboriginal peoples will have more autonomy, will be able to levy taxes and administer their own lands in an independent Quebec.

1991 Establishment of a Royal Commission on Aboriginal Peoples, whose term of reference include examining and making concrete recommendations concerning the recognition and affirmation of Aboriginal self-government (its origins, content and a gradual implementation strategy).

Submission of Bélanger-Campeau commission report on the constitutional and political future of Quebec, which identifies two alternatives: an in-depth reform of the federal system or Quebec sovereignty. The commission also recommends formal consultation of Quebeckers on this matter.

Referendum among Quebec Inuit. Only 22 per cent participate. Result: 85 per cent supported a constitutional proposal to create an autonomous government in northern Quebec with a majority of Inuit.

Proposal by the chief of the Assembly of First Nations in Quebec to form an alliance at the constitutional table, because according to him, Quebeckers and Aboriginal people are natural allies in this matter. The proposal is accepted with reservations by the Quebec department of justice (Rémillard) and the minister responsible for Aboriginal affairs (Sirros).

Signing of an agreement between the government of Quebec and the Quebec Inuit constitutional committee, with a view to formulating a constitution for an autonomous government in Nunavik (northern Quebec).

Establishment of two National Assembly committees under Bill 150: one to examine matters relating to the accession of Quebec to sovereignty and

responsible for studying federal constitutional offers.

Public statement by the new national chief of the Assembly of First Nations (Mercredi) to the effect that the AFN would if necessary support civil disobedience by the Cree if their legal and political action in Canada and abroad against the Grande Baleine hydroelectric project failed.

Publication by the federal government of constitutional proposals in *Shaping Canada's Future Together*, in which the government proposes inclusion in the Constitution of a general right of Aboriginal self-government within the Canadian federation with enforceability before the courts delayed for a period of up to ten years.

The Quebec minister responsible for Aboriginal affairs (Sirros) supports the inclusion in the Canadian Constitution of the right of Aboriginal self-government.

Official launch by the minister responsible for Aboriginal affairs (Sirros) of a public debate leading to the adoption of a government policy on Aboriginal issues.

The federal government establishes a pan-Canadian consultation process on its constitutional proposals and ends up accepting a parallel process for consulting Aboriginal people to be conducted by each national organization representing Indians, Inuit and Métis. The Native Women's Association demands equal treatment with other organizations but does not obtain it.

Media campaign outside Canada by the Grand Council of the Crees of Quebec against the Grande Baleine hydro-electric project. A response by the government of Quebec to the Cree publicity appears in the *New York Times*.

Government of Ontario and Ontario Indian representatives sign a political agreement in which the government of Ontario recognizes an inherent right of self-government within the Canadian federation. Although this political agreement has no legal status, it was the first time that a government in Canada recognized such a right. Even though it did not have the agreement of other governments in Canada, this recognition by Ontario raised the stakes in the areas that Aboriginal peoples would henceforth wish to discuss.

1992 The Royal Commission on Aboriginal Peoples publishes a commentary entitled *The Right of Aboriginal Self-Government and the Constitution*, in which the Commission argues that the right of self-government is perhaps already included in section 35 of the *Constitution Act, 1982*, and that any constitutional amendment ought to clarify the inherent nature of the right.

Report of the Special Joint Committee on a Renewed Canada (Beaudoin-Dobbie), which held public hearings across Canada, in which the committee recommends inclusion in the Canadian Constitution of Aboriginal peoples' inherent right of self-government. The Committee's mandate was to investigate and report on

proposals for a renewed Canada released by the federal government in the fall of 1991.

First ministers (federal and provincial) and Aboriginal spokespersons sign the Charlottetown Accord, with its provisions for constitutional amendments. Among other things, the accord includes a clause on Quebec and one on recognition of an inherent right of self-government. In the Canada-wide referendum, a majority of Canadian citizens and Aboriginal people reject the accord.

1993 Publication by the Royal Commission on Aboriginal Peoples of a second paper on Aboriginal self-government: *Partners in Confederation: Aboriginal Peoples, Self-Government, and the Constitution*, in which the Commission states its view that there are good reasons to believe that section 35 of the *Constitution Act, 1982* includes the inherent right of Aboriginal self-government.

Election of a new federal Liberal government. Quebec returns a strong majority of members from the Bloc québécois, a federal party advocating Quebec sovereignty.

1994 Election of a new Quebec government. The Parti québécois takes power again after nine years as the official opposition. The government sets in motion a process to consult Quebeckers on its option, Quebec sovereignty. Publication of a draft bill on sovereignty. Creation of regional consultation committees. The official opposition and Aboriginal peoples decide to boycott the Quebec consultation process.

Appendix 2
Distribution of Aboriginal Population in Quebec

Appendix 3
The Aboriginal Population of Quebec

Appendix 4
Territory Covered by the
James Bay and Northern Quebec Agreement

Appendix 5
The Fifteen Principles Submitted by
Aboriginal Peoples in Quebec

[i] On the need for a historical and legal reinterpretation, see the works of Trigger, Delâge and Dickason and the work on interpreting the French regime carried out by Andrée Lajoie's team for the Royal Commission on Aboriginal Peoples.

[ii] R. Dupuis, *La question indienne au Canada* (Montreal: Éditions du Boréal, 1991), pp. 32-36.

[iii] *Indian Register, Population by Sex and Residence, 1993* (Indian and Northern Affairs Canada, March 1994).

[iv] *The Nations, Indian and Inuit Populations in Quebec* (Indian and Northern Affairs Canada, Quebec Region, March 1994).

[v] *Population autochtone au Québec* (Quebec City: Direction des communications et des relations publiques, Secrétariat aux affaires autochtones, 2 March 1993).

[vi] Statistics Canada, *Canadian Social Trends*, No. 30 (Fall 1993), p. 18.

[vii] Statistics Canada, Catalogue no. 93-315 and 94-327; *Aboriginal Peoples Survey*, Catalogue no. 89-534, 1993 (cited hereafter as APS); *Canadian Social Trends*, cited in note , p. 19.

[viii] APS, cited in note .

[ix] Statistics Canada, Catalogue 93-328; APS, cited in note .

[x] General Council of Atikamekw Women, Brief to the Royal Commission on Aboriginal Peoples, Manouane, 3 December 1992.

[xi] See the judgements in first instance and on appeal in this case: *Native Women's Association of Canada, Gail Stacey-Moore and Sharon McIvor* v. *The Queen et al*. (1992), 2 F.C. 462 (first instance) and A524-92 F.C.A. (on appeal).

[xii] J. Hamelin, *Histoire du Québec* (Edisem, Privat, 1976), p. 59.

[xiii] See B. Trigger, *Les Indiens la fourrure et les Blancs* (Montreal: Boréal-Seuil, 1991), p. 323.

[xiv] D. Delâge, *Le Pays renversé* (Montreal: Éditions du Boréal, 1991), p. 94.

[xv] A. Beaulieu, *Convertir les fils de Caïn* (Quebec City: Nuit Blanche éditeur, 1994), p. 54.

[xvi] G. Havard, "La grande paix de Montréal de 1701", *Recherches amérindiennes au Québec* (1992).

[xvii] Delâge, cited in note , p. 104; Trigger, cited in note , pp. 396, 422.

[xviii] General Murray's Report on the State of the Government of Quebec, June 5, 1762, in *Documents Relating to the Constitutional History of Canada 1759-1791*, ed. Adam Shortt and Arthur G. Doughty, 2nd ed. (Ottawa: King's Printer, 1918), volume 1, p. 73.

[xix] Trigger, cited in note , pp. 241ff.

[xx] F.-X. Garneau, *Histoire du Canada* (Paris: Librairie Félix Alcan, 1913), volume 1, p. 87. For an analysis of the traditional interpretation of history as reported by authors like Garneau, see Trigger, cited in note , p. 12.

[xxi] "Articles of Capitulation between their Excellencies Major General Amherst, Commander in Chief of his Britannic Majesty's troops and forces in North-America, on the one part, and the Marquis de Vaudreuil, Grand Croix de l'Ordre Royal, et militaire de St-Louis, Governor and Lieutenant-General for the King in Canada, on the other", in Shortt and Doughty, cited in note , p. 33.

[xxii] "Papers relating to the Establishing of Civil Government in the Territories ceded to Britain by the Treaty of 1763: Egremont to Lords of Trade, May 5, 1763", in Shortt and Doughty, cited in note , pp. 128-129.

[xxiii] "General Gage's Report on the State of Government of Montreal, March 20, 1762", in Shortt and Doughty, cited in note , pp. 92, 94.

[xxiv] Revised Statutes of Canada, 1985, Appendices.

[xxv] *R.* v. *Sioui* (1990), 1 S.C.R. 1025.

[xxvi] The first decision was rendered by the Supreme Court of Canada in *Simon* v. *The Queen* in 1985, which concerned the territory of the province of Nova Scotia (1985), 2 S.C.R. 387.

[xxvii] Statutes of Canada, 1850, c. 42.

[xxviii] Called the *Constitution Act, 1867* since passage of the *Constitution Act, 1982*, which repatriated the Constitution.

[xxix] *Ontario Boundaries Extension Act*, 1912, 2 George V c. 40; *Quebec Boundaries Extension Act*, 1912, 2 George V, c. 32; and *An Act Respecting Ungava and erecting that territory under the name of New Quebec*, 1912 (1st session) c. 13, in Statutes of the Province of Quebec (Quebec City: King's Printer), pp. 51ff.

[xxx] *Indian Act*, Revised Statutes of Canada, 1985, c. I-5.

[xxxi] *Re Eskimos* (1939), S.C.R. 104.

[xxxii] Quebec, Order in council no. 2757, 15 July 1970.

[xxxiii] *Calder* v. *Attorney General of British Columbia* (1973), S.C.R. 313.

[xxxiv] Canada, House of Commons, *Indian Self-Government in Canada*, Report of the Special Committee on Indian Self-Government [the Penner report] (Ottawa: 1983).

[xxxv] Quebec, *Quebec Yearbook*, 1964-65, p. 68.

[xxxvi] *Quebec Yearbook*, p. 69.

[xxxvii] *Quebec Yearbook*, p. 68.

[xxxviii] Quebec, Commission d'étude sur l'intégrité du territoire du Québec, Commissioners' Report, volume 4.1, "Le Domaine indien" (1971), p. 8.

[xxxix] "Le Domaine indien", cited in note , p. 12.

[xl] *The James Bay and Northern Quebec Agreement* (Quebec City: Éditeur officiel du Québec, 1991 edition).

[xli] See map of land area covered by the James Bay and Northern Quebec Agreement in Appendix 4.

[xlii] JBNQA, cited in note , p. XV.

[xliii] JBNQA, cited in note , p. XXIII.

[xliv] Quebec, National Assembly, Standing Committee on the presidency of the council and the constitution, "Hearing of Aboriginal persons and organizations on the fundamental rights and needs of Amerindians and Inuit", *Journal des Débats*: Committees, 4th session, 32nd legislature, No. 166, pp. B-9237-38, 22 November 1983 (cited hereafter as National Assembly).

[xlv] É. Gourdeau, "Mémoire portant sur la question autochtone présenté à la Commission d'Étude des questions afférentes à l'accession du Québec à la souveraineté", 11 February 1992, pp. 10-11.

[xlvi] An interim injunction was granted in the first instance in *Chief Max "One-Onti" Gros-Louis* v. *The James Bay Development Corporation*, [1974] P.R. 38 (S.C.) and dismissed on appeal in *James Bay Development Corporation* v. *Chief Robert Kanatewat*, [1975] C.A. 166.

[xlvii] The fifteen principles submitted by the Aboriginal peoples of Quebec are listed in Appendix 5.

[xlviii] Quebec, Decision no. 83-20, February 1983.

[xlix] The right of possession involves the right to use land for specific purposes (which must be defined) and to enjoy certain benefits, but does not include the right of ownership.

[l] National Assembly, cited in note , pp. 9211-12.

[li] National Assembly, cited in note , p. 9297.

[lii] Motion of the Quebec National Assembly, 20 March 1985, in *Les fondements de la politique du Gouvernement du Québec en matière autochtone* (Quebec City: SAA, 1988).

[liii] Quebec, Decision no. 86-147, 11 June 1986.

[liv] Centrale de l'enseignement du Québec, Brief to the Royal Commission on Aboriginal Peoples, Montreal, 1 December 1993.

[lv] Quebec, Decision no. 88-309, 21 December 1988.

[lvi] *R.* v. *Sparrow* (1990), 1 S.C.R. 1075.

[lvii] Nunavik Constitutional Committee, Brief to the Royal Commission on Aboriginal Peoples, Montreal, 27 May 1993.

[lviii] *Déboursés, aides et dépenses "autochtones" pour l'année 1992-1993 selon les communautés autochtones* (Quebec City: SAA, January 1994).