

NEW RELATIONSHIP, NEW CHALLENGES:
ABORIGINAL PEOPLES AND THE PROVINCE OF ONTARIO

RCAP Project on Canadian Governments and Aboriginal Peoples

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PREFACE

Information contained in this study was drawn from interviews and from a review of available literature, government documents and other written material. Approximately forty interviews with Aboriginal representatives and Ontario public servants and elected officials were conducted to gain further insights and to provide a balanced perspective of both sides of the relationship.

We wish to thank officials in the Government of Ontario for making material readily available to us and for ensuring that we understood its context and significance; the study could not have been done in this fashion without their assistance. We also want to express our deep appreciation to the Government and Aboriginal representatives who agreed to meet with us and who shared their experience and views so generously; we learned a great deal from them. The errors and omissions are, of course, our responsibility.

CHAPTER I. INTRODUCTION

Federalism and Aboriginal Affairs

Virtually the first thing anyone learns who begins to study the relationship between government and Aboriginal peoples¹ in Canada is that "Indians are a federal responsibility."

The link between Aboriginal people and the British crown has its source in such key constitutional documents as the Royal Proclamation of 1763 which made clear the central role of the British crown in matters relating to Aboriginal peoples in British North America; with the Confederation of the British North American colonies in 1867, the relationship thus established between the British monarch and Aboriginal people came to be focused on the federal crown, the crown in right of Canada.

Section 91(24) of the *Constitution Act, 1867*, vested jurisdiction over "Indians and lands reserved for the Indians" in the federal government. Through this authority, the federal government enacted the *Indian Act*, with its system of defining Indian status and its provisions for the administration over matters relating to the lives and lands of status Indians. A 1939 Supreme Court² decision also brought Inuit within the meaning of Indians under section 91(24), and thus, recognized a special federal role, although Inuit are not covered by the *Indian Act*. In contrast, most Metis and non-status Indians have fallen into a sort of constitutional limbo, as neither level of government accepted special responsibilities.³

Thus, historically, the Government of Canada has been the dominant government in Aboriginal affairs. However, the Canadian federal system, which functioned in a highly centralized fashion during this century's two world wars, became highly decentralized, particularly after World War II, when the constitutional responsibilities of the provinces contained the fields central to the massive post-war construction of the Canadian welfare state. It is no coincidence that this is the period during which provincial involvement with Aboriginal people grew as well. As provincially delivered social services became increasingly important in the lives of Canadian citizens, so, too, did they become a larger factor in the lives of Aboriginal people. Pressures pushing all participants

¹ The term Aboriginal peoples refers to the descendants of the original inhabitants of Canada. While grouped under the label "Aboriginal" and recognized in the *Constitution Act, 1982* as "Indian, Inuit and Metis", there are many distinct nations of indigenous peoples in Canada. First Nations is the name preferred by the 129 Indian bands in Ontario, and it is used in this way throughout the study. We use the term Aboriginal community broadly, to include all Aboriginal peoples and organizations, as well as a cohesive group of Aboriginal peoples within a particular area.

² *Re Eskimos* (1939) S.C.R. 104.

³ An obvious exception is in Alberta, where the provincial government enacted *The Metis Betterment Act* in 1938, which set aside lands for the exclusive use of Metis and provided a basic framework for local self-government. In doing so, the provincial government assumed some responsibility for Metis and constructed a unique relationship with eight Metis settlements in northern Alberta. The *Metis Betterment Act* was repealed and superseded by the 1990 *Metis Settlements Act*.

in this direction were increased by the growing numbers of Aboriginal peoples living off-reserve. The federal government's current policy and interpretation of existing treaties is that federal responsibility, with a few exceptions, and jurisdiction extends only to Indian people resident on-reserve, while it is the general responsibility of provinces to look after the needs of Aboriginal residents living off reserves.

Ontario, then, is not alone in displaying a growing post-war involvement with Aboriginal peoples living in the province: at first, grudgingly and reluctantly; in more recent years, openly and directly and, occasionally, with enthusiasm. Aboriginal people, for their part, have followed a parallel trajectory, moving from resistance to grudging acquiescence to a straightforward acknowledgment that new circumstances call for new arrangements and relationships. This study examines the emergence of a new relationship between the Government of Ontario and Aboriginal peoples, together with what it implies about our present circumstances and future prospects. Specifically, it concentrates on the manner in which the Aboriginal right of self-government, now acknowledged by the Ontario Government, is being expressed in Provincial-Aboriginal relations.

The Object of This Enquiry

This study is one of a series commissioned by the Royal Commission on Aboriginal Peoples to explore the relationship between the federal, provincial, territorial and municipal governments and Aboriginal peoples. Consistent with the overall design of the project, this study devotes special attention to the question of whether or not the Government of Ontario, in its relations with Aboriginal peoples, fosters or impedes the development of Aboriginal self-government and in what fashion it does either. In providing a comprehensive answer to this question, the study addresses three central issues:

- the historical record in Provincial-Aboriginal relations;
- contemporary Provincial involvement in the Aboriginal field;
- the opportunities and constraints confronting both the Government of Ontario and Aboriginal peoples as they attempt to give expression to the principle of Aboriginal self-government.

The study generally covers the period up to December 1993, although some events occurring after that time are included. This analysis seeks to provide a better understanding of the agreements, institutions, policies and programs which structure the Aboriginal-provincial relationship in Ontario, and to shed light on the means by which Aboriginal governance might be fostered in the Province in the future. Consistent with the mandate of the Royal Commission on Aboriginal Peoples, special attention throughout the study is devoted to issues affecting women, youth and Aboriginal peoples living in urban areas. Chapter II sketches out the historical relationship between the Government and the Aboriginal peoples of the Province, tracing the growing provincial government involvement in Aboriginal affairs. In succeeding chapters of the study, the focus turns to the present-day relationship. Chapter III summarizes the social and demographic reality and describes the organizations that represent Aboriginal peoples and interact with the

provincial government. Chapter IV outlines the major government actors and structures involved in Aboriginal affairs, and Chapter V covers corporate policies and activities as they relate to Native people. In Chapter VI we analyze the impact of the policies and programs of the Ontario government on Aboriginal governance, and in Chapter VII we highlight several noteworthy cases which stand out because of their unique or distinctive character. Finally, in Chapter VIII, we conclude with an assessment of the relationship and offer some comments on future directions.

What This Study Does Not Do

It is perhaps useful to state what this study does *not* do. It does not investigate the forms of Aboriginal government within the Province of Ontario, nor does it examine the decision-making processes and governing structures of Aboriginal governments, their resource bases, accountability mechanisms and service delivery capacities. When such matters as these come up in the study, it is only insofar as they are a dimension of the central theme of the enquiry. These are undeniably concerns of capital significance, but they are being studied in the course of other research being done by the Royal Commission on Aboriginal Peoples.

Equally, the massive presence of the Government of Canada, particularly through the activity of its Department of Indian Affairs and Northern Development, is not the centrepiece of our story, even though it constitutes a policy and program environment of vast importance.⁴

Perhaps a few words on this latter point will be helpful.

The dynamics of federal-provincial relations colour the entire range of issues, not least self-government negotiations, land claims and financing. The provincial government's ability and inclination to act is often shaped by federal policy and funding. Federal policy can act as an incentive or a constraint on a province, and federal inaction can sometimes prompt a province to take steps on its own. The scope of the study does not permit a full treatment of federal-provincial issues, but as will be evident throughout the paper, the federal-provincial interface profoundly shapes Aboriginal affairs in the Province.

The direct relationship between Aboriginal peoples and the federal government also affects provincial-Aboriginal relations. As we suggested above, many Aboriginal peoples, in particular treaty nations and status Indians, have been reluctant to deal with provincial governments, given their concern over the potential loss of rights and the need to preserve the links to the federal Crown, and in the light of a history of conflicts with the provinces over land and resources. The result is a somewhat ambiguous relationship with provincial governments. However, most

⁴ In Ontario, the DIAND Regional Office is responsible for fulfilling treaty and *Indian Act* obligations. It provides for the delivery of basic services to status Indian communities, and is involved in economic development and the negotiation of community based self-government arrangements. The department provides funding for economic development; lands, revenues and trusts; education; social development; capital; facilities management; self-government negotiations; program administration; and core and consultation funding.

Aboriginal governments and organizations have come to accept the reality of provincial involvement in Aboriginal matters. The role of provinces has increased steadily since the 1950s through constitutional developments, the application of provincial laws to Aboriginal peoples, federal-provincial agreements, and the extension of a wide variety of services. In recent years, provincial governments have become directly involved in developing self-governing arrangements with Aboriginal peoples. As Abele and Graham note in their study of the Aboriginal policies and programs of Alberta and Ontario,

not only do provincial governments contest control of some of the land and resources that figure largely in some Aboriginal peoples' plans for their future, but ... provinces also possess the constitutional mandate, expertise and administrative systems in program and service delivery central to most visions of Aboriginal self-government.⁵

As a result, provinces play a vital role in the lives of Aboriginal peoples and in their aspirations for self-government. With the close of the most recent round of constitutional reform, the relations between Aboriginal peoples and provincial governments appear to be even more important. In any case, the future development of self-government will clearly require the untangling of jurisdiction and responsibility from existing provincial administration and legislation, the support of provincial institutions and the provision of resources currently deployed by the Province.⁶

Self-Government: Giving It Operational Meaning

Our final introductory remarks will be directed at clarifying the various ways in which provincial policies and programs can contribute to or impede the practice of self-government by Aboriginal people. A brief discussion of this should help to make it clear how we intend to operate in the conduct of this study.

The study approaches self-government inclusively, attentive both to general declarations and framework policies, such as the Ontario *Statement of Political Relationship*, on the one hand, and to the pragmatic expression of self-government in specific activities, on the other. It encompasses the diverse forms that exist and may emerge to suit the needs and aspirations of Aboriginal peoples who live in different circumstances, and the variety of forms and structures that will be developed

⁵ F. Abele and K. Graham, "High Politics is Not Enough: Policies and Programs for Aboriginal Peoples in Alberta and Ontario," in D. Hawkes, ed. *Aboriginal Peoples and Government Responsibility*, (Ottawa: Carleton University Press, 1988), p. 142.

⁶ Despite the importance of Aboriginal-provincial relations, there have been few studies of the Ontario-Aboriginal situation. Exceptions include Abele and Graham, "High Politics is Not Enough;" M. Boldt and A. Long, *Governments in Conflict*, (Toronto: University of Toronto Press, 1988); and a collection of papers in *Co-Existence? Studies in Ontario - First Nations Relations*, B. Hodgins, S. Heard and J. Milloy, eds., (Peterborough: Frost Centre for Canadian Heritage and Development Studies, 1992).

as self-government is put into practice. 'Self-government' in this study, therefore, may be taken to refer to the full expression of Aboriginal sovereignty, as well as to manifestations of Aboriginal self-management and control displayed in greater or lesser degree by specific programs or policies associated with the Government of Ontario. Declarations of sovereignty, of the sort found in the Ontario/First Nations *Statement of Political Relationship*, can provide the broad umbrella beneath which many sorts of self-management and control could find expression.

While Aboriginal organizations have focused their efforts since the early 1980s on securing constitutional recognition of their right of self-government, at the same time, the development of Aboriginal self-governing powers and institutions - the practice of self-government - has been evolving. In part, self-government can involve practical arrangements with governments to enhance Aboriginal involvement in the policy-making process and in the management and delivery of programs. Insofar as the concept relates to particular government programs bearing on Aboriginal people, it involves the ways in which and the degrees to which an Aboriginal community is able to conceive, design, finance, staff, implement and operate an activity according to its own judgments and preferences. Who set the policy? Who approved the program? Who started it up? Who runs the program? Who has the authority to end it or reform it?

Note that we speak here of Aboriginal 'communities', not persons, since we are examining programs and policies directed at collections of individuals, not at individuals *per se*.

Note also that we speak here of the authority to act, not the right to be consulted or to have input prior to a decision to be taken by some other government agency. Self-government has centrally to do with managing your own affairs, not advising others on how your affairs might be managed on your behalf.

Note, finally, that we will be focusing in this study on policies and programs directed at Aboriginal people or displaying a high Aboriginal content. The focus of this enquiry will not be on Provincial policies and programs of general application; that would take us too far afield from the centre of our study. We will not be studying, say, the justice system in the Province of Ontario, but we will be examining policies and programs within the justice system that have a specific bearing on Aboriginal people.

Clearly, the distinction between a comprehensive statement of self-government and its practical expression is not absolute. The inherent right to self-government, as enunciated in the *Statement of Political Relationship*, can logically be expected to lead in due course to programs and activities grounded in that right. On the other hand, if an Aboriginal community assumes responsibility for an ever-increasing range of public endeavours, then at some point these expanding management responsibilities may be aggregated into a full or comprehensive representation of self-government. Another way of putting this is to say that efforts to give practical expression to the Aboriginal right of self-government may make it possible to come to a fuller appreciation of the meaning of that right at the level of principle.

Nevertheless, the distinction between the two is clean enough practically speaking to allow it to be

of operational utility in this study. In reviewing the specific programs and policies of the Government of Ontario, as distinct from framework declarations, we will be looking for the following: the degree and kind of authority which an Aboriginal community or its representatives are capable of exercising over a provincial policy or program or over a policy or program that has largely been transferred from Provincial to Aboriginal control.

The self-government dimension needs to be assessed in reference to each stage in the policy or program administration process if one is to get at the practical expression of self-government in operational terms - or alternatively, to identify its effective absence.

For example, an Aboriginal community might have had no involvement in the decision to mount a particular program, but might be invited to involve itself in the co-administration of the program, once it has been designed and introduced; a degree of self-government is contained in the administration of the program, but not in its conceptualization or design, nor in the consideration of whether and why that program is preferable to the alternatives.

What are the main elements in the policy and program cycle to which one must pay heed? With respect to policy making, we would identify the following: problem or issue identification; policy development; policy approval; and policy implementation. With respect to the program area, the following seem to be the distinguishable elements: program design; program approval, including authorization of staff and financial resources; program implementation; program administration; program review; and the decision to continue, alter or terminate the program.

Reality is, of course, not as neat and tidy as this, and not all of these elements will necessarily be in evidence in each instance of Government activity to be examined. Nor is a full and detailed analysis of each element for all policy areas within the scope of this report. However, in examining a particular sphere of government activity, it will be desirable to bear these elements in mind in order to make some general observations and conclusions about the manner in which and degree to which provincial policies and programs are contributing to Aboriginal governance.

Let us turn now to a brief historical review

CHAPTER II. HISTORY

The historical evolution of Aboriginal affairs in Ontario may be divided into four broad periods: pre-Confederation, Confederation to the 1950s, the 1950s to the early 1980s, and the early 1980s to the present day. To some extent these divisions are arbitrary, reflecting the impressions of the authors. However, the periods are characterized by major events or shifts in policy patterns. A chronology of major events is appended.

Policies and events during the pre-Confederation period were instrumental in shaping contemporary political relations between Aboriginal peoples and Canadian governments. Following a period of relative importance as economic and military allies, Aboriginal peoples became marginalized through British colonial policies of settlement and assimilation. During this era, government regulation of the lives of Aboriginal peoples began to strip away the authority and capacity of Aboriginal communities to govern themselves.

In the years following Confederation and the first half of the 1900s, the federal government played a dominant role. Ontario's interest in and association with the Aboriginal population was mostly indirect, through federal-provincial agreements regarding the lands and resources of the province. This began to change in the 1950s, when the provincial government took a more active role in the lives of Aboriginal residents through the provision of social services. This continued into the 1960s, and during the 1970s, Aboriginal issues began to receive greater public and government attention, in part due to the increased politicization and organization of Aboriginal peoples. Concurrently, explicit proposals and demands for self-government started to emerge. The most recent phase began in the early 1980s. The inclusion of Aboriginal rights in the *Constitution Act, 1982* and the beginnings of the constitutional discussions on self-government sparked a sharper interest in Aboriginal affairs. Then, initiatives of the Peterson government, including the introduction of a corporate policy framework for native affairs, and the appointment of the Attorney General, Ian Scott, as Minister Responsible for Native Affairs gave a new profile to Aboriginal issues in Ontario. This activism has been continued and heightened under the NDP government. Ontario's current government has given its support to the inherent right of Aboriginal self-government, and has become involved in discussions of self-government, land claims and resource management.

While we use the term 'Aboriginal policy', it is really more apt to refer to Indian policy, at least until recently. While there is evidence that "half-breeds" were acknowledged as a distinct group to some extent in 19th century native policy, this changed in 1885, after the Northwest Rebellion. "Federal policy for Metis in Ontario became a policy of exclusion based on a doctrinaire view of 'Indians' as a homogeneous race which should not include peoples of mixed ancestry."⁷ Following Confederation, the Ontario government took a similar approach. It considered status Indians to be the responsibility of the federal government, and Aboriginal peoples who did not fit into the status

⁷ D. McNab, "Metis Participation in the Treaty-Making Process in Ontario: A Reconnaissance," *Native Studies Review* 1 no. 2 (1985), p. 58.

definition were, for the purposes of the provincial government, treated like other provincial citizens.

Both federal and provincial programs for the Metis have until recently mostly treated them as a disadvantaged population, not as an indigenous group with special rights.

Pre-Confederation

The Aboriginal Population

At the time of European contact, Iroquoian and Algonkian nations or tribes⁸ inhabited what is now Ontario. As map 1 shows, eleven major Iroquoian tribes occupied the area in and around southern Ontario from Georgian Bay south to Lakes Erie and Ontario, and east along the St. Lawrence River, with an estimated population of 18,000. These included the St. Lawrence Iroquois in the east, the Huron between Lake Simcoe and Georgian Bay, the Petun in the Collingwood region, and the Neutral in the Hamilton-Brantford area. The remaining seven tribes, the Erie, Susquehannock, Seneca, Cayuga, Onondaga, Oneida and Mohawk lived south of Lakes Ontario and Erie. Farming villages of 300-400 families formed the basis of the Iroquoian society and economy.

While Europeans encountered the St. Lawrence Iroquois in the area of Quebec City and Montreal in the 16th century, the tribe appears to have disappeared by the early 17th century, likely as a result of warfare or disease. In the early 1600s, Mohawk and other Iroquois tribes appear to have begun movement into the St. Lawrence Valley and central Ontario, as the fur trade extended. In the mid to late 16th century⁹, the Seneca, Cayuga, Onondaga, Oneida and Mohawk established a political and military alliance which became known as the Iroquois Confederacy or Five Nations. In 1722 the Confederacy was joined by the Tuscorara, leading to the name Six Nations. Members of the Iroquois Confederacy served as middlemen in the fur trade, and waged war on the Huron, Petun and Neutral in an effort to retain this position. As a result of this warfare and various epidemics, the Petun and Neutral either died or were absorbed into Iroquois culture, while a group of Huron migrated to a location near Quebec City.

Algonkian nations were spread throughout the province at the time of contact (see map 2). They included the Ojibwa or Chippewa (antecedents of Indians known today as Chippewa, Ojibwa, Mississauga and Saulteaux); the Ottawa of the Georgian Bay region; the Cree, who inhabited Northern Ontario; and Algonquin, who lived in the territory south of the Cree, east of the Ojibwa and north of the Huron, Petun and Neutral. Algonkian tribes shared cultural and economic

⁸ The terms Algonkian and Iroquoian refer to groupings of tribes or nations that share common languages and cultural patterns. Historical and cultural information can be found in various volumes of the Smithsonian's *Handbook of North American Indians*. W. Sturtevant, general ed. *Handbook of North American Indians*, (Smithsonian: Washington, various dates). Other sources include P. Driben, *Aboriginal Cultures of Ontario*, (Ontario: Ministry of Citizenship and Culture, 1987), and A. Macmillan, *Native Peoples and Cultures of Canada: An Anthropological Overview*, (Toronto: Douglas and McIntyre, 1988). For a regional history of the Ojibwa, see P. Schmalz, *The Ojibwa of Southern Ontario*, (Toronto: University of Toronto Press, 1991.)

⁹ Macmillan notes that some sources provide an earlier date.

characteristics as scattered autonomous hunting communities, although some semi-permanent villages existed in southern Ontario. Beginning in the late 1600s, Algonkian tribes became heavily involved in the fur trade, which had serious impacts on their social and economic organization.

Together with the Potawatomi, who lived on the west side of Lake Huron, the Lake Superior Ojibwa and the Ottawa formed a loose Confederacy known as the Council of Three Fires. Some Potawatomi migrated into Ontario in the 18th and 19th centuries. After the American Revolution and again after the War of 1812 some Delaware also settled in southern Ontario.

The history of the Metis in Ontario is less well documented.¹⁰ Driben suggests that Metis may have first developed as distinct cultural groups in northern Ontario, as the offspring of fur traders and Indian mothers.¹¹ Prior to the 1850s, Metis in Ontario were seen as distinct local groups or families, or as individuals involved with the fur trade. Metis communities and families were located in or near trade centres, including Moose Factory, Thunder Bay, Fort Frances, Kenora, and Penetanguishene. Metis in Ontario did not appear to identify themselves as a distinct 'nation', but rather as politically and culturally distinct communities from each other.¹²

The Administration of Indian Affairs

The administration of Indian affairs in what is now Ontario was primarily military until the 1830s, when Indian affairs were transferred from military to civil control. British policy became focused on "civilizing" or assimilating Indians. Central to this policy was the settlement of Indians on reserves, the provision of education, and conversion to Christianity.¹³ Settlement programs began by religious orders eventually led to a settlement policy for all Indians in the province.

Treaty making was also an important component of Indian policy. A series of surrenders of territory concluded between the mid-1700s and 1850 covered most of southern Ontario.¹⁴ Table 1 contains a listing of Ontario treaties and map 3 shows treaty areas. Numerous agreements were signed between the British Crown and the Mississauga and Chippewa. These treaties generally

¹⁰ Sources of Ontario Metis history include D. McNab, "Metis Participation"; E. Peters, M. Rosenberg, and G. Halseth, *The Ontario Metis: Characteristics and Identity*, (Winnipeg: Institute of Urban Studies, 1991); and D. Redbird, *We are Metis: A Metis View of the Development of a Canadian Native People*, (Willowdale: Ontario Metis and Non-Status Indian Association, 1980).

¹¹ Driben, p. 9.

¹² McNab, "Metis Participation," p. 64.

¹³ M. LaForest, *Indian Land Administration in Ontario (Upper Canada), 1791-1867*, (Ottawa: Office of Native Claims, 1979).

¹⁴ "Pre-Confederation Treaties," in B. Morse, ed., *Aboriginal Peoples and the Law*, (Ottawa: Carleton University Press, 1991).

covered small areas of land, and included one time only payments, usually in the form of trade goods. The text of early treaties did not include provisions for hunting and fishing rights, although they may have been discussed in treaty negotiations. Between 1818 and 1827, seven substantial land cession agreements were signed. The main difference from earlier agreements was the inclusion of annuities.

During the American Revolution, members of the Iroquois Confederacy served as British allies, and were promised land in return. Some Loyalist Mohawks settled in the Bay of Quinte region, on land that the Crown had purchased on their behalf in 1783 and 1784. Others settled along the Grand River in 1784, on land purchased by the Crown from the Mississauga. These lands were regranted and redefined in the Simcoe Deed of 1793 and became the Tyendinaga and Six Nations reserves. Beginning in 1798, Six Nations surrendered portions of their land to the Crown and through private sales. Land cessions prior to 1830 also rarely included reserves, although land was set aside in some agreements.

In 1850, the first of the major treaties covering large land areas of Ontario were concluded. The Robinson-Superior and Robinson-Huron treaties between the Crown and the Ojibwa covered about 54,200 square miles on the northern shore of Lakes Huron and Superior, clearing the area for mineral development. In the treaties, lands were surrendered to the Crown, and a substantial number of reserves set aside for the use of Indians, although the status of some of these lands have become the subject of disputes with the province. Hunting and fishing rights were retained by Indians in the ceded areas. The treaties also included a one time payment and annuities.

Federal Dominance, 1867 - 1950s

Confederation brought about a change in the administration of Aboriginal affairs in Ontario, rather than an alteration in policy.¹⁵ Relations between the province and the Indian population were carried out primarily through the federal government. Ontario's early involvement in Aboriginal affairs was derivative of other concerns, notably resource development. Provincial jurisdiction over lands and resources set the stage for an adversarial relationship between Aboriginal peoples' desires to protect their treaty rights and interests in ancestral lands, and provincial interests in obtaining resource revenues.

Following Confederation, the federal government and Indian nations negotiated a series of treaties to open up land for settlement and mineral development and to respond to Indian concerns over the protection of their hunting grounds. These "numbered treaties" followed the principles set down in the Robinson treaties for reserve land, payment, and hunting and fishing rights. Treaty No. 3, or the Northwest Angle Treaty, was made in 1873 between the Canadian government and the Saulteaux nations of northwestern Ontario. It covered 55,000 square miles of land from southeastern Manitoba to east of Dryden and from the Canada-United States border to the 50th parallel.

¹⁵ Laforest, p. 1.

Metis in Ontario also participated in the treaty process. Some Metis were included as "half-breeds" on the annuity paylists for the Robinson Treaty areas, although no land was set aside for them. In the Treaty No. 3 process, Metis were involved as reporters and interpreters, and possibly as negotiators.¹⁶ Some Metis became beneficiaries as members of Indian bands, and the Metis of Rainy Lake and Rainy River later signed an adhesion to Treaty No. 3 entitling them to the same treaty benefits as the Indians. While the Metis were specifically identified as "half-breeds" in the adhesion, by 1894 they had become identified by the federal government as analogous to Indians and reserves set aside were later included in the federal schedule of Indian reserves.¹⁷ Treaty No. 5 was signed in 1875. It involved large areas of land in Manitoba, but a triangle of land in northwestern Ontario was also included.

In 1905-06, increasing settlement and activity in mining and railway construction led to the conclusion of Treaty No. 9 between the federal government, the Ontario government, and the Cree-Ojibwa nations of northern Ontario. This was the first time that a provincial government took an active role in the treaty negotiations. The situation arose as a result of a conflict between Ontario and the federal government over the northwestern boundaries of the province and the ownership of lands and resources within the disputed territory, land covered by Treaty No. 3.

In 1884, the Judicial Committee of the Privy Council settled the boundaries in Ontario's favour. However, the federal government continued to claim the natural resources of the disputed area, as the territory was covered by Treaty No. 3. In the St. Catherine's Milling case of 1889 (also known as the Ontario Lands Case) the Judicial Committee of the Privy Council again ruled in favour of Ontario's claim. The case was Canada's first Aboriginal rights case, although Aboriginal rights were considered almost incidental to provincial rights, and were caught in the dispute between the federal and provincial government. In his arguments, Ontario's premier, Oliver Mowat, asserted that Indians had no title to the land, and that Ontario had title by virtue of its constitutional jurisdiction over Crown lands.¹⁸

Legal controversies continued over the status of reserve lands granted to the Indians in Treaty No. 3. Ontario and the federal government came to a formal agreement in 1894. "An Act for the settlement of certain questions between the governments of Canada and Ontario respecting Indian lands" included a provision that any future treaties with the Indians in Ontario would require the concurrence of the provincial government. Thus, Ontario became involved in the Treaty No. 9 arrangements. The province chose one of the three treaty commissioners and agreed to reserve lands assigned on the basis of one square mile for each family of five. Consistent with its interest in resource development, the Ontario government also insisted that no reserve could contain a site

¹⁶ McNab, "Metis Participation," p. 59.

¹⁷ *Ibid.*, p. 67.

¹⁸ O. Dickason, *Canada's First Nations: A History of Founding Peoples from Earliest Times*, (Toronto: McClelland and Stewart, 1992), pp. 339 - 340.

suitable for significant water power development. Ontario agreed to reimburse the federal government for an initial payment of \$8/Indian and perpetual annuity of \$4/person. Along with territory included in later adhesions in 1929, Treaty No. 9 covers almost 2/3 of the province. In 1923, the treaty-making process came to a close with the signing of the Williams Treaties with the Chippewa of Rama, Christian Island and Georgian Island, and the Mississauga of Rice Lake, Mud Lake, Scugog Lake and Alderville. These treaties were intended to settle disputes arising out of earlier treaties and outstanding land claims.

Provincial claims to ownership of minerals on some reserves led to the 1924 Canada-Ontario Indian Reserve Lands Agreement, an agreement reached between the federal and provincial governments without involvement of the Indian population. It confirmed the earlier federal-provincial agreements transferring all rights and interests of the province in reserve land and resources to the federal government to be administered for the benefit of the band, and entitled the province to 50 per cent of the proceeds of mineral sales. Central to the agreement was the management of Indian lands.

During much of this period, the Province of Ontario regarded Indians as a clear federal responsibility and as an impediment to the Province's ambitions for the economic development of its territory and the exploitation of its natural resources.

Growing Provincial Involvement, 1950s - 1982

The 1950s and 1960s

The growth of provincial involvement in Aboriginal (or more accurately, Indian) affairs in Ontario accompanied broader trends in the development of Canadian federalism. In the post-war period, provinces began to take on a greater role in provision of services. At the same time, the federal Indian Affairs Branch started efforts to involve the provinces in the provision of education, social service and welfare to status Indians.¹⁹ This led to a variety of ad hoc arrangements to deliver some social programs to Indians. As well, in 1951, the federal government made major revisions to the *Indian Act*. Under Section 88, provincial laws of general application became applicable to Indians, to the extent that these laws were not inconsistent with the *Indian Act* or treaties.

In 1948, the report of a joint Parliamentary Committee of the Senate and the House of Commons appointed to review the administration of Indian affairs and make recommendations on revising the *Indian Act* had noted the serious health and economic problems of reserve communities and the inadequacy of services to Indians.²⁰ The Committee encouraged the extension of provincial

¹⁹ J. Crossley, *Current Public Policy Issues Affecting Native Peoples in Canada and Prince Edward Island*, (Charlottetown; University of Prince Edward Island, 1992).

²⁰ Parliament, Special Joint Committee of the Senate and House of Commons Appointed to Examine and Consider the *Indian Act*, 1946-1948.

services to reserves. In 1951, the provinces agreed to provide Old Age Assistance and Blind Person's Allowances to Indians, sharing the costs equally with the federal government. According to one author, "after this initial effort, the province of Ontario took the lead in addressing some of the needs of its Indian citizens."²¹

In 1953 Premier Leslie Frost appointed a legislative committee to investigate the civil liberties and rights of the Indians of Ontario and make recommendations "towards the end that [the Indians] may enjoy improved standards of living and equality of opportunity."²² The 11 member committee described its work as the first survey of the "First Canadians" under the auspices of the provincial government. Committee members travelled throughout the province and met with 37 bands. Their report provides a snapshot of Ontario policy and government attitudes at the time. Recommendations were grounded in the terminology of integration and equality, and the Indian "problem" was described as one of "adjustment to modern day living." Committee members noted their surprise at their own ignorance of the circumstances of the Indian population. The report stated firmly that the survey was conducted "keeping in mind the limitation of responsibility under the Constitution."

The report also showed the extent of the province's involvement in Indian affairs at that time. The Fish and Wildlife Branch of the Department of Lands and Forests administered a family trapline policy that included some Indians. In 1953, the Branch also developed a wild rice management program. The Department of Highways was involved in road and bridge subsidies to Indian reserves, and the Department of Travel and Publicity was associated with Indians through its work in tourism. Health and Welfare was the field of greatest provincial-Aboriginal interaction. In addition to Old Age Assistance and Blind Persons's Allowances, the federal and provincial governments also shared the costs of pensions for disabled persons.

The report drew particular attention to the lack of care for both elderly and young Indians. The committee recommended that a federal-provincial agreement be made to extend the services of provincial Children's Aid Societies to status Indians, with full federal compensation to the province.

It also proposed that an agreement be sought on the provision of care for Indians in old age homes.

Other recommendations included the extension of the provincial franchise and the removal of the prohibition on Indians purchasing alcohol. The committee also proposed that a "suitable executive officer of Indian extraction" be appointed to act as a liaison officer between the various federal and provincial departments and the Indian people of Ontario.

In response to the report the provincial government granted status Indians the right to vote in provincial elections in 1954. The province also appointed an Indian advisory committee to the

²¹ J. Ovens, "Federal-Provincial Relations in Indian Affairs: A Report on Highlights of Provincial Positions Regarding Status Indians," (Ottawa: DIAND, 1979), p. 4.

²² Ontario, *Civil Liberties and Rights of Indians in Ontario*. Report of the Select Committee appointed by the Legislative Assembly of the Province of Ontario, to enquire into civil liberties and rights with respect to the Indian population of Ontario, and matters relevant thereto, 1954.

Department of Lands and Forests. In 1959, Ontario signed an agreement with the federal government providing for the extension of Children's Aid Society services to Indian communities. In the same year, the province amended its *General Welfare Assistance Act* to consider bands as municipalities for the purpose of the act. This allowed bands to administer social assistance under the act, at provincial rates and in accordance with provincial guidelines. By the mid-1960s, almost half of Ontario bands were administering social assistance under the act.

During the 1960s, the fragmented approach to provincial involvement in the provision of services to Indians continued, although Ontario signed a more comprehensive welfare agreement with the federal government in 1965. Under the Indian Welfare Services Agreement, the province undertook the delivery of a range of services on reserve including day care, counselling, child care, and social assistance. Cost-sharing operated on the general principle that the province could claim extra costs beyond those normally required to provide services to other citizens. In 1966, the Indian Community Branch was established in the Ministry of Public Welfare, to work as a consultation agency to direct native groups to provincial resources and services and a fund was set up to assist native projects.

Thus, during this period, Aboriginal peoples became a focus of some provincial policies and administration, and became involved with government in a limited advisory capacity. In rare cases, such as the provision of social assistance, Indian communities themselves were able to assume direct responsibility for the administration of programs. However, provincial policy was not directed toward accommodating Aboriginal differences and ways of governing. As one commentator has noted,

Ontario's initiatives in the 1950's, while honestly intending to meet the needs of communities, were similar in their structure to the means used by the federal government to implement its policy of assimilation. They were tailored to fit within the constitutional, legislative and administrative system governing Indian affairs. By the late 1960's, through the operation of universal programs, sectoral cost-sharing agreements and specific purchase of service arrangements, Ontario's services had become integrated into the service system on reserves. Their effect was to reinforce the assimilationist policy.²³

Provincial policies were founded on a concern for the social welfare and equality of Indians, not for cultural differences or self-government. The Ontario approach at this time was quite consistent with the emphasis of federal Indian policy on social welfare and poverty.²⁴ The 1950s and 1960s were also a period of increasing urbanization of Ontario's Aboriginal population, drawing the provincial government further into relations with Aboriginal peoples in Ontario, as the federal government was reluctant to extend the provision of services off-reserve.

²³ W. Smith, "Ontario's Approach to Aboriginal Self-Government," in *Co-Existence? Studies in Ontario - First Nations Relations*, p. 50.

²⁴ The federal approach is described in Crossley, p. 12.

1970-1982

The shape of Aboriginal affairs since the early 1970s has been affected significantly by events on the national scene. First, in 1969, the federal White Paper on Indian policy proposed an end to Indian special status. It recommended the repeal of the *Indian Act*, and the termination of the unique federal responsibility for Indians. Services for Indians would become the responsibility of provinces, as they were for other citizens. The plan met with strong Indian opposition across the country. It served as a catalyst for the formation of national and regional Aboriginal organizations, and for assertions of Aboriginal rights and pressures for participation in the policy process.²⁵

A second important development at the federal level was the federal reformulation of land claims policy in 1973 to recognize Aboriginal and treaty rights, in response to the 1972 Supreme Court decision in the *Calder* case. The federal government agreed to negotiate comprehensive claims, based on continuing Aboriginal rights and title not dealt with by treaty or other means, and specific claims, which resulted from the non-fulfilment of treaties and other lawful obligations, or the improper administration of lands and other assets under the *Indian Act* or formal agreements. As most of the lands and resources in questions were under provincial jurisdiction, the federal government took the position that provincial governments must participate in comprehensive claims negotiations and contribute to the provision of claims benefits to Aboriginal groups. The federal policy did not permit the inclusion of issues such as hunting, fishing and trapping rights, nor would the federal government accept claims based on pre-Confederation government actions. Only Indian bands were defined as claimants. Provinces were not consulted on the policy, and the unilateral federal approach made provincial involvement more difficult.²⁶ A good example of the difficulties with this approach is the small number of claims actually settled between during this period, relatively few given the large number of existing claims.

Aboriginal affairs in Ontario, then, were developing in this broader national context. The White Paper served as a wake up call for the provinces, and this rude awakening pushed them into a defensive posture. In Ontario it "caused the province to retreat to a more cautious stance whereby extension [of services] would be available only upon agreement by the Indian group concerned."²⁷

The province eventually articulated a policy to the effect that Ottawa was responsible for status Indians on and off reserves. This position was not well received by line ministries such as Education and Social Services, which had programs they wanted to deliver, and was ignored by the federal government. Only Aboriginal spokespeople were receptive to the Ontario stance and then only for tactical reasons. Indians saw it as ammunition in their battle to keep the unique albeit unhappy relationship with the federal government, while Metis thought they would benefit from extra attention and would have their own exclusive relationship.

²⁵ see Sally Weaver, *The Making of Canadian Indian Policy*, (Toronto: University of Toronto Press, 1981) for a study of the process leading up to White Paper and reactions to the proposal.

²⁶ Owens, p. 16.

²⁷ *Ibid.*, p. 10.

Provincial attempts to contain its responsibilities were also set in the context, in the mid-late 1970s, of general federal-provincial efforts to clarify roles and responsibilities and eliminate duplications. Aboriginal programs were easy to point to because of the patchwork of arrangements which created duplication. While there were some Ontario-federal efforts to study their relative roles, these became overtaken by events on the constitutional front.

The evolution of current provincial administrative structures for Aboriginal affairs also began during this period. In 1976, in an effort to pull together the decentralized administration of programs and services, a Minister without Portfolio was assigned responsibility for the overall coordination of policy development for provincial native affairs. The minister was supported by a single policy advisor and an advisory committee made up of senior officials from each policy field. In 1977, the minister was appointed Provincial Secretary for Resource Development, and maintained his native affairs responsibilities. About 1982, a native affairs office was developed in the Provincial Secretariat for Resource Development. The recognition of the need for Cabinet consideration of Aboriginal issues led to the formation of a Cabinet Committee on Native Affairs chaired by the Provincial Secretary for Resource Development. With the emergence of land claims in the 1970s, an Office of Indian Resources Policy was established in the Ministry of Natural Resources in 1978, with a major function of researching land claims.

While the White Paper left the Ontario government in a cautious mood, services under the 1965 Indian Welfare Agreement were continued. The province also became involved in a number of special or adapted programs. In policing, Ontario Provincial Police training programs were extended for band constables to enforce band by-laws, and a cost-sharing arrangement was signed with the federal government for special constables to enforce federal and provincial laws on-reserve. There were also some reforms to native justice and correctional services, and various special approaches taken by the Ministry of Community and Social Services. In 1978, the Ministry of Natural Resources introduced "Guidelines for Native Persons Violations," better known as the leniency policy. The policy provided direction to conservation officers to exercise leniency with regard to Aboriginal peoples hunting and fishing for personal use. About 1980 the Ministry of Citizenship created the Ontario Aboriginal organization core funding program.

Off-reserve, the needs of urban Aboriginal residents began to gain some attention. In 1978, the Ontario Federation of Indian Friendship Centres (OFIFC) submitted a discussion paper to the Minister of Culture and Recreation, which detailed the problems faced by Aboriginal peoples living in cities.²⁸ The report identified a number of serious concerns, including discrimination, unemployment, a lack of adequate housing and health care, low education levels, a lack of cultural awareness, and alcohol abuse. The Ontario government was the target of criticism for its failure to respond to these needs in a long term, coordinated fashion and the OFIFC called for the establishment of a task force to identify the needs and resources of the urban Aboriginal

²⁸ Ontario Federation of Indian Friendship Centres, *Strangers in Our Land*, (Ontario Federation of Indian Friendship Centres, 1978).

community, and develop policies to improve the quality of life for urban Aboriginal residents. The government responded with the appointment of the Ontario Task Force on Native People in the Urban Setting, led by a joint steering committee of representatives from five Ontario ministries and three Aboriginal organizations. While self-government was not explicitly mentioned, one of the objectives of the task force report was to "develop the opportunities and resources whereby they may determine their own future, while adjusting to an urban environment and retaining their cultural identity."²⁹

The task force report found that the major problems faced by the urban Aboriginal community were not given the priority by the government necessary for effective policy-making, and that government policy appeared to be reacting to political pressure and past mistakes, rather than effectively identifying needs. It identified a number of special programs for Aboriginal peoples in urban areas, primarily in relation to employment, housing, culture, education and justice, but noted that in general, most programs were those available to the general urban population. The report also observed a lack of integration of government departments in addressing Aboriginal needs, and discrepancies between Aboriginal needs and government responses.

In 1978, Ontario and the Ontario Metis and Non-Status Indian Association formed a joint committee to investigate the status of Metis and non-status Indians in the provinces. The committee held five "hearings" across the province, and OMNSIA produced a report. However, the hearings were poorly attended and the process did not show any substantive results.

Other major developments affecting or involving Aboriginal peoples in the 1970s centred on land and resources. In 1973, the Teme-Augama Anishnabai filed cautions under the Ontario Land Titles Act for about 4,000 square miles of their traditional lands. This action effectively froze all non-native economic development in the area. Court action began in the District Court of Nipissing in 1978, as the Ontario government decided to sue the Teme-Augama Anishnabai for their land, "a move reminiscent of its actions in the 1880s and 1930s."³⁰

A second major development was the appointment of the Royal Commission on the Northern Environment (RCNE) in 1977. While it began as a body to investigate a single issue, it evolved into a full scale inquiry into all aspects of resource development in the north. In 1976, the government had signed a memorandum of understanding with Reed Paper Company for timber rights to 19,000 square miles of land in northwestern Ontario. This was a controversial decision, in large part due to the firm's pollution of the English-Wabigoon River system and the devastating impact on the Grassy Narrows and Whitedog reserves. The bands threatened legal action against Reed paper and Ontario Hydro to prevent development, and this threat, together with the opposition raised by other groups, prompted the government to appoint the Commission. In an appearance

²⁹ Ontario, Task Force on Native People in the Urban Setting (James Ramsay and Barney Batise, co-chairs), *Native Peoples in Urban Settings: Problems, Needs and Services*, (Toronto, 1981).

³⁰ D. McNab, "Aboriginal Land Claims in Ontario," in K. Coates, ed. *Aboriginal Land Claims in Canada*, (Toronto: Copp Clark, 1992), p. 83.

before the Commission, the Provincial Secretary for Resource Development, who held responsibility for native affairs, asserted the position that resources in the north belonged to all residents of Ontario, to be managed by the government in the best interests of all citizens. However, the government later agreed to a mediation structure for the resolution of issues, recommended by RCNE Commissioner Patrick Hartt. Hartt's preliminary report proposed the establishment of a tripartite (federal-provincial-Indian) body. In 1978, the Ontario Tripartite Process was created to examine priority issues such as policing, hunting and fishing and land related problems, with Hartt as its first Commissioner. Later that year, the Indian Commission of Ontario was formed to act as a secretariat for the tripartite process and facilitate the resolution of disputes. The Commission will be discussed in more detail in Chapter VII.

Thus, the 1970s was a period of growing, if ambiguous, involvement of the province in Aboriginal affairs. While early in the decade the White Paper prompted a provincial retreat, in practice, Aboriginal programs and the treatment of Aboriginal peoples as a special needs group continued. More attention was being given to Aboriginal issues, and the province showed a greater willingness to negotiate with Aboriginal peoples and devolve some programs. Consultation with Aboriginal communities, particularly on reserve, grew gradually but modestly during this period. The origins of a more centralized administrative focus on Aboriginal issues within the provincial government were established during these years. At the same time, there was some reluctance, especially in the area of resource development, where the economic interests of the province clashed with Aboriginal concerns over the protection of lands. For example, Ontario's willingness to enter into a tripartite mediation process over Grassy Narrows-Whitedog occurred only when the alternative was court action.³¹

Provincial Activism, 1982 - present

The Impact of the Constitutional Discussions

Events of the early 1980s began to force a consideration of Ontario's overall policies regarding Aboriginal affairs, in part because of the constitutional process and in part because of the increasing sophistication and resources of Aboriginal organizations, due both to federal and provincial funding. Since that time, provincial governments in Ontario have taken an increasingly pro-active role in Aboriginal affairs. As the steps taken by the Rae government since its election in 1990 will be covered in more detail in the following chapters, this section will focus on the 1982-1990 period.

From 1982 onwards, Aboriginal affairs became centred on the issue of self-government and the constitutional status of Aboriginal peoples. Section 35 of the *Constitution Act, 1982* recognized existing Aboriginal and treaty rights and mandated a First Minister's Conference to discuss the nature of the rights in Section 35. In total, four First Minister's Conferences were held between 1983 and 1987. While initial discussions covered a wide range of issue, talks coalesced around the issue of self-government.

³¹ Ovens, p. 26.

In the months leading up to the first conference it became clear that one conference could not hope to achieve consensus around the Aboriginal agenda. Ontario premier William Davis, Attorney General Roy McMurtry and Intergovernmental Affairs Minister Tom Wells lent their support to extending the process. With the extension of the process, Aboriginal issues were given an unprecedented level of attention at the most senior level. The effects of this five year period were felt well beyond the actual time span. The process created a forum and a level of interaction with Aboriginal leaders not possible before. As well, governments had to marshal resources and develop policy and legal capacities in an area which had previously been a very low priority. Thus, whatever else was to happen to the constitution, the 1983-1987 process drew the provinces in and ensured a level of involvement from which retreat is likely impossible.

Another feature of Ontario's role in the process was to raise the profile of the involvement of Aboriginal women. Ontario recognized the Ontario Native Women's Association as a contributor to the debate (and in doing so went against the wishes of the male dominated Metis and Indian groups), worked with and supported the equality amendment and funded an ONWA constitutional project.

Once the process was secured the attention turned to self-government. By the 1985 conference attention was focused almost exclusively on the self-government issue. At this conference, Frank Miller had replaced William Davis as Ontario premier. The federal government proposed a contingent self-government amendment, which was supported by Ontario and the required seven and fifty provinces, but rejected by the Assembly of First Nations and Inuit Committee on National Issues. Without the support of at least one of the Aboriginal groups, Ottawa did not proceed with the proposed amendment.

By the time of the last meeting in 1987, the government had changed in Ontario, with the coming to power of the Liberals under David Peterson. In the months leading up to the meeting, Ontario Attorney General Ian Scott had become a key player in the preparatory meetings. The week before the conference, Ontario circulated a draft inherent/contingent right text, and a federal version of the text was tabled at the conference. It did not receive the required provincial support and neither the Inuit nor the AFN (the AFN was split) supported the amendment. Once again, Ontario played a key role at the meeting in the effort to cut a deal. However, the federal government was preoccupied with the Meech Lake meeting scheduled for the end of April of 1987, and pressures of the five year process were being felt by the Aboriginal groups, creating divisions within both the Inuit and Indian organizations. The conferences came to an end without an agreement on self-government.

Away from the constitutional table, the federal government established a two track approach to self-government negotiations in 1985; 1) a DIAND based community self-government policy for First Nations, and 2) a tripartite approach (federal, provincial, and Metis and off-reserve Indians). The community self-government policy established a process through which Indian bands could negotiate with DIAND self-government agreements to provide for authority beyond the *Indian Act*. This form of self-government would be based on powers delegated through federal and provincial

legislation, rather than on constitutional recognition of the inherent right to self-government. By the early 1990s, 142 proposals had been developed, although only 15 were at the substantive negotiations stage. Five of these are in Ontario.

The tripartite approach for Metis and off-reserve Aboriginal peoples also began in 1985 as part of a parallel track to the constitutional negotiations. The federal government becomes involved in tripartite negotiations at the invitation of a provincial government, and a senior Cabinet minister is designated as the federal Interlocutor to represent the federal government in negotiations. Tripartite negotiations may include such items as housing, health care, justice, social services, economic development, education, training, and language. The tripartite process is not intended to address land claims or treaty rights. At the time of writing, Metis organizations in Alberta, Saskatchewan, Manitoba, New Brunswick, Prince Edward Island, Nova Scotia and Ontario were involved in tripartite negotiations.

Ongoing Provincial Policy Development and Administration

Away from the constitutional table, the provincial Resources Secretariat and other ministries continued on with their normal activities in relation to the Aboriginal population. In 1985, with the election of the minority Liberal government, Attorney General Ian Scott was appointed Minister Responsible for Native Affairs, and the native affairs office moved to the Office of the Attorney General. In 1987, it was renamed the Ontario Native Affairs Directorate (ONAD). In 1988, ONAD took over responsibility for land claims from the Ministry of Natural Resources.

The increased provincial attention to Aboriginal issues was evident early on, as the Peterson government adopted a corporate native affairs policy in October 1985. The province committed itself to:

1. Supporting the constitutional entrenchment of Aboriginal rights to self-government;
2. Entering into Aboriginal self-government negotiations;
3. Assisting Aboriginal peoples in becoming more self-reliant; and
4. Providing services to Aboriginal peoples in a non-discriminatory and culturally sensitive manner.

The corporate policy established the goals of the government and the broad framework in which individual ministries were expected to operate.

Two major initiatives began in this period. First, in February 1986, while constitutional discussions on self-government were going on, Canada, Ontario and the Nishnawbe Aski Nation (NAN) signed a Memorandum of Understanding on NAN Self-Government. The parties realized that regardless of the outcome of the First Ministers Conferences, specific negotiations and legislation would be required to implement NAN self-government. They reached an agreement to negotiate in 11 areas (fishing, trapping and hunting, band status and lands for reserves, housing, infrastructure, education, health, social services, economic development, powers and institutions of self-government). However, some early negotiations broke down and original timetables were not met. Efforts by NAN to continue the process led to an addendum signed by the parties in 1989.

which reaffirmed their commitment to NAN self-government and focused negotiations on land and resources, policing and social services.

Second, in December 1986, Ontario, the federal government and First Nations (parties to the Ontario Tripartite Process), signed the Declaration of Political Intent, committing themselves to enter into tripartite discussions on issues related to self-government, jurisdiction and powers. Education was selected as the first sector for negotiation. The process had a slow start, in part because of the preoccupation with the constitution. Little attention had been given to staffing the resources secretariat, later to become ONAD, and it took some time to get the human resources in place. The Ontario government also did not deal with jurisdiction in the DPI process. Although jurisdiction was included in the document, it was left for higher level discussions in the constitutional talks.

The Ontario government also moved during this period to consolidate its own approach to self-government. In 1989, following the failure of the 1983-87 First Ministers' Conferences to constitutionalize the right to self-government, the government issued guidelines for the negotiation of self-government agreements. These were the first provincial set of guidelines for negotiating self-government and indicated Ontario's willingness to enter into discussions with Aboriginal communities "for the purpose of establishing new arrangements in programs, policy or law which enable those communities to achieve a greater measure of control over their affairs."³² The policy required that the federal government participate in all self-government negotiations, calling Aboriginal self-government "preeminently a matter of federal concern." Until other regimes were negotiated, provincial laws of general application would continue to apply. The province also emphasized its responsibility to represent the interests of all residents of the province. The policy expressed Ontario's concern over the control of land and resources, noting that the province would maintain sufficient control over Crown land to ensure continued economic and recreational benefit to all residents of the province.

In contrast to the federal reserve based community self-government policy, the Ontario guidelines outlined various approaches to self-government negotiations for reserve, crown land and urban Aboriginal communities, and listed sectors in which the government was willing to negotiate. On-reserve, the government would discuss education, health, social services, recreation and cultural services, justice, land use planning on Crown land, environmental impact, Crown land and natural resource access rights, agriculture, land claims and economic development. The government would participate in negotiations "toward the establishment of Indian specific governing institutions which may exercise executive and legislative powers" for the purpose of administering reserves, regulating the behaviour of residents on reserve, and providing services to reserve residents. For Crown land communities, Ontario was willing to discuss a similar list, as well as infrastructure, toward "establishing public institutions in the nature of service agencies/service boards for all residents of the communities which may exercise by-law making powers and administrative

³² Ontario Native Affairs Directorate, *Guidelines for the Negotiation of Aboriginal Self-Government*, Tabled in the Ontario Legislature on December 14, 1989, by the Honourable Ian Scott, Minister Responsible for Native Affairs.

powers." While urban self-government was covered by the guidelines, Ontario limited itself to negotiations on institutions and entities that would provide services and exercise administrative powers subject to the Charter and provincial legislation, standards, and policies.

Ontario's involvement in the self-government process would be coordinated by ONAD, although line ministries would lead negotiations in particular sectors. Steps in the process included a review of proposals and decision whether to become involved in negotiations, followed by the development of a framework agreement setting out goals, agenda and protocol, and finally, the negotiation of a final agreement detailing financial and institutional commitments. Framework and final agreements would be subject to Cabinet approval.

Thus, the Ontario government indicated its willingness to negotiate self-government. However, Abele and Graham describe the government of Ontario as "embracing the principle and language of self-government without a clear definition of the concept," and suggest that a municipal model, or a form of self-administration was implicit in the provincial position at this time.³³

The changes during this period laid the groundwork for developments that have taken place since 1990. The constitutional process focused greater attention and resources on Aboriginal issues, and Ontario began to take a more pro-active role, with its corporate agenda and self-government guidelines. The signing of the tripartite Declaration of Political Intent indicated some movement toward the recognition and negotiation of self-government. Funding to Ontario Aboriginal organizations also increased under the Peterson government, especially in the areas of economic development, health and welfare assistance. However, while substantial progress was made, it was still very much a case of the Government of Ontario following a course it had established for itself in the development and delivery of policy and programs.

³³ Abele and Graham, p. 150.

CHAPTER III. ABORIGINAL PEOPLES IN ONTARIO

Before we turn to a discussion of current policies and programs, the following sections provide a brief overview of the demographic and socio-economic characteristics of the Aboriginal peoples in Ontario, and describe the major Aboriginal actors in the relationship with the provincial government.

Demographics and Socio-Economic Background

A look at the demographic and socio-economic situation of Aboriginal peoples in Ontario sets the context out of which pressures for self-government have been and are emerging. As in other parts of the country, social and economic difficulties faced by Aboriginal individuals and communities feed frustration with provincial policies and fuel Aboriginal desires to develop their own priorities and approaches to their particular needs.

Demographics

Exact population figures for Aboriginal peoples in Ontario are difficult, if not impossible, to present accurately. Estimates by Aboriginal organizations often differ from census counts or Indian Affairs records. However, the information below gives some impression of the size, complexity and situation of the population. Most of the data to follow come from the 1991 Census and Aboriginal Peoples Survey.

The 1991 Census Canada figures indicated that 243,550 people in Ontario were of Aboriginal origin.³⁴ This figure constituted 2.4 per cent of Ontario's population. Of this total, 114,895 people reported that they identified with a particular Aboriginal group (North American Indian, Metis or Inuit). This population represented 18.4 per cent of Canada's total Aboriginal population.

Ontario's status Indian population according to the 1991 Indian Register was 117,152; 23 per cent of the Canadian total. Of this total, 61,882 people or 53 per cent were recorded as living on reserves, Crown lands or Indian settlements. There are 128 Indian bands or First Nations in Ontario, occupying about 197 reserves or settlements. First Nations range widely in population, from small bands with less than 100 members, to Six Nations of the Grand River, the largest band in Canada, with a registered Indian population of 16,513. The 1991 Aboriginal Peoples Survey counted 12,055 Metis and 780 Inuit in Ontario. Again, numbers are difficult to ascertain and Metis

³⁴ This does not include those who live on reserve and refused to be enumerated or those who resided in institutions at the time of the census. During the 1991 Census, 34 reserves in Ontario were incompletely enumerated and were not included in Census counts, and an additional 26 were not included in the Aboriginal Peoples Survey, which counted people who identify with an Aboriginal group. How much bias is created by not having these communities in the sample is not known. At a national level of aggregation the impact on, for example, percentage distribution of age and gender for the on-reserve population as a whole would likely not be altered significantly by not having the data. This assumes that the demographic conditions of the non-participating communities would not be significantly different from the participating group.

organizations have estimated much higher populations.

The geographic distribution of the Aboriginal population creates a particular context for the development and application of government policies and programs. A significant portion of the Aboriginal population lives in northern Ontario, which raises issues such as access to health care and other services, and different types of economic development. The majority of the Aboriginal population lives in the more urbanized south. The large numbers of Aboriginal peoples living off reserve, in both rural and urban settings, again creates particular needs for Ontario programs and the development of self-government. The 1991 APS reported 14,205 people with Aboriginal identity living in the Toronto area, 6,915 in Ottawa-Hull, and there are also Aboriginal populations in the Hamilton, Kitchener, London, Oshawa, St. Catharines-Niagara, Sudbury, Thunder Bay, and Windsor metropolitan areas. Some Aboriginal organizations estimate that up to 65,000 Aboriginal people live in the Toronto area. Approximately 75 per cent of Aboriginal people in Ontario live off reserve.

The age and gender distribution of Aboriginal peoples in Ontario was comparable to national averages for Aboriginal people. As in the country as a whole, the Aboriginal population was significantly younger than the non-Aboriginal population. Nearly 37 per cent of people reporting Aboriginal identity in Ontario were aged 14 or under, and approximately 55 per cent of the population was under the age of 25. The population of Aboriginal women in Ontario was slightly higher than that of Aboriginal men, at 53 per cent.

Socio-Economic Circumstances

A brief snapshot of social and economic circumstances underscores the problems that fuel Aboriginal desires to gain more control over their futures, and at the same time, pose challenges for developing healthy, self-sufficient communities. By almost any measure, Aboriginal people are worse off than any other community in Ontario.

Generally, Aboriginal peoples are in poorer socio-economic circumstances than the rest of the Ontario population. According to the 1991 APS, the unemployment rate for the total Aboriginal population in Ontario, at 10.6 per cent, was lower than the rate for Aboriginal peoples in all other provinces and territories in Canada. However, this rate was significantly higher than the 1991 rate of 5.9 per cent for Ontario's total population. Incomes of Aboriginal people were also lower. In Ontario, 22.3 per cent of the Aboriginal population had an income of less than \$2,000, in contrast to 13.4 per cent of the total provincial population.

In comparison to Aboriginal peoples across Canada, Aboriginal peoples in Ontario rated fairly well in terms of education levels. More Aboriginal people in Ontario had university degrees than in other provinces. However, at 3.4 per cent of the Aboriginal population, this was lower than the total Ontario rate of 14.1 per cent. 13.7 per cent of Aboriginal peoples in Ontario had less than nine years education, in contrast to the national Aboriginal average of 21.2 per cent. Again, however, these rates were much worse than Ontario and national averages of 7.9 and 9.8 per cent, respectively.

Indicators of cultural strength are also important to consider, as desires to protect and enhance Aboriginal cultures and languages are a significant part of the self-government story. Only 12.6 per cent of the Aboriginal population in Ontario aged 4-15 spoke an Aboriginal language in 1991, in contrast to 20.8 per cent of the population 15 and over. Counts were highest for Indians living on reserves. About 40 per cent of Aboriginal peoples in Ontario reported participating in traditional activities, such as hunting, trapping, or traditional dancing. Again, counts were highest for Indians living on reserve (around 60 per cent).

In summary, Aboriginal peoples in Ontario as a group have the highest rates of unemployment, suicide, death by non-natural causes, infant mortality, incarceration, child protection, inadequate housing, and student drop-out rates. These problems are combined with the lowest life expectancy and education levels.³⁵ A major concern for many Aboriginal communities is the rate of youth suicide. In the first 3 months of 1993, there were 11 youth suicides in small Indian communities in northern Ontario, and these tragic circumstances continue.

The circumstances described above create particular implications for self-government, as they pose specific needs to be met by Aboriginal families, communities, organizations, and provincial services and financing.

Ontario Aboriginal Organizations

A network of Aboriginal political, advocacy and service delivery organizations are involved in efforts to improve the political, social, and economic circumstances of Aboriginal peoples. While broad gauge consultations and negotiations are carried on with several regional political organizations, the province also relates to individual First Nations, Aboriginal communities, and organizations operating in areas such as child welfare or justice.

First Nations in Ontario are organized into four major political organizations: the Union of Ontario Indians - Anishinabek Nation (UOI); the Nishnawbe-Aski Nation (NAN); Grand Council Treaty No. 3; and the Association of Iroquois and Allied Indians (AIAD).

- The Union of Ontario Indians is the oldest Aboriginal political organization in the province, dating back to the mid-1800s. It became known as the Grand General Indian Council in 1910, and the Union of Ontario Indians in 1949. The UOI currently represents 43 Potawatomi, Delaware, Ottawa and Ojibwa First Nations along Lake Superior, Georgian Bay, and in southern Ontario. The "overriding objective of the UOI is to promote the realization of the inherent right of First Nations self-government."³⁶ The organization

³⁵ Aboriginal Family Healing Joint Steering Committee, *For Generations to Come: The Time is Now. A Strategy for Aboriginal Family Healing*. Final Report of the Aboriginal Family Healing Joint Steering Committee, September 1993, p. 1.

³⁶ *Anishinabek News*, vol.5, no.5.

provides political advocacy and secretariat functions for member First Nations, and is governed by an elected Board of Directors and an elected Grand Chief and Deputy Grand Chief, who serve as political leaders of the organization.

- The Association of Iroquois and Allied Indians was formed in 1969 and is the smallest of the four organizations, representing eight First Nations in southern Ontario. The AIAI main office is located in London and is led by a Grand Chief.
- Grand Council Treaty #3 represents 25 Ojibwa First Nations located mainly in the Kenora, Dryden, and Fort Frances areas. The organization is led by a Grand Chief and has a head office in Kenora. Of the four status Indian organizations in Ontario, Grand Council Treaty #3 has been the most aggressive in asserting its sovereignty over the treaty area and its special relationship with the federal Crown.
- The Nishnawbe-Aski Nation is made up of 48 Ojibwa and Cree First Nations located in the northern half of Ontario, mainly in the Treaty No. 9 area, although some Treaty No. 5 bands are also NAN members. The organization was formed in 1973 as Grand Council Treaty No. 9 to represent the social, political and economic aspirations of the Nishnawbe-Aski people. In 1981, the name of the organization was changed to Nishnawbe-Aski Nation. NAN is governed by a board of directors made of the 46 First Nation chiefs, and an elected Executive Council of three Deputy Grand Chiefs and a Grand Chief. NAN has taken the route of phased negotiations toward self-government in various sectors, exploring options within the existing legislative and jurisdictional framework.

There are also about ten First Nations in Ontario not affiliated with a political association. These include Six Nations, Walpole Island, Akwesasne, Teme-Augama Anishnabai, Nipigon Ojibwa, Whitesand, Whitedog, Chippewas of Nawash, Shoal Lake 39, Shawanaga and Saugeen.

The Chiefs of Ontario Office (COO) functions as a coordinating office for the four regional status Indian organizations and in some cases, for the independent First Nations. It was formed in the mid-1970s, when the four status Indian organizations recognized the need for a coordinating body, and held an all Ontario Chiefs Conference to establish the new body. All chiefs meet annually, and elect a Regional Chief every three years. The mandate is determined at the annual meeting, and resolutions are adopted to guide COO activities. The Priorities and Planning Committee, made up of two NAN, two UOI, one AIAI, and one Grand Council Treaty #3 representatives; one Independent member; the Regional Chief; and a Regional Elder, oversees the implementation of resolutions. The Regional Chief represents status Indians to the Assembly of First Nations and facilitates discussion, planning, implementation, and evaluation of local, regional, provincial and national matters affecting the status Indian people of Ontario. The Chiefs of Ontario coordinating body receives core funding from the Ontario Native Affairs Secretariat and consultation and policy development funding from the Department of Indian Affairs.

Most of Ontario's 128 First Nations are also affiliated with regional tribal councils. There are about 20 tribal councils in Ontario, each made up of 5-10 bands. Tribal councils are important

players in the Aboriginal-provincial relationship, as they deliver a range of services in areas of provincial jurisdiction. A number of tribal councils are involved in negotiations and pilot projects related to self-government.

In 1971, the Ontario Metis and Non-Status Indian Association was incorporated to represent the interests of Metis and off-reserve Indians. The organization is comprised of approximately 100 local groups, which are divided into 5 administrative zones. Among OMAA's objectives are the development of services and programs in areas such as self-government, treaty rights, lands and resources, social services, housing and education. Since 1987-88, Canada and Ontario have been signatories to contribution agreements that have enabled OMAA to receive financial support for discussions on off-reserve self-government. In late October 1993, OMAA declared bankruptcy, and a new organization, the Metis Nation of Ontario, was formed. The Metis Nation of Ontario is affiliated at the national level with the Metis National Council.

The Ontario Native Women's Association (ONWA), based in Thunder Bay, was founded in 1971 as a political advocacy organization for Aboriginal women across the province. It has 56 local member associations in four regions across the province. ONWA conducts research into the needs of Aboriginal women, and works with other Aboriginal and government organizations to respond to those needs. Core funding for ONWA comes from the Secretary of State (now the Department of Canadian Heritage) and the Ontario Native Affairs Secretariat.

A range of institutions and organizations have also developed in urban areas. For many years, Friendship Centres have provided support to urban Aboriginal residents. There are about 27 Friendship Centres in Ontario, including an Inuit Friendship Centre in Ottawa. The Ontario Federation of Indian Friendship Centres (OFIFC) was formed in 1971 and now represents 24 provincial member centres. (There are also three independent Friendship Centres in Ontario. The Native Canadian Centre of Toronto, which has become involved in self-government planning for the Aboriginal population of Toronto, is not a member of the Federation.) While it began as a lobbying and resources agent, it has become responsible for developing training programs, initiating program development and political advocacy. The OFIFC is a focal point for consultations by the provincial government, and also receives core funding from the Ontario Native Affairs Secretariat and Department of Canadian Heritage. In 1990, ONWA and OFIFC signed a Mutual Assistance Pact to encourage information exchange, consultation and support in each others activities. The agreement committed both parties to joint involvement in the development of policy, programs and resources.

The Aboriginal Urban Alliance of Ontario was formed in 1990 to represent the specific interests of urban treaty and status Indians. The AUAO's main concerns are the maintenance of special status and treaties and access to funding for Aboriginal peoples living in urban areas, but the organization has identified a wide range of issues of concern, including lands and resources; Aboriginal and inherent government rights; the environment; access to education, housing and health services; taxation; the constitution; and human resource and economic development.³⁷

³⁷ Aboriginal Urban Alliance of Ontario, "Mission Statement, Objectives and Background Information,"

During the latest round of constitutional reform, Aboriginal organizations formed the Constitutional Working Group to discuss matters of common concern. Representatives included NAN, Grand Council Treaty #3, UOI, AIAI, Independent First Nations, ONWA, OFIFC, Tribal Councils and District Chief Councils, the Aboriginal Urban Alliance, and the Native Canadian Centre of Toronto.

It can be seen from this brief review that the organizational situation in Ontario is anything but clear cut. There is a wide assortment of political and service organizations, often with overlapping membership and competing mandates. In consequence, significant conflicts exist within the Aboriginal community over representation and the legitimacy of organizations, which in turn affects relations with the provincial government. Both Aboriginal and government representatives interviewed spoke about some of these difficulties. There is concern at some levels of the Aboriginal community about the representation and accountability of political organizations. At the same time, the provincial government faces the difficulty of knowing with whom to negotiate, given the overlapping mandate of political organizations and questions raised about representation.

This is not to say that this complexity can or should be done away with at the snap of a finger. The Aboriginal reality, in Ontario as elsewhere, *is* complex and it is to be expected that the range of organizations representing that reality will reflect this. However, it must be admitted that one of the barriers to progress is this organizational situation; a clarification of mandates, roles and responsibilities -- were that possible -- would yield benefits in the ease and speed with which progress could be made.

Chapter IV. THE GOVERNMENT OF ONTARIO

The following provides an overview of the Ontario government's key players and policy making structures in Aboriginal affairs.

Premier

As in other areas of provincial politics and public policy, the office of the Premier is of primary importance in setting direction and establishing priorities. Evidence is provided throughout this report confirming the central role of Premier Bob Rae in establishing Aboriginal affairs as a key Government agenda item. He has signalled very clearly, by the actions documented in this study, that he intends the vigorous, sustained effort to transform the status of Aboriginal peoples in Ontario to be one of the defining features of his administration.

Minister Responsible for Native Affairs

The current Minister Responsible for Native Affairs is Bud Wildman. Wildman, a veteran MPP from Sault Ste. Marie, was appointed in 1990 as Minister of Natural Resources and Minister Responsible for Native Affairs. The choice of the Minister of Natural Resources as Minister Responsible for Native Affairs was almost a revolution in the traditional approach of the ministry, since it had been in conflict with Aboriginal peoples over hunting and fishing rights and land claims for decades. In 1993 Wildman was shifted to Environment and Energy, but carried the native affairs portfolio with him.

The role of the minister as defined by order in council is to develop native affairs policy as it affects the entire government. This includes the coordination of policy development, program delivery and special projects across ministries, the coordination of communications, negotiations and mediation in native affairs, the assistance of line ministries in policy development and program delivery. The mandate of the minister extends to all Aboriginal peoples.

That Wildman was chosen by the Premier to be the Minister working most closely with him throughout the Charlottetown constitutional process indicates both the confidence in which the Minister was held and the importance the Premier attached to Aboriginal issues in those constitutional discussions.

Cabinet and Other Committees

Cabinet is the central point of decision-making in the Ontario government, setting the broad directions and priorities of the government and initiating and approving government policy and budget decisions. The focus of policy development lies with several Cabinet committees, which make recommendations to Cabinet for final decisions on policies. Two major Cabinet committees, the Cabinet Committee on Justice Policy (CCJ) and its Sub-Committee on Aboriginal Issues have a mandate to deal with Aboriginal issues. The Sub-Committee on Aboriginal Issues, formed early in the life of the Rae government, is chaired by Bud Wildman, who is also a member of the CCJ.

Wildman also sits on the powerful Cabinet Policy and Priorities Committee, which enhances the profile of Aboriginal issues. The Policy and Priorities Committee oversees the coordination of government wide issues and is the final review board for major policy issues prior to Cabinet consideration.

The Subcommittee on Aboriginal Issues includes membership from the Ministries of the Attorney General, Northern Development and Mines, and Culture, Tourism and Recreation, as well as other ministries with an interest in Aboriginal affairs. This committee reviews all policy with significant Aboriginal content or specific reference to Aboriginal peoples.

Ontario Native Affairs Secretariat

The Ontario Native Affairs Secretariat (ONAS), established in 1990, is the successor to ONAD. It is the central agency charged with supporting the Minister Responsible for Native Affairs, and is led by a Secretary with Deputy Minister status. Since the Rae government was elected, the Secretariat has undergone several internal reorganizations in an effort to equip itself to meet the government's agenda. Both the human and financial resources of ONAS have been increased, consistent with the overall pattern of growth in this field.

ONAS manages the implementation of the province's Aboriginal Agenda, assists line ministries in sectoral policy development, develops and monitors corporate Aboriginal affairs policy, researches and negotiates land claims, and manages the province's involvement in self-government negotiations. ONAS also coordinates corporate communications and public education. As will be discussed in more detail in the following chapter, ONAS' agenda is dominated by self-government, land claims, and corporate exercises in fiscal planning and priority setting. The Secretariat is composed of eight units: Office of the Secretary, Legal Services, Executive Support, Communications, Corporate Policy and Planning, Negotiations Support, Negotiations (Toronto), and Negotiations (Thunder Bay).

The role of ONAS has evolved from a predominantly advocacy function to a central agency control and command role, although within and outside of government, the Secretariat is perceived in different, and sometimes conflicting terms. While viewed by Aboriginal peoples in part as an advocacy unit, it is seen by the province as a government agency fulfilling crown responsibilities.³⁸ ONAS faces conflicts between its civil service role on one hand and the perception that its members are advocates on the other. The Secretariat must also deal with the expectations of Aboriginal organizations and communities, while having to cope with expenditure restraints and cutbacks in program support.

³⁸ Devlin and Associates, Inc. "The Aboriginal Community and the Ontario Government: A Review of the Relationship: The Ontario Public Service Perspective," draft, prepared for COO, OFIFC, and ONWA, June 1992.

Deputy Ministers Committee on Aboriginal Issues

In May 1992 Cabinet agreed to the establishment of a Deputy Ministers Committee on Aboriginal Issues, after an internal review indicated that the government was hampered by the lack of a deputy level coordinating committee to oversee the implementation of the government's Aboriginal agenda. The Deputy Ministers Committee is chaired by the Secretary to the Cabinet, David Agnew and membership includes 12 key ministries. Its role is to assist Cabinet in identifying priorities and developing strategic plans in priority areas. As such, it seeks to ensure a coordinated and integrated approach to policy development planning and decision making, and sees to it that the government's commitments are understood by all ministries. It is also responsible for ensuring that Ontario's Aboriginal affairs agenda is carried out through implementation of the corporate plan.

Government Departments and Agencies

Individual ministries will be discussed in more detail later on, but we note here the trend toward the formation of Aboriginal specific units or branches within individual ministries, to coordinate the development of policy across the ministry, with other ministries, and with ONAS. These units also consult with Aboriginal organizations in the province and individual First Nations and communities.

Aboriginal People in the Ontario Public Service

The government has also launched a number of initiatives to bring Aboriginal peoples into the public service, both at Queen's Park and in regional offices. While these activities are not directly related to the self-governance of Aboriginal communities, they can be significant in terms of improving relationships between Aboriginal communities and the province, increasing Aboriginal input into the overall governance of the province, and enhancing understanding of Aboriginal issues within the government.

Aboriginal peoples are one of four groups designated by the government for employment equity and the Ontario Native Employment Equity Circle was formed by a group of Aboriginal employees in August 1990. While each Aboriginal employee in the public service is automatically a member, the Circle has a database of 150 employees, as some Aboriginal employees choose not to actively join. It provides input on any employment equity initiatives that may affect Aboriginal peoples, advocacy and support for Aboriginal employees, and public education.

Despite the efforts that have been made, Aboriginal people are underrepresented in positions with access to authority and decision-making, such as senior management, and in "feeder" positions for senior management jobs. Most Native public servants tend to be employed in clerical positions, on short term contracts, or in seasonal jobs.

Chapter V. GENERAL POLICY FRAMEWORK

In October 1990, within weeks of being elected, the Rae government indicated the direction it planned to take in Aboriginal affairs. At a self-government conference organized by the Assembly of First Nations, Premier Rae announced the Ontario government's recognition of an inherent Aboriginal right to self-government with the following statement:

We believe there is an inherent right to self-government, that inherent right stems from powers, and if you will, sovereignty, which existed prior to 1763, certainly existed prior to 1867, and certainly prior to 1982.³⁹

He also expressed the commitment of his government to transfer resources and negotiate powers of self-government. At the same time, Rae said that neither the constitutional impasse nor jurisdictional battles with the federal government would be permitted to limit progress in Ontario.

The specific objectives of the government were made clearer over the following months. In the November 1990 Throne Speech, the negotiation of self-government and improvement of the quality of life in Aboriginal communities were identified as government priorities. The next month, Bud Wildman outlined to approach the government would take on Aboriginal issues in a statement to the Ontario legislature.⁴⁰ The Minister's Aboriginal agenda set out five objectives for the government:

1. Significant progress in the establishment of First Nation self-governing arrangements, through direct negotiations with First Nations;
2. The negotiation of land claim settlements with First Nations;
3. Raising the quality of life in Aboriginal communities by improving provincial programs and funding arrangements;
4. Addressing the self-government and program needs of Aboriginal peoples who live off-reserve by working with Aboriginal peoples and their associations; and
5. Negotiating a statement of political relationship with First Nations to guide the future relationship between the government of Ontario and First Nations in the province.

Wildman also noted that the Government would pursue discussions on its relationship with the Ontario Metis Aboriginal Association (OMAA), the Ontario Native Women's Association (ONWA), and the Ontario Federation of Indian Friendship Centres (OFIFC).

In the same statement, the minister outlined fundamental principles to guide self-government and land claims negotiations:

³⁹ "Bob Rae, Premier, Province of Ontario," in Frank Cassidy, ed. *Aboriginal Self-Determination, Proceedings of a Conference held September 30 - October 3, 1990*, (Lantzville and Victoria, B.C.: Oolichan Books and Institute for Research on Public Policy, 1991), pp. 152-153.

⁴⁰ Ontario Legislative, *Debates*, December 18, 1990, p. 2848.

1. Ontario's role in both constitutional discussions and self-government negotiations would be guided by the recognition of the inherent right to self-government;
2. Aboriginal representatives would be treated as equals at the negotiating table;
3. The province would respect the special trust relationship of the federal government with Aboriginal peoples; and
4. Wherever possible, the province would undertake comprehensive community negotiations to resolve both land claims and self-government issues at the same time.

While generally consistent with the increasing activism and agenda of the Peterson Government as symbolized in its 1985 corporate Aboriginal policy, the Rae Government's 1990 agenda in reality marked the start of a new phase in Provincial-Aboriginal relations. In the vigour of its commitment, in its recognition of the inherent right and in its declared determination not to let constitutional discussion or jurisdictional conflict impede progress in Ontario, the Government communicated a powerful message to the people of Ontario and raised high expectations in the Aboriginal community.

The question then confronting the Government was: How are these commitments to be put rapidly into effect? Much of the balance of this study is taken up with describing and assessing the efforts to do just that, focusing on broad corporate policies in this chapter and specific policies and programs in the next.

The Statement of Political Relationship

In August 1991, the provincial government and First Nations leaders met at Mount McKay, near Thunder Bay, to formally sign a historic *Statement of Political Relationship* (SPR).⁴¹ The SPR, signed by the Premier, the Minister Responsible for Native Affairs, and representatives of most First Nations⁴² acknowledged that First Nations "exist in Ontario as distinct nations, with their governments, cultures, languages, traditions, customs and territories..." The parties to the SPR agreed that:

The inherent right to self-government of the First Nations flows from the Creator and from the First Nations' original occupation of the land... Ontario recognizes that under the Constitution of Canada the First Nations have an inherent right to self-government within the Canadian constitutional framework and that the relationship between Ontario and the First Nations must be based upon a respect for this right.⁴³

⁴¹ See Appendix B for a copy of that agreement.

⁴² Exceptions were the Chippewas of Nawash, Chippewas of Saugeen, and Cockburn Island First Nations.

⁴³ *Statement of Political Relationship*, signed at Mount McKay, Ontario, August 6, 1991.

The SPR committed the parties to respect the existing treaty relationships and to facilitate the further exercise and implementation of the right through the treaty-making process, constitutional and legislative reform, and agreements.

With the signing of the SPR, Ontario became the first provincial government to formally recognize the inherent right of self-government of Aboriginal peoples, and achieved one of its five Aboriginal Affairs objectives. At the level of principle, the government accepted the First Nations' view of the inherent right, and the language used to describe the right. At the other end of the spectrum, the signing of the SPR also signalled the formal acceptance by nearly all First Nations in Ontario of a role for the Provincial Government in negotiating self-government. While the SPR was a big step for the Ontario government to take, it was also a major and difficult leap for some First Nations, given their treaty links to the British Crown and their historic ties to the federal government.⁴⁴

The SPR is a statement describing a political commitment to enter into further negotiations, but is not legally binding. Some commentators note:

It remains vague about specifics, provides no timetable, allocates few resources, and ignores the problems of implementing the right to self-government within the constitutional framework. It remains to be seen how willing the province will be to transfer the resources and share the powers that would allow the Aboriginal communities to take control over land, resources, services and programs.⁴⁵

While heralding the signing of the SPR as a new era in provincial-Aboriginal relations, some native leaders also expressed hesitations. Concerns continue to be echoed on the Aboriginal side that the SPR may simply be part of a historical pattern of governments making paper commitments to Aboriginal peoples, but taking no action. A recent comment by the Chiefs of Ontario reflects this position:

No significant progress has been made to resolve any outstanding issues since the signing. The act of signing into process political sentiments has been the only and most significant feature of the Statement of Political Relationship.⁴⁶

Some Aboriginal representatives also express caution about how Ontario interprets the inherent right, voicing apprehension that the province views self-government in a limited form, similar to

⁴⁴ D. Smith, *The Seventh Fire: The Struggle for Aboriginal Government*, (Toronto: Key Porter Books, 1993), p. 129.

⁴⁵ A. Fleras and J. Leonard Elliot, *The Nations Within: Aboriginal-State Relations in Canada, the United States and New Zealand*, (Oxford University Press: Toronto, 1992), p. 100.

⁴⁶ Chiefs of Ontario, "Submission to the Royal Commission on Aboriginal Peoples", August, 1993, p. 32.

band government under the *Indian Act*.⁴⁷

The Ontario/Aboriginal Round Table

In the fall of 1991, the Province and the Aboriginal signatories to the SPR formed the Ontario/Aboriginal Round Table to ensure that dialogue would continue between First Nations and Ontario on the implementation of the Statement. The Round Table included four representatives from each side, and was co-chaired by Bud Wildman and Ontario Regional Chief Gordon Peters. Representatives on the government side with Wildman were the Minister of Citizenship, the Attorney General, and the Parliamentary Assistant to the Premier. While the Round Table activity focused on SPR implementation in its early days, its work was overtaken rapidly by constitutional developments, and discussions shifted to options for negotiating the entrenchment of the inherent right. The Round Table became a forum for the coordination of the respective constitutional positions.

Since the referendum, there has been one meeting of the Round Table, in April 1993, in an atmosphere clouded by suspicion and disappointment in the aftermath of the Charlottetown Accord's defeat. While the intent was to identify issues and discuss the future role of the Round Table, little was achieved, due in part to the tense atmosphere and an overcrowded agenda. The future role of the Round Table remains uncertain, and Aboriginal organizations have not been funded for further participation in the Round Table. However, ONAS officials acknowledge the need for some kind of umbrella structure to oversee the implementation of the SPR.

The Charlottetown Constitutional Round

The constitutional discussions that took place during 1992 provided a national venue within which the Government of Ontario's relations with Aboriginal peoples could be expressed. The Ontario Premier was active on two fronts. First of all, he was the First Minister who pushed most aggressively for the full participation of the representatives of Aboriginal people in the constitutional discussions. Despite the ultimate referendum failure of the Charlottetown Accord, this procedural innovation may prove to be one of its more enduring legacies. Secondly, the Premier and Government of Ontario vigorously supported the entrenchment of the inherent right to self-government in the Constitution and led the negotiations which produced substantial draft amendments relating to this issue which provided, not only for the statement of the right, but for its negotiation and implementation.

As with previous rounds, the 1992 constitutional negotiations constituted a major diversion of effort from other matters, both for the Government and for the participating Aboriginal organizations. Most people to whom we spoke acknowledged that the time and effort that went into the constitutional negotiations was time and effort that could not be applied elsewhere.

⁴⁷ See for example, testimony of Bill Nothing, Executive Director, Northern Nishnawbe Education Council, before the Royal Commission on Aboriginal Peoples, December 1, 1992, Sioux Lookout, Ontario, p. 6.

Statement of Political Relationship Guidelines

Implementing the SPR and the rest of the Aboriginal agenda presents a significant challenge for the Ontario government in terms of policy, procedures and government organization. While bilateral efforts via the Round Table to discuss the implementation of the SPR have foundered, the government has made attempts to develop internal procedures for implementing the SPR. In August 1992, ONAS issued a draft set of guidelines to assist ministries in interpreting and implementing the SPR.⁴⁸ The guidelines contain both general explanatory comments on the government's interpretation of the SPR, and some specific directives for ministries.⁴⁹

The general comments provide insight into the government's approach to self-government. The guidelines point out that Ontario distinguishes between the *source* and the *content* of the inherent right. While acknowledging that the source is inherent, the province maintains that the content is to be determined through negotiations. In contrast, many First Nations maintain that the content of the inherent right presumes full jurisdiction which can be exercised immediately.

The SPR Guidelines also note that, while the Statement applies only to the First Nation signatories, "all Aboriginal communities should be treated with respect within the spirit of the Statement". Ministries are directed to continue to develop working relationships with off-reserve Aboriginal communities and organizations through consultations on sectoral issues of importance to these communities, and to develop consensus and/or to negotiate solutions to the issues. The guidelines emphasize the responsibility of ministries to address the self-government and program needs of Aboriginal peoples living off reserves as one of the five objectives of Ontario's Aboriginal Agenda.

The guidelines also provide specific advice to ministries on new working relationships that should arise out of the SPR. Ministries are directed to:

- Develop new modes of interaction that involve First Nations as partners in government initiatives affecting them, including negotiations rather than simply consultation;
- Make internal operational adjustments in the treatment of Aboriginal issues. Each ministry should consider operations ministry-wide as having implications for relations with First Nations, and develop ways of coordinating the ministry's activities;
- Address the possible implications of policies pertaining to Aboriginal issues for institutions, agencies or boards affiliated with ministries, such as school boards;
- Increase their knowledge about Aboriginal cultures, traditions, histories, territories, and

⁴⁸ Ontario Native Affairs Secretariat, *Statement of Political Relationship, SPR Guidelines: Questions and Answers*, (ONAS, August, 1992).

⁴⁹ The guidelines were not intended to provide a definite interpretation of the SPR, as the process is by nature evolutionary. Also, despite ONAS' efforts to prepare the guidelines together with First Nations, they received no response to the draft guidelines from First Nations. As well, during the time of their preparation, work was ongoing in relation to the constitutional accord. Thus, the guidelines have remained in draft form only.

beliefs;

- Recognize and deal with the holistic Aboriginal approach to issues, which may require a number of ministries to work jointly on initiatives; and
- Ensure that new initiatives do not infringe on Aboriginal or treaty rights.

The SPR Guidelines also reflect the ongoing concern of the Ontario government with third party interests. While expressing a commitment to self-government negotiations, the guidelines emphasize that the province will not sign agreements without appropriate public consultation.

The Cowie Report

Early on in its mandate, the government recognized that it was ill equipped to meet its own Aboriginal affairs agenda and in 1991 commissioned Ian Cowie, a lawyer specializing in Aboriginal matters, to conduct an internal review of Aboriginal affairs policy and management.⁵⁰ The review identified a number of shortcomings in the province's capacity to meet its objectives. It pointed to the need for change in a number of areas:

- Improved structures, policies and guidelines for self-government and land claims negotiations;
- An alignment of federal and provincial responsibilities;
- The integration of policy and strategy across ministries to meet the government's objectives;
- Policies and structures to address the needs of Aboriginal people off-reserve;
- A revised legal and fiscal framework; and
- A means to address third party interests.

In response to the April 1992 report, Cabinet directed in June of that year that a special task group be established to conduct a review of the government's policy framework, organizational processes and delivery mechanisms.

Self-Government and Land Claims Task Group

The Self-Government and Land Claims Task Group was led by Grant Wedge, then an Assistant Deputy Minister in ONAS, and staffed from ONAS, ministries and central agencies across the government. It was given a mandate to make recommendations in the following areas:

- An improved corporate policy framework and procedural guidelines to govern provincial negotiations;
- Improved structures and processes for preparing, negotiating, and implementing agreements;
- Improved partnerships with Aboriginal peoples;
- Options for relationships with off-reserve Aboriginal people;

⁵⁰ *Government of Ontario, Aboriginal Issues: Policy and Management Review, April, 1992.*

- Options to consider third-party interests and public communications regarding Aboriginal negotiations; and
- Implications for provincial planning and development of new fiscal arrangements with Aboriginal governments and the federal government.

The initial phase of the Task Group's work took place between July 1992 and February 1993. Six interministerial work teams completed a review of government processes, structures and current policies. The results of Phase I, which have been reviewed and approved by Cabinet, are:

1. An interim approach to negotiating self-government using the 1989 guidelines and draft SPR guidelines;
2. Interim Aboriginal Representation Guidelines to assist the government in identifying groups with which to consult and negotiate;
3. An approach to guide stakeholder consultations and the involvement of municipal governments and local school boards in negotiations; and
4. An interim three phase process for self-government and land claims negotiations.

The Cabinet responded to the completion of Phase I of the Task Group's work in two ways. First of all, it directed the Task Group to carry out further work developing policy frameworks and guidelines for negotiations in the following areas: self-government, land claims, and off-reserve lands and resources. The guidelines are intended to provide direction to government negotiators, and to clarify the government's approach. Policy development has been completed regarding land claims and is still underway in the other areas, and we will provide a sketch of developments in a moment.

Secondly, the Cabinet noted that the framework policies, while necessary, were designed to offer guidance in the medium-term: what about the short term? What significant advances could be accomplished during the next year or two? In response to the Cabinet's desire to see some more immediate action the Deputy Ministers' Committee was given a mandate to establish a corporate plan and an agenda of 'deliverables'.

The Deputy Ministers' Committee and the Corporate Plan

The Deputy Ministers' Committee on Aboriginal Issues was very active in the months following its inception and the ministries and their deputies produced an Aboriginal corporate plan of more than 50 significant items that could be tackled in reasonably short order, grouped into eight major themes. Themes include self-government, land claims, and public education. These are spread across the Government ministries. Ministries met with ONAS staff to discuss and confirm their priorities and the Deputy Ministers' Committee and CCJ approved a "focusing", placing the items in categories according to their priority and frequency of reporting. Ministries are required to report to the Deputy Ministers' Committee on the progress they have made in advancing these items - every three months for primary items, every six months for secondary items and annually for tertiary items. The corporate plan is also reviewed by ONAS at bi-weekly meetings. The plan is

part of an effort to make progress on major issues, given the limits of provincial financial and human resources, as well as the need for overall coordination. It is intended to focus the province's Aboriginal agenda.

Framework Policies

As we noted above, Phase II of the Task Group's work involved the development of three general policy frameworks that Cabinet identified as being necessary.

The largely internal process by which they are being elaborated has been the subject of some critiques by Aboriginal organizations. Criticism has been levelled by the Chiefs of Ontario at the lack of involvement of Aboriginal organizations in the development of the policy frameworks, which it sees as contrary to a partnership approach. In a presentation to the Royal Commission on Aboriginal Peoples, Gordon Peters commented that "to us that is not conducive to the kind of relationship we are talking about because we are simply being asked again to consult on things that are already prepared. We are being asked if we can in some way Indianize provincial policy so we are assured that there is some cultural relevance to the policies that are being brought forward."⁵¹ On the government side, however, officials emphasize that there is a need to consolidate the government's own approach in these areas before they are in a position to negotiate. The government needs to "get its act together" internally before going out into the field. One interviewee noted the difficulty of determining when to bring Aboriginal representatives into the process.

Framework Policy for Self-Government Negotiations

The framework policy for self-government negotiations is intended to update the guidelines issued in 1989. ONAS officials do not expect the new policy to be completed until early in 1994. Work in this area was slowed down by the 1992 constitutional discussions, and Ontario is currently exploring various options for the exercise of the inherent right to self-government. At a meeting in Inuvik in July 1993 leading up to the Annual Premiers' Conference, Ontario outlined 4 possible options. The Minister, Bud Wildman, came out in support of the position that at least some Aboriginal communities may well have existing Aboriginal rights to self-government recognized and affirmed by section 35 of the *Constitution Act, 1982*. A number of commitments were made in Inuvik and at the Annual Premiers Conference in August 1993 to explore this area further.

As noted above, the Task Group has developed an interim approach using 1989 guidelines and draft SPR guidelines, pending the new policy. Ontario is also committed to the implementation of specific projects during self-government negotiations, in sectors which are under negotiation. An example is the introduction of a justice pilot project in Whitefish Bay, a community engaged in

⁵¹ Testimony of Chief Gordon Peters, Chiefs of Ontario, before the Royal Commission on Aboriginal Peoples, Toronto, Ontario, June 4, 1993.

self-government negotiations with Ontario and the federal government.

Framework Policy for Land Claims Negotiations

The second part of Phase II of the Task Group's work is the development of a framework policy for land claim negotiations. The province's traditional approach has been to review and respond to claims "based on the criteria of legal obligations and fairness in an historical context,"⁵² and Ontario has had no written or stated policy on land claims. However, the Cowie report pointed out that land claims policy formulation has been driven by specific negotiations and lacked coordinated planning.

The current exercise is an effort to consolidate existing approaches to land claims negotiations; the policy under development was described by ONAS as "nothing extraordinary". As of the fall of 1993, a draft Cabinet submission had been prepared and was waiting to go through the approval process. This policy outlines the province's objectives and principles, and includes guidelines for negotiations in different cases, including unsold unsurrendered land, reserve land, and Aboriginal title based claims. The framework also outlines requirements for each stage of the land claims process.

Part of debate over land claims in Ontario has centred on definitions and the key policy questions involving the federal governments' categories of land claims.⁵³ Ontario and the federal government have different categories of claims and processes for each category and the province must operate around federal constraints.

Guidelines for the Negotiation of Lands and Resources

Work on guidelines for the negotiation of land and resource issues is being carried out by the Ministry of Natural Resources and a set of guidelines is expected by early 1994. The ministry is currently looking at various options and models, ranging from government control, with Aboriginal advice, to exclusive Aboriginal management. They are attempting to provide models at various points along the scale between exclusive government management and full Aboriginal management. The Ministry is also developing a series of principles to provide direction for the models.

Expenditure Review

⁵² McNab, "Aboriginal Land Claims in Ontario," p. 77.

⁵³ *Ibid.*

While ONAS is operating in the self-government and land claims policy environments, a third element of Ontario's efforts to improve its approach to Aboriginal affairs has been a review of expenditures and the development of a long term fiscal plan. Through a study of the overall level of expenditures on Aboriginal individuals, governments and organizations (based on a review of spending on Aboriginal specific programs, Aboriginal components of general programs, and general programs with a high Aboriginal utilization rate) the province is trying to assess whether its spending on Aboriginal peoples reflects its Aboriginal affairs agenda. The review also arises from the need to develop an overall fiscal framework to negotiate the new relationship and the development of funding principles. It is also an attempt to put the province in a better position to negotiate with the federal government over fiscal responsibility for Aboriginal peoples. Like other provinces, Ontario is particularly concerned about fiscal restraint, and the federal withdrawal of financial commitments to Aboriginal peoples.

Ongoing Self-Government and Land Claims Negotiations

While ONAS and ministries are engaged at a planning level in an extensive effort to revamp the province's policy framework and focus its priorities in Aboriginal affairs, the province continues to participate in a number of ongoing self-government and land claims negotiations.

Self-Government

There are five sets of self-government negotiations ongoing in Ontario under the federal community based self-government policy. The Ontario government is formally involved in two negotiations: with the Whitefish Bay First Nation, a Treaty #3 Ojibwa nation in northwestern Ontario; and with the United Indian Councils, a federation of nine Mississauga, Chippewa and Potawatomi bands. In both cases, there are two sets of parallel negotiations (federal-Aboriginal and provincial-Aboriginal).

- In the case of Whitefish Bay, the parallel approach is part of an effort by the First Nation to protect its treaty relationship with the Crown.⁵⁴ Whitefish Bay was the first major self-government negotiation to include Ontario, and the province is involved in discussions on land and resources, justice, health and social services. Consistent with Ontario's commitment to address priority needs during comprehensive negotiations, the Province and the Whitefish Bay community developed a pilot project in justice in 1992 to implement an Elders Court to deal with criminal, family and civil matters. The project is in the developmental stage. A ministry of health official interviewed noted that these negotiations provided a useful example of how to operationalize the SPR, as ministries were forced during the negotiations to examine their practices, and establish priorities for self-government negotiations. Public consultations were held in the fall of 1993.

⁵⁴ D. Smith, p. 109.

- The United Indian Councils has been developing community based government for the past eight years, and put together a framework agreement with the federal government in May 1990. The provincial government only recently came to the negotiating table.

The Ontario government is making a strong effort to finalize these negotiations, as the federal government's policy mandate for community based self-government negotiations ends in March, 1994. This places all parties in a difficult position, as they are unlikely to complete work and have sub-agreements in all areas under negotiation by March. At this time, it is not clear what, if anything, will replace the federal policy.

Agreements to negotiate under the federal policy have also been entered into by the federal government and three other tribal councils or First Nations - the North Shore Tribal Council, Grassy Narrows Ojibwa, and Kasabonika First Nation. Ontario is an observer in the first two cases, but does not have a formal mandate to negotiate.

The Province is a party to wide ranging self-government negotiations with the Nishnawbe-Aski Nation (NAN) that have been under way since the signing of the MOU in 1986. Unlike the Whitefish Bay negotiations, the NAN MOU does not fit into the federal community based policy, as it provides for comprehensive negotiations to establish a framework for all NAN communities. Negotiations are continuing through the Indian Commission of Ontario, and various sectoral initiatives will be discussed in the following chapter.

In terms of tripartite negotiations for off-reserve Indians and Metis, OMAA requested in the spring of 1993 that the federal and provincial governments enter into a trilateral framework agreement to establish the parameters of an enumeration process which would provide the foundation for trilateral negotiations for Metis self-government. With the exception of enumeration, no discussions are currently taking place.

Land Claims

The Ontario Government is also involved in a number of land claims discussions, including high profile negotiations with the Teme-Augama Anishnabai (TAA) and the Algonquins of Golden Lake. As in self-government negotiations, Ontario is concentrating corporate efforts on bringing current negotiations to a close. Some are trilateral, while others involve only the province and Aboriginal groups.

- In December 1990, Ontario and five chiefs from Manitoulin Island signed a historic land claim to settle issues of unsold, unsurrendered land, following decades of negotiations and the signing of an agreement in principle with the previous government in July 1990. This agreement stands out as the first bilateral agreement signed by the province, as it was done without the participation of the federal government, which disclaimed any responsibility.
- Ontario, Canada and the Mississauga #8 First Nation have been engaged in tripartite negotiations under the ICO on a dispute over the location of the northern boundary of the

reserve. Discussions began in 1986 over the dispute, outstanding since the reserve was first surveyed in 1852, following the signing of the Robinson-Huron Treaty. The parties reached the latest agreement in principle in December 1993.

- After years of litigation, community strife and much publicized blockades, the Ontario Government and the Teme-Augama Anishnabai (TAA) reached a bilateral agreement in 1990 that recognized the need to negotiate a treaty of co-existence. This stemmed from a claim dating back to 1877, when Teme-Augama Anishnabai first denied that they had surrendered title to land in the Temagami region, claiming that it was not included in the Robinson-Huron Treaty of 1850 signed by other area bands. In 1991, TAA lost a Supreme Court decision on their claim to the land, but substantive negotiations began in August 1992. A agreement in principle was reached in the Temagami dispute in August 1993 between Premier Rae and the Minister, Bud Wildman, and Chief Gary Potts to provide the TAA with 298 square kilometres of land for their own use, \$15 million in compensation, and shared stewardship over approximately 1,295 square kilometres around Lake Temagami. The agreement was accepted by the TAA, but rejected by the Temagami First Nation in a November 1993 referendum. Attempts to reach a settlement continue.
- The Algonquins of Golden Lake have asserted a claim over land in the Ottawa River watershed from Mattawa to Hawkesbury. In 1983 Golden Lake submitted a comprehensive claim for unextinguished title to the land. In early 1991, Ontario and the Golden Lake Algonquins signed a "Statement of Intent" which committed Ontario to begin negotiations in June 1991 on provincial aspects of the claim. The federal government maintained observer status until December 1992, as it had not decided on the validity of the claim as a comprehensive claim. In 1992, Canada joined the Golden Lake negotiations, accepting it as a claim based on Aboriginal title, falling outside the criteria of its comprehensive claims policy. Negotiations have a two year timetable. Public consultations began in February 1993, and a series of nine public open houses were held over the spring. This approach was labelled innovative by the parties, as public input was sought before negotiations on substantive issues began.⁵⁵ Once again, this is indicative of the government's commitment to the consideration of third party interests.
- Ontario also hopes to have final agreements in two sets of negotiations on unsold reserve land (Garden River and Nippising) by early 1994.

⁵⁵ "Public Input Sought on Algonquin Land Claim," *Globe and Mail*, May 29, 1993, A7.

Conclusions

At a corporate level, Ontario's efforts are focused on developing the capacity to implement the Government's Aboriginal Agenda in a coherent and efficient fashion. As many government officials interviewed declared, Ontario is now trying to "operationalize" the inherent right. The work of the Self-Government and Land Claims Task Group and Deputy Ministers' Committee on Aboriginal Issues reflects Ontario's attempt to equip itself to do so. ONAS officials note that it will take some time to tie the different areas together. In the meantime, an impression of confusion and activity without concrete output is left in the minds of a number of Aboriginal people we interviewed in connection with this study. At the same time, Ontario civil servants took the view that the Government was doing what it had to do in getting its act together, and wondered whether the Aboriginal communities and organizations would be capable of sustaining an active negotiating process in the areas they had identified as priority.

Meanwhile, there has been some advances in both self-government and land claims. However, there are various obstacles to progress. For provincial ministries, self-government negotiations challenge traditional bureaucratic approaches. Self-government and land claims negotiations are also areas which are particularly complicated by the federal-provincial interface. In the case of the federally initiated community based self-government discussions, such as Whitefish Bay, the province must take part in a negotiation process over which it has little control. Provincial officials interviewed pointed to the need to expedite the process, and the difficulties posed for the Province by the constraints of the community-based self-government negotiations, which are based on delegated powers, a federal position inconsistent with the provincial acceptance of the inherent right. Frustration with federal policy was expressed by both government officials and Aboriginal representatives in Ontario.

The incoming federal government appears to accept a position on the inherent right that is consistent with Ontario's and much closer to the aspirations of Aboriginal people than is the concept of delegated powers. If this position does indeed shape the federal government's approach and negotiating mandates, it may make the management of the federal-provincial interface easier for all concerned. One cannot expect, however, that the situation will change overnight.

CHAPTER VI. POLICIES AND PROGRAMS OF THE ONTARIO GOVERNMENT

In this section, we turn to the specific policies and programs of the Ontario government, and their contribution to Aboriginal self-government. The province is active in numerous sectoral areas that are vital to Aboriginal visions of self-government, such as education, policing, social services, economic development, and the regulation of land and resources. In addition to this sectoral division, geography is also important in the application of policy. Funding and programs delivered by Ministry of Northern Development and Mines cut across various sectors, and have a substantial impact on Aboriginal peoples living in the north of the province.

As we noted at the outset, we have characterized self-government not just in terms of full scale jurisdiction, which may be the ultimate end of many Aboriginal communities, but also in terms of how, in the policies and programs of individual ministries, Aboriginal communities are able to make specific, pragmatic steps toward self-government. This section looks at those policies and programs that are directed specifically at Aboriginal peoples or display a high Aboriginal content, as well as structural and institutional relationships between ministries and Aboriginal peoples.⁵⁶ In our analysis, we illustrate and illuminate recent trends and developments and offer some impressions and conclusions on progress made and problems encountered. An examination of individual policy and program areas provides a picture of the extent to which political principles and rhetoric surrounding the government's commitment to the inherent right of self-government are matched by financial support and actual progress on the ground.

Government Policies and the Urban Environment

In recent years, Aboriginal organizations have placed a growing emphasis on the need to improve services and develop self-governing structures in urban centres. The increase in the urban Aboriginal population since the 1950s has resulted in 2/3 - 3/4 of Ontario's Aboriginal population residing in urban areas. The urban population is diverse, made up of Aboriginal people from different nations, treaty areas and cultural backgrounds. At the same time, they share common difficulties and distinct needs in relation to self-government. What may appear to be only a small step on reserve may be a major development in an urban context, where Aboriginal peoples currently lack even the limited governing powers of First Nations.

In 1981 the Task Force on Native People in the Urban Setting set the lofty goal of a "comprehensive and coordinated policy towards Native people in Ontario urban areas."⁵⁷ While this goal has not been met, there have been developments in service delivery and programming,

⁵⁶ Much of this information is drawn from a database developed by the Ontario government containing an inventory of programs that are "Aboriginal specific" in some respect. Ontario Native Affairs Secretariat, *Ontario Government Programs, Services and Expenditures in Support of Aboriginal Peoples: Program Descriptions, Volume II of the Database*, ONAS, August 1991.

⁵⁷ *Task Force on Native People in the Urban Setting*, p. 10.

especially in the Toronto area. These include Aboriginal Legal Services of Toronto, the Metro Toronto Police Aboriginal Peacekeeping Unit, and many other agencies. Recent provincial governments have shown an increased interest and involvement in urban Aboriginal concerns, as evidenced in particular by the inclusion of off-reserve self-government and program needs in the 1990 Aboriginal Agenda. The Ontario Federation of Indian Friendship Centres and other Aboriginal organizations have been consulted on a variety of recent initiatives, including family violence, education and training, health, long-term care for seniors and disabled, housing, economic development, and racism.

However, a recent OFIFC report highlights problems of unemployment, inadequate housing, limited education, racism, family violence, health issues, lack of services and supports for growing urban Aboriginal population and suggests that there has been little change since the 1981 report.⁵⁸ While urban concerns were included as part of the 1990 Aboriginal affairs agenda, current efforts remain diffuse and there is not yet a coherent policy for addressing the self-government needs of the off-reserve population.

Government Policies and Aboriginal Women

Within the Ontario government, the special needs of Aboriginal women have been singled out as a particular focus of the Ontario Women's Directorate (OWD), which acts as a central advocacy agency for women. The OWD employs an Aboriginal policy analyst and the directorate reviews Cabinet submissions to ensure that the concerns of Aboriginal women are addressed, monitors the treatment of issues affecting women in self-government negotiations, participates in interministerial committees on policy development, and funds various public education and community based projects related to the status of women. The OWD has been responsible for the coordination of spending across 16 ministries for initiatives dealing with wife assault and family violence. Under this umbrella, resources have been allocated to shelters and counselling services for Aboriginal women, and to the development of an overall strategy to counter family violence in Aboriginal communities. The OWD is one of four lead government agencies in the joint development of an Aboriginal Family Healing Strategy between Aboriginal organizations and several ministries, a unique approach to policy development that will be discussed in Chapter 7.

The Ontario Native Women's Association receives core funding from ONAS and has been involved in a variety of Ontario government initiatives. ONWA has been focused traditionally on program issues, although it has been active in the constitutional and political arenas.

Aboriginal women have been identified as a target group for some policies and programs, but most policies and programs affecting Aboriginal women are those of general application, or those targeted for Aboriginal peoples as a whole. Of 175 programs identified as "Aboriginal specific" in

⁵⁸ Ontario Federation of Indian Friendship Centres, "Urban Aboriginal Peoples in Urban Areas: A Report to the Royal Commission on Aboriginal Peoples," August, 1993, p. 7.

a 1991 Ontario inventory, Aboriginal women are identified as special target groups for only two programs, Wife Assault Prevention Initiatives, and the Ontario Native Women's Directorate Community Grants Program. However, there are also a number of child and family programs that serve Aboriginal women.

Government Policies and Aboriginal Youth

Like Aboriginal populations across the country, Ontario's Aboriginal population is characterized by its youth. The future development of Aboriginal communities depends heavily on the fortunes of the current generation. The large youth population indicates a particular need for programs related to child care, education, youth services, job training, as well as language and cultural retention.

While there are various programs that affect Aboriginal youth, and some that are targeted specifically, there appears to be no particular focus placed on Aboriginal youth by the government. Of the 175 Aboriginal specific programs, eleven are directed at Aboriginal youth, and eight at children and families. Many of the programs were initiated in the 1970s and 80s. Programs include, among others:

- Child and family services: Support for child welfare (counselling, placement, foster care, adoption), including First Nation child welfare agencies; and support for day nurseries, including on and off-reserve Indian day care centres.
- Young Offenders: The Native Family Courtworker Program provides referral, counselling, information and other support services to Aboriginal youth involved with the court system. The Ministry of Community and Social Services also provides some funding for wilderness camps that provide Aboriginal-specific custody.
- Education: An Aboriginal component of Heritage Languages Program and the Native Student Retention Program which funds 3 pilot projects to reduce the Native student dropout rate.
- Recreation: The Li'l Beavers program, delivered by Friendship Centres to provide culturally appropriate social and recreational activities for Aboriginal children in cities.
- Employment and Skills Training: Environmental Youth Corps, Native Rangers Program.

Unlike the case of Aboriginal women, there is no unit with a mandate to act as a Aboriginal youth advocate, or to coordinate youth policies and programs.

Sectoral Policies and Programs

The current relationship between the Ontario government and Aboriginal peoples in the province is extensive and complex. Some ministries, such as Community and Social Services, or the Native Community Branch of the Ministry of Citizenship, have delivered services to Aboriginal communities for many years, while the role of other ministries is quite recent. In addition to the delivery and funding of specific programs, ministries are involved in negotiations with Aboriginal

groups over a wide range of issues. Many departments now have Aboriginal units or offices, to coordinate policy development, work with Aboriginal organizations, carry out negotiations, and provide links to ONAS and other ministries. As a result, a specialized community of bureaucrats dealing with Aboriginal affairs has developed.

Ontario Ministries with Aboriginal Affairs Units

- Attorney General
- Citizenship (Native Community Branch)
- Community and Social Services
- Consumer and Commercial Relations (Aboriginal Gaming Section)
- Education and Training
- Environment and Energy
- Health
- Natural Resources
- Northern Development and Mines (within the Policy Coordination Branch there is a Coordinator of Native Policy and Native Policy Advisor)
- Solicitor General and Correctional Services (First Nations and Contract Policing Branch)
- Transportation

Notes:

The Ontario Women's Directorate has a Policy Analyst for Aboriginal Issues within the Justice and Designated Groups Unit.

The Ministry of Housing has several policy advisors in the Housing Policy Branch who devote considerable time to the Aboriginal component of the jobs Ontario Homes program.

The Ministry of Intergovernmental Affairs has a person in the Office of Constitutional Affairs and Federal-Provincial Relations assigned to the Aboriginal portfolio.

The Ministry of Municipal Affairs also has several staff in the Government Liaison Unit, Corporate Management Services Division, who work on Aboriginal issues, but not exclusively.

The majority of policies and programs that affect Aboriginal peoples are those of general application. However, there are a number of Aboriginal specific initiatives within general policies.

As well, the development of specialized Aboriginal policies has begun in areas such as health and family violence. There also appears to be a greater commitment to consultation and partnership in

policy and program development. In terms of self-government, Aboriginal involvement in provincial programs still remains largely at the level of self-administration. However, there are some pilot projects and other initiatives that provided for greater flexibility and the development of Aboriginal alternatives to the existing system.

As of 1991, Aboriginal peoples were the exclusive client group of 81 Ontario programs; 61 programs contained a specific Aboriginal component. In 1991/92 provincial ministries spent approximately \$336 million on expenditures targeted to Aboriginal peoples, communities and governments.⁵⁹ Of this amount, \$80.4 million was reimbursed by the federal government under cost-sharing arrangements. Taking into account federal reimbursements, total provincial expenditures were approximately \$255.8 million. About \$20 million of the expenditures (6%) went to one time programs. \$19 million was devoted to salaries and wages (less than 1% of total ministry budgets for salaries and wages). Sixteen provincial ministries had Aboriginal targeted programs, but 84.5% of the government's expenditures of Aboriginal peoples flowed through five ministries: Community and Social Services (32.9%); Health (26.7%), Solicitor General and Correctional Services (9.6%); Ontario Native Affairs Secretariat (9.2%); and Northern Development and Mines (6.1%).

Health and Social Services

Structures and Institutional Relationships

Both social services and health have been areas of substantial Aboriginal-provincial interaction. This began with the federal transfer of responsibility for the delivery of social services through bilateral agreements on welfare programs in the 1950s and 1960s. Since that time, the level of provincial involvement has grown. Both the Ministries of Community and Social Services (MCSS) and Health have specific units designated to address Aboriginal issues. Although individual programs in child and family services, social assistance, child care and other areas of MCSS involvement are dealt with by various units within the ministry and area offices, MCSS has a Native Affairs Secretariat that was formed in 1990. At that time, MCSS identified the need for an overall strategic framework for Aboriginal services, and created the office in part to develop the framework. Since the SPR signing, Secretariat staff have been subject to increasing demands from within the Ministry on how to respond to the *Statement*, limiting its time for overall policy

⁵⁹ This information comes from *1991/92 Ontario Expenditures on Aboriginal Peoples, Communities and Governments: Analysis of Expenditure Data Obtained from 1993-94 Estimates*. Ontario Native Affairs Secretariat and Treasury Board, May 1994. This is a pilot data base. Expenditure information does not capture mainstream programs of general application, where clients are not identified by ethnicity. It includes programs or expenditures for which Aboriginal peoples, communities, governments or organizations are the exclusive client group; expenditures within a general program that can clearly be identified as being in support of Aboriginal people; and expenditures for salaries, wages and employee benefits of staff that spend a minimum of 60 per cent of their time working on Aboriginal policies, programs and/or issues. The pilot data base has a number of limitations, including some inconsistencies between ministries in the presentation of data.

development. The Secretariat also coordinates policy, provides executive support, and liaises with ONAS, other ministries and the federal government.

In the Ministry of Health, the Aboriginal Health Office has a number of functions, including policy development, self-government negotiations involving the ministry, advocacy, coordination of the ministry's approach to Aboriginal health, and liaison with Aboriginal organizations.

Policies

Both MCSS and Health have, or are developing, some specific policies in relation to Aboriginal peoples. One of the most notable cases is the Ministry of Health's exercise to develop a comprehensive Aboriginal health policy. In October 1991, the Minister of Health committed the ministry to work in partnership with Aboriginal organizations to develop an Aboriginal health policy. A first planning meeting was held in December 1991 between organizations and the Aboriginal Health Office. In January 1992, Aboriginal health was identified as a strategic priority for the ministry and a commitment was made to develop health policy in a collaborative manner, consistent with the spirit of the SPR. Representatives from eight Aboriginal organizations⁶⁰ and the ministry have been shaping the policy. The Aboriginal organizations developed a preliminary outline of objectives and processes, which formed the draft terms of reference for policy development. One of the objectives of the process was "to establish a strategy by which governments, Aboriginal and Provincial, will address Aboriginal health needs and priorities in the context of the inherent right to self-determination/self-government."⁶¹ The ministry provided funding of \$360,000 to the organizations for province-wide community consultations, which took place in 1992. The steering committee completed a draft policy in June of 1993. The draft policy is based on principles of Aboriginal control and traditional health, and focuses on health status, access to services, and planning and responsibility for health care. At the time of writing, the draft policy had been ratified in principle by the status Indian organizations, approved in principle by the Ministry, and was on its way to Cabinet.

In discussions with Ontario officials, this initiative was identified as an indication of a new approach to policy development, consistent with the SPR. The policy involved significant Aboriginal involvement in the identification of needs, and collaboration in the formulation of the strategy. It attempts to address Aboriginal self-government and service needs in a comprehensive fashion. However, the actual results of the exercise remain to be seen. The Ministry has also made a number of other policy changes consistent with Aboriginal interests, including special exemptions from provisions of the Regulated Health Professions Act for traditional Aboriginal healers and midwives providing services to members of the Aboriginal community. The Tobacco

⁶⁰ Ontario Native Women's Association, Ontario Metis Aboriginal Association, Nishnawbe-Aski Nation, Union of Ontario Indians, Association of Iroquois and Allied Indians, Grand Council Treaty #3, Chiefs of Ontario, Ontario Federation of Indian Friendship Centres.

⁶¹ Ontario Federation of Indian Friendship Centres, *Summary of Findings Report: Aboriginal Health Policy*, (OFIFC: 1992).

Control Act tabled in the legislature in November 1993 includes exemptions for traditional uses of tobacco, such as healers carrying out ceremonies in hospitals.

MCSS policies affecting First Nations and Aboriginal peoples have been more diffuse, and until recently there has not been a similar attempt to develop a comprehensive approach to Aboriginal services. As noted earlier, the Ministry's Native Affairs Secretariat began the preliminary work in 1990 on an Aboriginal policy framework, and in 1991 it became clear that this framework would need to provide an MCSS response to the Statement of Political Relationship, within the context of the existing constitutional and jurisdictional situation.

In December 1991 the Minister of Community and Social Services invited the leadership of the provincial First Nations and Aboriginal organizations to participate with the ministry in the joint development of an MCSS strategic framework for Aboriginal services. After preliminary discussions in 1992, the First Nations tabled their social services position paper with the Minister and advised that all ministry frameworks and initiatives should be consistent with the principles contained in their document, declining participation in a joint process to develop the MCSS framework. There was willingness on the part of the off-reserve Aboriginal organizations to participate in the development process and discussions will continue with those organizations. Further internal development of the MCSS framework in 1993 coincided with a comprehensive ministry restructuring process. In April 1994 the ministry shared with the First Nations and Aboriginal leadership a working document which laid out a strategic direction for MCSS Aboriginal services. Within this new strategic direction the ministry will "pursue those changes necessary to enable First Nations and Aboriginal communities to design, plan, manage and control their own social services."⁶²

In order to begin moving the ministry in this direction, a number of activities are planned. Together, they are intended to produce the following outcomes:

- a) the establishment of negotiation processes to transfer control of specific services;
- b) proactive issues resolution processes;
- c) support for community development and capacity building and enhanced ministry understanding of the SPR and First Nations/Aboriginal political structures and processes;
- d) enhanced intergovernmental relations, protocols and communications;
- e) financial mechanisms that will facilitate the transfer of control; and
- f) clear accountability within the ministry for all activities related to Aboriginal services under the new strategic direction.

It is anticipated that the framework will support current innovative activity within the Ministry and ensure timely resolution of corporate Aboriginal policy issues impeding policy and legislative reform.

⁶² MCSS Aboriginal Services Transfer Initiative - A Strategic Framework, March 31, 1994. Working document, Mission Statement.

With regard to legislative reform, the 1984 *Child and Family Services Act* (CFSA), developed in consultation with First Nation leaders, included special provisions to recognize that Aboriginal peoples should be entitled, wherever possible, to deliver their own child and family services in a manner consistent with Aboriginal cultures, heritage, traditions, and the concept of the extended family. Part X of the Act allows permits designation of a "child and family service authority" as a Children's Aid Society under section 15(2) of Part I. In addition, Part XI permits regulations to be made exempting such authorities and bands from statutory or regulatory requirements under the CFSA. MCSS and First Nations leaders have continued on informal dialogue on the CFSA to discuss concerns and progress made. For First Nations, the Act was something of a bitter pill to swallow. While it does enable them to deliver their own services, it provides for only delegated powers, falling short of the full authority First Nations wish to exercise. In the area of child care, Aboriginal services must follow ministry guidelines. However, a reform process is under way, with Aboriginal communities determining their own consultation processes.

MCSS has also been involved in an extensive provincial social assistance review and reform project for the past five years. Six project teams set up under the Advisory Group on New Social Assistance Legislation included a First Nations Project Team, which examined the impact of the entire social assistance system on First Nations. In a May 1992 report, the team recommended that new legislation should include a First Nations specific enabling section that would allow First Nations the option of choosing to remain under the provisions of provincial legislation, negotiate a modified version of general provisions, or operate under a system designed by the community.⁶³ The team also made a number of short term recommendations for change that have been implemented. The team's four guiding principles; that social assistance must be First Nation controlled, determined, specific and based, have been endorsed by the All Ontario Chiefs Conference. The Ministry has begun discussions with the Chiefs of Ontario on setting up a parallel First Nations process for social assistance reform that respects the inherent right of self-government, and plans to hold discussions with off-reserve organizations.

MCSS and Health are two of four lead ministries in the development of the Aboriginal Family Healing Strategy, an initiative that will be discussed in Chapter VII. They are also working on a new approach to long term care for the elderly, disabled and chronically ill. In October 1991, MCSS, Health and the Ministry of Citizenship released a public consultation paper, "Re-Direction of Long-Term Care and Support Services in Ontario," which proposed major changes to long-term care in Ontario. Following the release of the report, Aboriginal organizations carried out their own consultations to discuss the contents of the paper and the current problems faced by Aboriginal peoples in the sector.

⁶³ Ontario. First Nations Project Team, *Principal Report on New Social Assistance Legislation for First Nations in Ontario*, May 1992.

Programs

Three Aboriginal child welfare agencies, Payukotayno and Tikanagan in the Nishnawbe-Aski Nation territory, and Weechi-it-te-win in the Treaty No. 3 area, have been designated as Children's Aid Societies under the *Child and Family Services Act*. Payukotayno provides service delivery to the James and Hudsons Bay area and has been operating since 1985. Along with child welfare, this agency administers programs for young offenders, children's mental health, and a variety of family counselling and prevention programs. Tikanagan serves 28 communities in the western and central regions of Nishnawbe-Aski territory and provides child welfare and counselling services. Weechi-it-te-win Family Services provides child welfare and counselling services to ten First Nations in the Treaty No. 3 area.

MCSS also supports Native Child and Family Services of Toronto, which was first provided with service funding in 1988. It is not mandated as a Children's Aid Society. NCFST's major function is casework - counselling, mediation, and advocacy to support families. It also runs a customary care program which is the first fully licensed off reserve residential placement program under the direct control of an Aboriginal community. As well, NCFST supports the Mooka'am Sexual Abuse Treatment Program, and a Youth Outreach Program.

MCSS also supports approximately 40 band operated child care centres, and 3 centres off-reserve. In March 1993, MCSS provided funding of \$800,000 under a jobsOntario capital grant to Mahmowenchike Inc. to build northern Ontario's first urban Aboriginal child care centre in Thunder Bay.

The degree of authority of the agencies described above is limited by terms of provincial legislation and the need to follow provincial policy and guidelines in the administration of these services. Aboriginal agencies are concerned that they operate just like non-Aboriginal Children's Aid Societies, and that incorporation in provincial legislation does not lead to self-determination. In testimony before RCAP, Tikanagan described its current situation as interim, and stressed the need for child and family services to be based on an overall framework for self-government.⁶⁴ Native Child and Family Services of Toronto was approved as administrative initiative, not as the result of a formal policy or as a consequence of political approval.

In the area of social welfare, nearly all bands in Ontario now administer their own welfare under provincial programs, and bands are considered as municipalities under the General Welfare Assistance Act.

Other areas in which MCSS supports Aboriginal run services include shelters which provide accommodation for assaulted Aboriginal women and children. MCCS funds staff services, child care workers, emergency transportation for six off-reserve and two on-reserve shelters. The

⁶⁴ Testimony of Tikanagan Child and Family Services before the Royal Commission on Aboriginal Peoples, Sioux Lookout, Ontario, December 1, 1992.

Ministry also funds four Native organizations in Toronto, Kenora, Thunder Bay which provide alcohol treatment and prevention services.

In terms of youth programs, MCSS supports the Lil'l Beavers Program, which is delivered through 19 Friendship Centres. It provides culturally appropriate social and recreational services for Native young people in urban areas. The program is funded solely by Ontario, with no federal cost-sharing. MCSS also provides funding for 25 community development workers and funds 16 family courtworker positions, seven of which are cost-shared with the Ministry of the Attorney General.

The Ministry of Health has a variety of general programs with Aboriginal specific components. In Toronto, Anishnawbe Health Toronto is funded as part of the ministry's Community Health Centres Program. It was incorporated as a non-profit organization and began providing health services in 1989. Anishnawbe Health is governed by a board of directors elected from the Aboriginal community and has a staff of 26. Core funding comes from the Ministry of Health, with some additional project funding from the Ministry of Citizenship and the City of Toronto. The organization has tried to move away from a "culturally sensitive" approach to be a "culture based" organization, grounded in traditional values and practices. Anishnawbe Health has established a Street Patrol program which is currently funded through short term grants from city of Toronto. The ministry also funds AIDS support programs, Emergency Health services, health promotion, and nursing homes on reserve.

Overall, developments in health and social services tend to be administrative. Changes to legislation and devolution of administration and delivery have allowed for more flexibility, and contributed to self-government at the level of program administration and delivery. But, as noted earlier, the degree of self-government is limited. However, there are some promising policy developments, such as the Aboriginal health policy initiative.

Justice and Law Enforcement

In both Ontario and across the country, justice and law enforcement are areas in which Aboriginal peoples have encountered serious problems with the existing system, resulting in a demands for the development of self-governing Aboriginal institutions. Through the Ministry of the Attorney General, and the Ministry of the Solicitor General and Correctional Services, the province is involved in policing, court-based and legal services, probation and parole, prison, services to young offenders, Native awareness training, and alternative justice programs. Approaches to Aboriginal programs have centred on the improvement of access to and understanding of existing systems and the development of justice alternatives.

Structures and Institutional Relationships

In the Ministry of the Solicitor General and Correctional Services, Aboriginal public safety was identified as a key aspect of the ministry's last strategic plan, and a committee of representatives

from units across the ministry was appointed to coordinate policy development to promote the achievement of the Aboriginal agenda. Key features of the ministry's agenda include the transfer of responsibility to Aboriginal communities, policy coordination, and policy development. With the amalgamation of the ministries of the Solicitor General and Correctional Services, attempts are underway to bring parallel structures in the two ministries together. The Ministry also has a special representative for First Nations policing, and a number of analysts who specialize in Aboriginal issues.

The Ministry of the Attorney General is involved in Aboriginal issues in several contexts, including the prosecution of individuals, land claims litigation, self-government negotiations, and development of policies and programs. The ministry has had an internal problem - much worse prior to the 1980s - in that its officials experienced in Aboriginal affairs gained their experience fighting native claims, often in collaboration with the MNR. Currently, the ministry is attempting to provide some consistency in its policies and procedures, with the establishment of a unit led by a director/manager to coordinate the approach to Aboriginal issues across the ministry.

Both ministries have a variety of institutional relationships with Aboriginal organizations. The Ontario Native Council on Justice provides a forum for Aboriginal organizations to develop positions on justice, and holds regular meetings with ministry liaison personnel. The Council began as the Native Advisory Committee of the Criminal Justice System, following the 1975 Federal Provincial Conference on Native Peoples and the Criminal Justice System. It was incorporated in 1988, and is now core funded entirely by Ontario (shared by the Ministry of the Attorney General, Correctional Services and Solicitor General, Community and Social Services, and ONAS). A NAN-Ontario Working Group on the administration of justice also meets regularly, and proposals are developed through this structure. The MAG has provided funding for NAN to participate in the working group, and for the development of legal education materials and pilot projects.

The Ontario First Nations Police Commission was established in 1983 as an advisory body and support for First Nations policing. It is made up of representatives from First Nations, the Ontario government, and DIAND.

Overall Policies

In 1991, the Ontario government justice review project was initiated to analyze the current justice system in Ontario, and native justice issues were included as a special component of the study. The development of the overall framework is now complete, but is not yet public.

Programs

- Policing

In policing, Ontario is involved in several types of programs to enhance Aboriginal involvement and control. First, there are specialized units within existing forces, such as OPP Fly in Patrols

which provide services to remote reserves. In Toronto, an Aboriginal Peacekeeping Unit was set up within the Metro Toronto Police Force in the spring of 1993 to improve relations between police and the Aboriginal community. The three person unit is mandated to provide outreach services to Aboriginal individuals and agencies, as well as training and education within the service and police college. This is the first unit of its kind in Canada.

Other arrangements operate under the Canada/Ontario/First Nations Policing Agreement (OFNPA).

The Ontario Indian (now First Nation) Constable Program was started in 1975 to provide on-reserve policing services by First Nation police officers under the auspices of the Ontario Provincial Police (OPP). The officers enforce federal, provincial and band laws. While they are recruited and hired by the bands, constables are accountable to the OPP Commissioner (except for band by-law infractions). The signing of a new OFNPA in 1989, which runs from 1991 to 1996, and budgets up to \$90 million to be spent over four years, permitted an increase in the number of First Nation constables policing reserves in Ontario from 112 to 132. First Nation constables are currently working in 67 (out of 129) reserves.

More importantly, for our focus on the development of self-government, the 1989 agreement also provides the framework for the transfer of the supervision of policing functions to First Nations. It commits the federal and provincial governments to negotiate the gradual transfer of control over policing to local First Nations constables which will be under the control of community or regional policing authorities, rather than the OPP.

To date, the Six Nations Police Service program is the first and only First Nation policing service to be developed within the OFNPA framework. Six Nations first negotiated a tripartite agreement in 1989, and has gradually taken over duties previously delivered by OPP. In 1992, the federal government, Ontario, and Six Nations signed the Six Nations Policing Agreement, providing for the development of a Six Nations policing authority. This updated the 1989 agreement and placed it as a sub-agreement under the umbrella of the OFNPA. A Six Nations Police Commission of six community members will administer a force of 16 constables.

Ontario, along with Canada and Quebec, is also a party to the Akwesasne Policing Agreement 1990-1993, which is a stand alone agreement outside of OFNPA due to the involvement of Quebec.

Under the agreement, 15 special constables are empowered to enforce all laws within Akwesasne jurisdiction. The police force will be overseen by an eight member Akwesasne Police Commission, independent of the Mohawk Council.

At present Nishnawbe Aski Nation is negotiating with the Solicitor General and the federal government to create a regional stand-alone police service and police commission. There are also ongoing negotiations with the Anishinabek Nation (four communities) and Wikwemikong First Nation (Manitoulin island) under the OFNPA. These negotiations have been underway for some time, and there is no indication when settlements may be reached. The ministry has provided some resources for research and groundwork, and has seconded sergeants as act as advisors for the NAN negotiations.

In discussions with ONAS and ministry representatives, the development of self-policing under the OFNPA was singled out as one of the most innovative developments in relation to Aboriginal self-government. It is an area in which there has been substantive progress, accompanied by funding and a commitment to further negotiations.

- Court-based and Legal Services

In addition to policing, Ontario funds a variety of court-based and legal services directed at and involving Aboriginal peoples. These include the Native Justice of the Peace Program, the Native Courtworker Program, and funding to native-specialized clinics under the Ontario Legal Aid Plan, such as the NAN Legal Services Corporation which was formed in 1990 to provide legal services and public legal education. It has been designated an area office through Ontario Legal Aid Plan.

A number of cases stand out. In Toronto, Aboriginal Legal Services of Toronto (ALST) was founded in 1991. It has a legal clinic funded by the Ontario Legal Aid Plan and a legal services unit that provides courtworkers and inmate liaison workers for Aboriginal peoples. ALST also runs a Community Council Program that diverts adults out of the court system into a community based process. We highlight this program for its contribution to Aboriginal control in an urban context. The project was conceived as the result of intensive negotiations with the Aboriginal community in Toronto and discussions with elders. In 1991, ALST received a \$100,000 grant to develop the project, and in 1992, the MAG funded ALST \$100,000 to administer the program. The proposal was essentially presented to the MAG, and the ministry was not significantly involved in its development. Those involved with its delivery note the ministry cooperated hesitantly at the beginning, but has become more supportive with the apparent success of the program. The program operates under a protocol with the Crown Attorney's office. Certain types of cases involving Aboriginal peoples can - at the ultimate discretion of the Crown Attorney - be diverted to a community council. While there are some charges that are not eligible, most criminal code offenses administered by the province can be diverted.

- Probation and Parole

Under a 1991 agreement with the Ministry of Correctional Services, the Akwesasne Justice Department provides probation and parole service for clients in their community, replacing the service which would normally be provided by MCS. Under the Native Community Corrections Program, the ministry has contracted with 40 Aboriginal peoples to assist in supervision of Native probationers, under the direction of an MCS probation officer.

- Alternative Justice

While most of the programs described above involve enhancements to the existing system to provide better access and understanding, there are a number of alternative and pilot projects that have emerged in recent years, consistent with Aboriginal control and concepts of justice.

The Sandy Lake Community Justice Program started in 1990 as a demonstration project to increase community involvement and control in the criminal justice system. An elders council sits in court,

and acts as equals in presiding over trials related to the Young Offenders Act, Criminal Code and Provincial Offenses Act. Elders are also involved in counselling, overseeing community service orders, and other prevention activities. The project received a favourable first year evaluation and Attorney General personnel expect funding to be renewed. The Attawapiskat First Nation Justice Project, funded about the same time as Sandy Lake, has a similar community based justice objective. An Elders panel appointed by the Chief and Council hears and passes sentences on adult and young offender cases that have been diverted from the Provincial Court by the Crown Attorney.

Grand Council Treaty #3 has received funding from the MAG and the federal department of justice for a 2 year project to define a justice system based on Ojibwa values, and research and consultations are taking place to develop a pilot model.

In August 1992, an agreement was signed between NAN and the Ministry of Correctional Services for the development of correction and related services in the north. It calls for discussion on the development and delivery of appropriate programs for native offenders, and the creation of new community-based corrections programs.

There are also several alternative programs for Aboriginal youth which are funded by the Ministry of Community and Social Services. Three wilderness camps serve as open custody and open detention centres: Camp Wee-Cha-hin is run by the Payukotayno James and Hudson Bay Family Services; Awashishuk Centre is also run by Payukotayno and has been in operation since 1984; and Cha-Ka-Besh Wilderness Camp has been in existence since 1986, and is operated by Tikanagan Child and Family Services.

Thus, in the sectors of justice and law enforcement, the trend has been toward more self-government in policing, with the establishment of separate police commissions through multi-year agreements. Steps in the administration of justice are much more tentative, and have been directed more toward culturally appropriate services than toward self-government. The development of pilot projects does provide greater room for Aboriginal control over the delivery of services and the shape of programs.

In a brief to the Royal Commission, the Ontario Native Council on Justice suggests that "the current direction and development of Aboriginal community justice initiatives in Ontario is highly congruent with the ultimate goals of Aboriginal self-determination."⁶⁵ The ONCJ notes that the SPR has helped to open new doors for justice initiatives with First Nations, concluding that "this is particularly true for programs which empower First Nations communities to assume increased control over areas of criminal justice."⁶⁶ However, some of the people interviewed for this study

⁶⁵ Ontario Native Council on Justice, "The State of the Justice System for Aboriginal Peoples in Ontario," report submitted to the Royal Commission on Aboriginal Peoples Intervenor Participation Program, June 1993, p. 30, footnotes excluded.

⁶⁶ Ontario Native Council on Justice, "The State of the Justice System for Aboriginal Peoples in Ontario," p. 22.

were more critical. While acknowledging the progress that has been made in some specific areas, they pointed to reductions in program levels and financial support in areas where the demand was expanding and the benefits were undeniable. More generally, it was asserted that there was a lack of direction and an unwillingness to confront the critical issues in the justice system.

Land and Natural Resources

Historically, land and natural resources have been a particularly contentious area in the provincial government-Aboriginal relationship. The field has been marked by long-running disputes over traditional Aboriginal territories and treaty promises, Aboriginal opposition to the imposition of provincial legislation and regulations, and by the damaging impact of resource development on some Aboriginal communities. Land and resource issues are closely linked to self-government, due to spiritual ties to land, and Aboriginal and treaty rights, as well as economic development. For many land based Aboriginal communities, control over resources is vital to their visions of self-government.

The management of lands and resources is also an area complicated by third party interests. The province has had to attempt to balance the competing interests of Aboriginal peoples, resource development, environmentalists, tourism and recreation interests and non-Aboriginal citizens. Land and resources continues to be an area in which the province is reluctant to surrender jurisdiction to Aboriginal peoples, although there have been some recent developments in co-management and the recognition of Aboriginal hunting and fishing rights related to the Supreme Court decision in the *Sparrow* case.⁶⁷

Structures and Institutional Relationships

The major provincial players in this field are the Ministries of Natural Resources, Environment and Energy, and Northern Development and Mines. Due to its role in wildlife management and enforcement, the Ministry of Natural Resources has been criticized frequently by Aboriginal organizations for violations of treaty rights, and there is a long history of resistance to Ontario fish and game laws.⁶⁸ In the Ministry of Natural Resources, the Aboriginal Policy and Operations branch is responsible for the development of policy, coordination of operations and the negotiation of agreements with Aboriginal communities. While land claims fall under ONAS' mandate, MNR is responsible for negotiations on resource access issues, and the branch is currently focusing its efforts on the negotiation of agreements in this area.

⁶⁷ The Supreme Court's decision in the *Sparrow* case laid down broad guidelines governing the scope and effect of section 35(1) of the *Constitution Act, 1982*. Legislation that infringes or denies the exercise of Aboriginal rights under section 35(1) could be challenged under that section, and must meet a rigorous standard of justification.

⁶⁸ see for example, United Chiefs and Councils of Manitoulin, "UCCM Fish and Wildlife Project", report submitted to the Royal Commission on Aboriginal Peoples, Intervenor Participation Program, June 1993.

Ontario Hydro, the province's largest Crown agency, also has a history of poor relations with Aboriginal communities in the province. Ontario Hydro has developed various structures to improve its relationship with aboriginal communities. In 1991, the corporation organized a board committee and operational group to address Aboriginal and Northern issues. Ontario Hydro also appointed a vice-president responsible for Aboriginal and northern affairs to manage the development and implementation of policy initiatives related to Hydro's involvement with Aboriginal and northern communities.

In addition to these internal structures to address Aboriginal issues, there have also been a number of joint structures developed in recent years for the co-management of resources and development. These include the Wendapan Stewardship Authority created in May 1991 to be involved in resource management of the Temagami area, with representatives appointed by Ontario and the Teme-Augama Anishnabai. It was the first move in the province to create a co-management regime over resource development on traditional land. In another example, the Windigo and Shibogama Planning Boards were set up under the Ontario-Windigo-Shibogama Planning agreement to advise the government on resource management of 27,000 square kilometres of land and waters in the NAN area. Costs are shared by the Ministry of Environment and Energy, Ministry of Northern Development and Mines, the Ministry of Natural Resources, and the Ontario Native Affairs Secretariat.

Policies

The most significant policy in relation to self-government is the Ministry of Natural Resource's Interim Enforcement Policy regarding Aboriginal rights to hunt and fish, which replaced the earlier "leniency" policy. In May 1991, the ministry announced the policy, which was intended to incorporate the government's Aboriginal affairs principles, reflect the guarantee of Aboriginal rights in section 35 of the *Constitution Act, 1982*, and respond to the Supreme Court decision in the Sparrow case. The policy was intended to minimize charges laid against status Indians under federal and provincial fish and game legislation while harvesting food in traditional and treaty areas, and remains in effect until individual agreements are negotiated with Aboriginal communities. The first agreement under the interim policy was signed in October 1991 with the Golden Lake Algonquins for the area of their land claim, which includes a section of Algonquin Park designated for hunting. The agreement produced strong opposition from sports groups and conservationists. Renewed agreements were signed in October 1992 and 1993 and include seasons, harvest limits and other hunting provisions. It also relied on greater public input and assurances regarding public safety, wildlife conservation and the protection of the park. However, the Interim Enforcement Policy continues to raise the ire of organizations such as the Ontario Federation of Anglers and Hunters.

The approach of the government has also been affected by recent judicial decisions. In January 1993, the Ontario Court of Appeal ruled in *R. vs Bombay and Bombay*, a case in which two Saulteaux people, beneficiaries of Treaty No. 3, were convicted on a number of fishing violations. The Court of Appeal found defendants not guilty and accepted as fact that there was a right

guaranteed by Treaty No. 3 to fish commercially. In the *Jones and Nadjiwon* decision, which centred on the province's restriction of the commercial quota available to the Chippewas of Nawash Council, the defendants were found not guilty, and the judge was critical of MNR quotas in his decision. The ministry was characterized as adversarial towards Aboriginal peoples, and was criticized for not meeting constitutional requirements under section 35.1. The province has decided not to appeal the decision, and to negotiate with the two Saugeen Ojibwa Nation bands.

As noted earlier, MNR is also involved in an extensive exercise related to policy development for access and management of land and resources, under the auspices of the Self-Government and Land Claims Task Group.

Ontario Hydro has also developed guidelines to structure its relationship with Aboriginal communities. The Rae government's 1990 Throne Speech directed the corporation to ensure that northern and native communities benefitted from its development proposals and ongoing activities.

Ontario Hydro made a commitment to ensure that the corporation's strategic focus and direction in relations with Aboriginal peoples reflected their interests. In 1990, it developed Aboriginal relations guidelines that include the recognition of First Nations as governments, respect for Aboriginal and treaty rights, and a commitment to address the interests of Metis and Aboriginal peoples living off-reserve. The corporation is also involved in negotiations with a number of northern bands about past grievances and the allocation of funds in response to their settlement.

Programs

The role of MNR in this area has been centred more on regulation than the delivery of programs. The Wildlife Management Program provides for the overall management and policy direction for hunting and trapping activities, including the allocation of licenses and enforcement of quotas. Aboriginal specific elements are related to treaty rights and special provisions for Aboriginal peoples living north of 50.

The Canada\Ontario Resource Development Agreement, cost shared on an equal basis between DIAND's Ontario Region and the Ministry of Natural Resources, has been in place since the early 1970s and is renewed every five years. It has funded a variety of resource development projects that support traditional pursuits in areas such as hunting, fishing, trapping, and tourism.

In November 1991, the federal and Ontario governments announced the Northern Ontario Development Agreement, covering forestry, minerals and tourism. The forestry program provides \$12 million for economic development for Aboriginal peoples through forest management on reserves, access to Crown land forest resources, and forestry training programs and community colleges and universities. In the tourism program, \$800,000 was allocated to Aboriginal tourism development. In June 1992, a \$120,000 joint project was funded under the agreement for a two year liaison service between its minerals project and area First Nations, to encourage First Nations to participate and make recommendations for future cooperation in the minerals field.

MNR also runs programs that encourage greater Aboriginal involvement in the planning of

provincial parks, and in areas such as forest fire protection. In January 1992 a working group with equal government and NAN representation was formed to make recommendations on an appropriate level of forest fire protection for isolated northern Ontario communities.

MNR does deliver some small Aboriginal specific programs, such as the Northern Native Rangers program, which provides training for Aboriginal peoples in several northern communities to assist MNR in program delivery. For Aboriginal youth, the ministry runs a number of training programs.

The Native Rangers program provides employment and skills training as junior rangers in several northern communities. As well, the Environmental Youth Corps, which is funded by the Ministry of the Environment and delivered by MNR, in cooperation with bands and Aboriginal organizations, provides training and work experience in resource management for Aboriginal youth during the summer months.

Negotiations

The Ministry of Natural Resources is involved in numerous negotiations on lands and resources, including land claims, co-management, timber management, and commercial fishing.

In November 1990, Canada, Ontario and the Nishnawbe Aski Nation reached the NAN Interim Measures Agreement, under the NAN MOU. It is novel agreement which commits the government to notify NAN regarding developments on Crown land that may have a significant impact on NAN communities. It also provides mechanisms for NAN to raise land related concerns during the negotiation of comprehensive lands and resources agreements. NAN and MNR have also reached an agreement on some guidelines for the management of timber on Crown land.

In 1991, a memorandum of understanding was signed with the Wabeseemoong (formerly Islington) First Nation to negotiate the co-management of natural resources, land use and economic development in the traditional areas of the First Nation.

In 1991, through the Indian Commission of Ontario, Canada, Ontario and six First Nations located north of Lake Superior, members of the Ojibway 1850 Treaty Council, signed an Interim Measures Agreement which established procedures for raising issues of concerns to parties during substantive negotiations regarding land and a larger land base, pursuant to a framework agreement reached in 1991. The Interim Measures Agreement also commits the governments to notify affected First Nations of planned developments and other activities that may affect that First Nations.

To date, most fishing negotiations have focused on access, rather than management, control or jurisdiction. In June 1993, a framework agreement was signed with the Union of Ontario Indians for the negotiation of matters related to use and management of the fisheries. The framework agreement is meant to assist individual First Nations that want to enter into specific agreements. While the agreement focuses on access to and allocation of resources, it does include a provision to permit discussion of areas of exclusive authority, shared authority and advisory involvement of First Nations.

Thus, there are signs of recognition of Aboriginal and treaty rights. The impact of the Sparrow decision on MNR policies has been significant and it has brought the guarantee of Aboriginal rights under section 35(1) into focus for the ministry. There is also movement toward co-management, and policy development about how to approach land and resource management. While relations appear to have improved, it is a complicated area, as discussions related to access, use, management and control of natural resources have encompassed the active involvement and frequent opposition of third party interests. A major issue for the ministry is the commercialization of fishing, an area in which there are significant third party interests resistant to Aboriginal rights.

Despite positive developments, there is still concern in some Aboriginal communities about discrepancies between MNR policy and practice. For example, in 1993 a submission to the Royal Commission, the United Chiefs and Councils of Manitoulin argued that while the *Statement of Political Relationship* lays out the basic principles for the conduct of relations between Aboriginal peoples, recognizes treaty rights and the inherent right of self-government, and indicates the willingness of the provincial government to negotiate issues, the relationship continues to be problematic:

Despite the existence of the Statement of Political Relationship between our Nations and Ontario, on the ground its effect has been negligible. What the Crown says publicly and what it actually does are not necessarily the same. On a practical level, the lack of interface between our governments means that we continue to be locked out of decisions that affect our future and the health of the resources. There is little meaningful exchange of information which may have an effect on harvesting levels and stocks, and no effective opportunity for us to participate in decisions that may affect fish and wildlife.⁶⁹

Aboriginal communities continue to complain of MNR sting operations, seizing of equipment, and harassment of Aboriginal hunters and fishers.

Economic Development and Labour

Structures and Institutional Relationships

Given the poor economic situation of many Aboriginal communities and individuals, both on and off-reserve, economic development is vital for the immediate well-being of Aboriginal communities, and the further development of self-government. Meaningful self-government requires economic growth and a significant degree of self-reliance. Economic development and labour programs cover a wide range of sectors, and are delivered by many ministries across the Ontario government. Major players in Aboriginal economic development are the Native

⁶⁹ United Chiefs and Councils of Manitoulin, "UCCM Fish and Wildlife Project, Submission of the Royal Commission on Aboriginal Peoples," p. 59.

Community Branch of the Ministry of Citizenship, and the Ministries of Natural Resources and Northern Development and Mines, and the Ministry of Economic Development and Trade.

For many Aboriginal communities, gaming is closely tied to both economic development and self-government, and the Ministry of Commercial and Consumer Relations has a mandate to negotiate gaming agreements with First Nations. The ministry has recently set up a specific Aboriginal Gaming Section to deal with all Aboriginal gaming issues.

Policies

Following the establishment of the 1985 corporate native affairs policy, Cabinet directed the Minister Responsible for Native Affairs to develop guidelines for the implementation of native economic development programs, based on three principles: 1) Aboriginal peoples should receive provincial programs and services on a non-discriminatory basis; 2) ministries are encouraged to develop native-specific services to meet the particular needs of Aboriginal people; and 3) provincial programs and services should emphasize initiatives supportive of self-determination and self-reliance, and should be developed in consultation with Aboriginal peoples. As part of the policy development, the Ontario Native Affairs Directorate commissioned a report in 1987 directed at the development of an overall framework⁷⁰, and a second study focusing on the economic status of native women.⁷¹ The overall report pointed out that most provincial economic development programs were universal, and not targeted to unique Aboriginal needs. It also noted the inadequacy of services for Aboriginal women and youth, and the lack of specific programs responding to the needs of different Aboriginal peoples, including Metis and urban residents. As well, there was insufficient provision for Aboriginal control over and participation in the design and delivery of programs.

In 1989, the Ontario Cabinet endorsed a native economic development policy, which was designed to assist ministries in addressing the needs of Aboriginal communities in a manner consistent with the government's 1985 corporate policy framework. Principles and policy statements underlying the policy include:

- a commitment to the incorporation of general native interests with respect to economic development into the programs, services and practices of Ontario.
- the reduction of disparities between Aboriginal and non-Aboriginal communities, as well as regions.
- compatibility with Native lifestyles, aspirations, and differences between regions and on and off-reserve communities.

⁷⁰ J. Philip Nicholson, Policy and Management Consultants, *Toward an Framework for Native Economic Development Policies and Programs in Ontario*, a discussion paper prepared for the Ontario Native Affairs Directorate, 1987.

⁷¹ J. Philip Nicholson, Policy and Management Consultants, Inc. *Economic Status of Native Women in Ontario*, (Ontario Women's Directorate and ONAD, May 1987).

- the right and responsibility of Aboriginal communities to take the lead role in planning and shaping their own futures with the involvement of the public and private sectors. The province will seek to transfer decision-making in the area of community economic development to Aboriginal organizations or institutions.
- an acceptance of the need for social and financial support services for Aboriginal women to assist them to participate in the wage and business sectors.

Along with the undertaking to promote Aboriginal control, the strategy provided that:

Where Ontario continues to deliver or has responsibility for economic development programs and services, Ontario shall ensure increased access and equity for Native people through:

- the revision of existing programs to increase relevance and address the special circumstances of Native communities;
- the development of Native-specific sub-programs;
- the establishment of Native advisory boards and/or equal participation in program design and delivery.⁷²

The government made a commitment to develop initiatives in the following areas: skills development, physical infrastructure improvement, control of and access to natural resources, support for natural resources development activities, and support for Aboriginal economic development and financial institutions.

Finally, the strategy outlined Ontario's intent to enter into Memoranda of Understanding with Canada and Aboriginal organizations in Ontario on economic development, which would outline the role of each level of government, maximize Aboriginal involvement in the development of policies and programs, and increase Aboriginal economic development access and opportunities.

Pursuant to the strategy, in April 1991, Canada, Ontario and the Ontario Metis Aboriginal Association signed a Memorandum of Understanding on Economic Development, setting up a process by which OMAA members could access economic development and skills training programs of both levels of government. The government's intent was to sign agreements with other Aboriginal organizations in the province as well, but status Indians groups withdrew, as negotiations on the MOU fell short of their expectations regarding control over economic development programs.⁷³ Currently, the UOI is seeking negotiation of an MOU under the auspices of the Indian Commission of Ontario, which is not acceptable to Canada or Ontario.

Programs

A variety of initiatives exist across a number of ministries, and the 1989 economic development

⁷² Ontario Native Economic Development Policy, *Working Paper*, (June, 1990), p. 3.

⁷³ Indian Commission of Ontario, *1989-1991 Report of Activities*, p. 24.

policy still provides the main framework for assessment. Many programs related to economic and infrastructure development have been funded through the general jobsOntarioCapital program, a five year \$2.3 billion fund announced in the 1992 budget to create jobs and support economic restructuring and community development. It is a component of the government's broader economic renewal strategy, jobsOntario.

In May 1991, the Ministry of Citizenship announced that a total of \$2.3 million would be provided for programs to ensure equity and access in business opportunities, jobs and training for Aboriginal peoples. \$700,000 of the total was allocated to a Native internship program, and \$1.5 million for a small business program. In July 1992, \$3.3 million was allocated for economic development, \$1.3 million of which was directed at northern Ontario. In April 1993, the ministry announced funding of \$1.5 million under the Ontario Aboriginal Economic Development Program for entrepreneurial and community development to 32 communities and First Nations. Through this program, funding has been provided for equity funds, various small business ventures and economic development corporations. As well, a Native Economic Development Participation Fund is administered by ONAS.

In December 1993, the government and Aboriginal organizations (AIAI, NAN, OFIFC, OMAA, ONWA and UIO) announced a new program to support Aboriginal community economic development. Aboriginal organizations worked together to design an Aboriginal-specific component to the jobsOntario Community Action program that will provide funding from economic development planning and long-term capacity development. Proposals for funding will be assessed by a project review committee consisting entirely of representatives from the political and other Aboriginal organizations in Ontario.

Negotiations

The Ontario government is also involved in negotiations to develop an Aboriginal labour board, an area that overlaps both economic development and training. The Ontario government recently established the Ontario Training and Adjustment Board project (OTAB), to set up an arms length agency from government to manage all labour adjustment programs. When Aboriginal organizations were approached for involvement in the OTAB steering committee, Aboriginal leaders requested a separate consultation process. At that time, the federal Pathways to Success program was beginning, and Aboriginal management boards had been put in place. Aboriginal political leaders suggested that with these boards, they already had structures that could manage provincial programs. Cabinet approved a separate Aboriginal consultation, and possible separate allocation of funds for Aboriginal peoples and a separate Aboriginal labour force development strategy. The Aboriginal Intergovernmental Committee on Training (AICOT) was formed with representatives from provincial organizations and Aboriginal Management Boards. AICOT received \$350,000 for consultations, and has submitted a Phase I report. Phase II is underway and its report is intended to address Aboriginal needs, gaps and duplications with federal policy, and relations with OTAB. Following the submission of a Phase II report, Aboriginal organizations are expected to enter into negotiations with the Ministry of Education and Training to discuss the development of an Aboriginal board. Meanwhile, the development of OTAB is complete. A

placeholder has been left in the legislation for an Aboriginal board member, pending the outcome of negotiations with the ministry. Interviewees noted that the development of an Aboriginal board is definitely seen as a self-government initiative, as it will be increasing Aboriginal control, management, design and delivery of programs.

Another area currently under negotiation is Aboriginal gaming. This is a contentious issue in Ontario and throughout the country, and members of several First Nations in Ontario have been subject to prosecution as a result of gaming activities. As in hunting and fishing, gaming is a sector in which many Aboriginal communities find the government to be resistant to their initiatives. One source described gaming as the prime example of an area in which First Nations want to move ahead, but the government refuses. Gaming on reserves was put on the Indian Commission of Ontario agenda in December 1990.

Under current policy, gaming is divided into charitable and casino gaming. In March 1992, the Ministry of Commercial and Consumer Relations was given a mandate to negotiate charitable gaming agreements with First Nations, Tribal Councils and provincial organizations to license and regulate their own gaming. Agreements involve several components, including a gaming code that provides a framework for rules, licensing and enforcement. In June 1993, the Mississaugas of Scugog, located near Peterborough, reached an agreement with the Ministry of Commercial and Consumer Relations. In October of the same year, the minister and Wauzhushk Onigum Nation (Rat Portage) signed a charitable gaming agreement, and are continuing negotiations on a gaming code which will elaborate the details of the agreement. The agreement also provides for the establishment of a gaming commission to control, administer and regulate gaming activities on reserve. Activities are to be conducted in accordance with the Criminal Code.

Since the NDP government first announced its intention to implement casino gambling, many First Nations have been actively lobbying the government. In early 1993, Ontario decided that First Nations would have "meaningful participation" in casino gambling, and the Ministry of Consumer and Commercial Relations was given the mandate to negotiate with Aboriginal groups the terms of their involvement. The ministry took an umbrella approach to negotiations, and met with about 24 First Nations as a group. The province established five parameters: it would support a single First Nations pilot casino; the pilot casino would be situated on a reserve; the casino would meet the same standards of integrity and security as the planned casino in Windsor, Ontario; the First Nations pilot casino would be operated in conformity with the Criminal Code of Canada; and profits would be shared among First Nations in Ontario. Through arrangements arrived at during the negotiations, Ontario First Nations were to send in proposals for sites by February 28, 1994. Fourteen proposals were received. First Nations at the negotiating table are nominating members for an independent panel of experts to choose a site, based on jointly developed criteria that includes economic, infrastructure and social considerations.

Perspectives on gaming appear to differ significantly. For many First Nations, the issues are self-government and economic development, although some First Nations are most interested in economic development, and are willing to put the sovereignty issue aside. For the ministry, the major issues appears to be the application of the Criminal Code and the regulation of gaming.

Ministry representatives note that this is an area of competing interests, as many charitable organizations rely on gaming proceeds, and the ministry must try to satisfy all parties. It appears from the government's position that it wants to maintain a significant degree of provincial control and regulation.

Education and Training

Education is a field, like many others, complicated by jurisdictional disputes and treaty promises. Federal government involvement in Aboriginal education arises from its primary responsibility for Indian education under section 91(24) of the *Constitution Act, 1867*, its spending power on post-secondary education, and the inclusion in the numbered treaties of commitments to maintain schools. As a result, the federal government has been heavily involved in Aboriginal education, but as in other areas, has limited its responsibility almost exclusively to status Indians living on reserves. The Department of Indian Affairs began the integration of status Indian children into the provincial system in the 1950s. Tuition agreements, whereby DIAND would provide provincial school boards with funding to permit status Indian students to attend provincial schools, were first introduced in Ontario in 1961. The provincial education act was revised in 1975 to legitimize the agreements.

At the national level, the push for Aboriginal self-government was centred on education in the early 1970s and the National Indian Brotherhood released *Indian Control of Indian Education*. The federal government adopted the NIB paper as the basis for its new policy in 1973, and encouraged local control and administration. Since then, DIAND has continued to enter into agreements with band councils to administer all or part of education programs and individual bands began to enter into tuition agreements with school boards. In 1982, the federal government terminated special education and financial assistance to off-reserve elementary and secondary First Nation students, a move viewed by Aboriginal communities as an abrogation of treaty rights. Currently, under the *Indian Act*, the federal government provides education to all status Indian students aged 6-18, living on reserves or Crown land.

A recent report commissioned by DIAND concluded that Indians have had little role in the formulation and implementation of education policy in most provinces. While there have been more tuition agreements negotiated by Indian bands and an increase in Indian advisory committees, "these developments, however, operate at the margins of provincial education laws, policies, programs and administration."⁷⁴

Structures and Institutional Relationships

The Ministry of Education and Training has a Native Education Policy Unit responsible for policy development across the ministry. While there are been advisors in various divisions for many

⁷⁴ J. Macpherson, *Macpherson Report on Tradition in Education: Towards a Vision of Our Future*, (DIAND: Ottawa, 1991). This report was commissioned by DIAND in response to *Tradition in Education*, an extensive 4 volume study published in 1988 by the Assembly of First Nations.

years, a specific unit was created in 1991, as a result of the ministry's involvement in negotiations regarding education under the Declaration of Political Intent.

Policies

In Ontario, the Ministry of Education first became involved in developing specific native education programs in the early 1970s. Since that time, programs have evolved in a piecemeal fashion, and the ministry does not have a discrete policy for elementary and secondary education. While there have been some attempts to develop an overall policy, political and bureaucratic will to do so has not been present, despite the potential for Aboriginal education initiatives within existing structures.

There have been some policies in specific areas. For instance, in 1991 a new policy on Aboriginal Languages provided that effective September 1992, school boards must offer an Aboriginal language if requested by the parents of 15 or more students. The ministry will provide financial assistance to offset the operating costs of the language program. However, Aboriginal people have been asking for native languages as a *first* language for many years with no success.

The 1988 Ontario Education Act allows for the appointment of Indian school board trustees where a board has entered into a tuition agreement with the federal government, band council, or a native education authority. Under the policy, if the number of students drops below 100 or 10 per cent of the board's average daily enrolment, representation is then at the board's discretion. The role of native trustees is also limited according to the elements of the agreement. The result is to allow for some representation of native parents on school boards, but their role may be limited, and the policy applies only to status Indians with tuition agreements. This remains a sore point with Aboriginal people, even though in the move toward self-government this would be looked at only as an interim measure, as Aboriginal trustees need to be increased to have at least some effect of education for children living off-reserve.

Programs

Aboriginal-specific programs funded or delivered by the Ministry of Education and Training include Native Teacher Education, Curriculum Development, Native Counsellors Training, and Heritage Languages. Other programs related to education include an Aboriginal component of the Northern Distance Education Network, and funding for community groups for basic adult literacy and skills training.

A pilot project underway in conjunction with the Ontario Federation of Indian Friendship Centres and local school boards merits particular attention. In 1989, a report on native student dropouts suggested that Friendship Centres would provide a better environment to encourage Aboriginal students to stay in school.⁷⁵ The ministry approached the OFIFC with a proposal for Friendship

⁷⁵ R. MacKay, *Native Student Dropouts in Ontario Schools*, (Ministry of Education, Ontario, 1989).

Centres to deliver education services to dropouts or potential dropouts. The proposal was accepted, and three sites were selected by the OFIFC for pilot projects. The program has proven successful, but the Ministry of Education and Training has taken a hands off approach and has not agreed to support and recognize the program beyond the pilot stage. This has led to frustration on the Aboriginal side, as the programs are seen as successful and operational and 10-12 more centres are waiting to offer programs. However, they require government support to keep the existing programs afloat and endorse new sites.

At the post-secondary level the Ministry and Aboriginal organizations have jointly developed a coordinated strategy for Aboriginal students. This, the Aboriginal Post-Secondary Education and Training Strategy, was one of the early and significant exercises in joint program development between Aboriginal organizations and the province. The development of the strategy began under the Liberal government, and was focused on Aboriginal access to education and retention in provincial post-secondary institutions, and did not deal with self-government. However, programs under the strategy have involved joint decision-making, contributing to greater Aboriginal control. In March 1992, seven colleges and six universities received \$1,846,000 to develop and improve programs and services to Aboriginal people in post-secondary institutions. Funding is to be used to increase the number of Native counsellors, for special projects including the development of courses, and for supplementary grants to offset the costs of program delivery. An Aboriginal Education Council was set up under the strategy to provide direction to the ministry. The Council exists through an order-in-council, and is more than advisory, as it has negotiated powers with the ministry to ensure as much as possible equal decision making regarding the strategy. The council is virtually the only Aboriginal body to have some "clout" in the field of education, and this kind of participation is missing at the elementary and secondary levels.

Negotiations

As we noted in Chapter IV, education is the only area being negotiated under the 1986 tripartite Declaration of Political Intent. Pilot projects have been established or are under development with the Mushkegowuk Tribal Council, NAN, the UOI, London District Chiefs Council, Six Nations, and Grand Council Treaty #3. These projects have been funded to allow the communities to identify needs for the delivery of second level services. Pilot projects are developed and tabled by the Aboriginal parties at the DPI table. In addition to the pilot projects, parties to the DPI have been discussing the core principles for a First Nations Education Law to apply to those Aboriginal peoples for whom they are negotiating, an amendment to the provincial Education Act to improve Aboriginal trustee representation on local school boards for First Nations with tuition agreements, and a set of guidelines for negotiating tuition agreements.

Despite these activities, progress has been slow and limited. While the pilot projects focus on the delivery of second level services, they have yet to show have they contributed toward advancing self-government. After approximately six years of negotiations there is no clear evidence of progress toward this end, and the First Nations Education Law appears to be the only initiative that may point the way toward steps to self-governance.

Housing and Infrastructure

Structures and Institutional Relationships

Major players in this field are ONAS, the Ministry of Northern Development and Mines and the Ministry of Transport. As noted earlier, the Native Community Branch of the Ministry of Citizenship has also been active in Aboriginal communities for many years in the promotion of community, economic and organizational development and part of its activities include infrastructure support. It has 11 field offices throughout the province, as well as regional offices in Sudbury and Thunder Bay. The Ministry of Housing also delivers non-profit housing programs that involve Aboriginal peoples.

Overall Policies

There is no single "Aboriginal infrastructure" policy, but this area can be included in the overall commitment of the province in its 1990 Aboriginal Agenda to improve the quality of life in Aboriginal communities. Infrastructure is also affected by policies in various areas, such as economic development.

Programs

The Aboriginal Community Capital Infrastructure Fund, a \$20 million, ten year fund, is administered by ONAS. It includes capital funds to meet government's commitment in its Aboriginal Agenda to raising the quality of life in Aboriginal communities. Capital funds have gone primarily to two Canada-Ontario agreements, Six NAN Bands and Plumbing Retrofit. The Six NAN Bands Agreement stands out. In 1990, soon after its election, the NDP government announced that it would provide land and financial resources so that the federal government could create reserves for six new NAN bands. While the six communities, known as the "six-pack", were granted band status in 1985, they did not receive reserve status, nor the normal services provided by the federal government. A formal agreement was signed in December 1991 to establish the six communities as reserves under the *Indian Act*, and to support basic community infrastructure. This was an unusual move, since the province had not funded this type of on-reserve project in the past. Aboriginal groups saw it as an early positive sign, and an indication of the Rae government's determination not to let jurisdictional disputes get in the way of improving the quality of life in Aboriginal communities. An Aboriginal run corporation was set up to administer about 70 per cent of the funding. ONAS suggests that it has been showing good results, providing a positive example of a self-governing institution.

The Ontario Native Community Infrastructure program administered by the Native Community Branch provides assistance on and off-reserve for the construction, acquisition and renovation of community halls. In 1991, it launched a pilot project to transfer a portion of the program to the control of the Ontario Federation of Indian Friendship Centres. The four year, \$4.5 million program operates under an agreement between the OFIFC and the Ministry, and provides Friendship Centres with capital funding for infrastructure development. Under the agreement, the

Ontario Federation of Indian Friendship Centres has control over the administration of the program and the allocation of funding to individual Friendship Centres, under joint guidelines established with the NCB. While NCB representatives sit at the table with an OFIFC review committee, decisions are made by the committee and the board of the OFIFC.

Aboriginal communities have also received funding for the construction and renovation of community centres and arenas under the Ministry of Tourism and Recreation's Fresh Approach Program, and through the jobsOntarioCapital funding.

In the area of off-reserve non-profit housing, some progress is being made toward greater Aboriginal control in program development and design. Under the jobsOntario Homes program, 2,000 of 20,000 units were designated for Aboriginal peoples in December 1992. Urban Aboriginal organizations have complained about access, the types of housing, management, the selection of tenants, Aboriginal involvement in delivery, and the distribution of housing units. Recognizing that the Aboriginal community had not been well-served by programs in the past, the ministry launched consultations with Aboriginal organizations (OFIFC, ONWA, OMAA and the Ontario Aboriginal Housing Association) during the winter of 1992-93 to determine how the program might be altered to better serve Aboriginal needs. During the summer of 1993, Aboriginal organizations were involved in program design, and were expected to present proposals to the government in the fall.

Ontario has also joined with the federal government in providing funding for services for homes on reserves in northern Ontario.

Culture

Structures and Institutional Relationships

Major ministries in this area include Culture, Tourism and Recreation, Citizenship (Native Community Branch), and Northern Development and Mines.

Policies and Programs

There are a variety of special projects and service grants in the area of culture. As part of the jobsOntarioYouth program, various initiatives were funded to promote cultural equity and access for black and Aboriginal youth. They included grants for job experience with various cultural organizations, theatre groups, and community radio stations. Some funding under the Community Radio Ontario Program has gone to the fostering of native radio programming and stations.

The Ministry of Culture, Tourism and Recreation has also provided grants for First Nations libraries, and created a steering committee for Native Library and Information Services. The Steering Committee will work with the ministry to develop a framework for province-wide Native Library and Information services and is to be comprised of representatives from the Aboriginal community.

Assessment and Conclusions

This overview shows that the extent to which there is Aboriginal control in policy development and program delivery varies. In general, the trend is toward the government tailoring part of a program of general application for specific Aboriginal needs. Government interviewees suggested that there is good will and fairly good cooperation, and that there has been a behaviour change on the part of line ministries. There is uncertainty about the extent of the inherent right and the meaning of a nation-to-nation relationship, but some ministries have begun to rethink their policies and operations. The development of an Aboriginal health policy was often cited as an example in our consultations.

While we note these positive developments, there are a variety of constraints, both within and outside of government. On the government side, ministry objectives and corporate Aboriginal affairs objectives can conflict, and in some cases an intransigent bureaucracy is attempting to hold on to turf. As well, progress is hindered by a lack of knowledge and understanding of Aboriginal cultures, history and perspectives, which demonstrates the need for a commitment to public education of the OPS and broader public sector. Public education is one of the eight key initiatives of the province's corporate plan to implement the Aboriginal Agenda. The province is also in a period of severe restraint, which seriously affects its capacity to meet its agenda and respond to the needs of Aboriginal communities. So far, Aboriginal programs and funding have not been seriously affected by the recent round of government cutbacks, due mainly to strong negotiating by the Minister Responsible for Native Affairs and the Secretary of ONAS. However, the future is less certain. This poses a serious challenge for the development of self-government in communities with inadequate services to begin with.

Constitutional structure and federal responsibility may also constrain the province (or at least, this is sometimes cited by the province as a constraint). Some government employees interviewed suggested that Ontario is willing to go further, be more flexible, and discuss a broader range of issues when the federal government is not present. On the other hand, the absence of federal involvement in some negotiations can also impede progress toward a final settlement.

On the Aboriginal side, progress is affected by the degree to which organizations and communities are willing to work with the province. ONAS officials note that in some cases, they must do a fair amount of selling of what the province can do. They also face difficulties in knowing with whom to negotiate. Within organizations there may be different views expressed at the political and community levels.

Finally, the interests and rights of third parties add another layer of complexity. It appears easier for the government to move ahead in areas where there are no third parties involved (as in health) than where there are (as in hunting and fishing). The first can draw on the widespread but shallow popular support for doing the right thing by Aboriginal people, while the second directly and deeply offends the specific interest of particular groups of people. This is clearly demonstrated by the active sports and commercial fishing lobby against special provisions for Aboriginal peoples. There is also a major gulf between ONAS and the spending ministries on the one hand, and the

Ministry of Municipal Affairs plus mayors and reeves on the other. Municipalities are reluctant to see decisions made which directly affect their territory and tax base, eg. the transfer of land to Aboriginal communities for land claim agreements. This simmering difficulty is not being seriously addressed by the province at the moment. When the province talks about third party consultations, it does not have the municipalities in mind.

Questions remain about what the province is actually willing to give up. Is it anything more than delegation of statutory authority in specific functional areas or self-administration? It is somewhat difficult to make firm conclusions at this point, as much policy is under development, and innovative programs tend to be pilot projects, with no certainty as to their future.

Chapter VII. NOTEWORTHY CASES

Introduction

In this chapter, we highlight two cases that are noteworthy in the context of Aboriginal- government relations in Ontario. The first case, the Aboriginal Family Healing Strategy, provides an example of a joint Aboriginal-government exercise in policy development. The second case we examine is the Indian Commission of Ontario, a tripartite structure through which a variety of disputes are negotiated.

Aboriginal Family Healing Strategy

Background

Since early 1991, Aboriginal organizations and the provincial government have been involved in a joint exercise to develop a comprehensive strategy to address family violence in Aboriginal communities. In interviews with representatives across government ministries, the Aboriginal Family Healing Strategy was pointed to repeatedly as a positive example of a new style of policy making consistent with the NDP government's commitment to a government to government relationship with Aboriginal peoples. For this reason, it provides an instructive example through which to examine the process and problems of developing policy in this new political context.

The strategy is in part a response to a 1989 report issued by the Ontario Native Women's Association.⁷⁶ The report drew attention to the high levels of family violence in Aboriginal communities across the province, and emphasized the ineffectiveness and inappropriateness of existing services. Highlighting the links between family violence, the history of government control of Aboriginal communities, and the poor social, political and economic position of Aboriginal peoples, the report called for urgent action to develop adequate and culturally appropriate services, and to approach the problem from a perspective specific to the situation of Aboriginal women.

The ONWA report was followed in November 1990 by the Ontario government's announcement of the "Violence Against Women: Wife Assault Prevention Initiatives," which included an ongoing commitment by the government to fund programs to prevent wife assault and identified the need for a specific Aboriginal family violence strategy. In January 1991, the government created an interministerial working group to examine the issue, and made a commitment to work together with Aboriginal organizations to develop a comprehensive strategy.

⁷⁶ Ontario Native Women's Association, *Breaking Free: A Proposal for Change to Aboriginal Family Violence*, (Thunder Bay: ONWA, 1989).

Strategy Development

In July 1991, a joint Aboriginal-government steering committee was formed to oversee an Aboriginal-driven community consultation process and a joint strategy development process. The committee included representatives from 11 ministries or agencies (Attorney General, Citizenship, Community and Social Services, Correctional Services, Education, Northern Development and Mines, Housing, Health, Solicitor General, Women's Directorate, ONAS) and 8 Aboriginal organizations (ONWA, OMAA, Ontario Federation of Indian Friendship Centres, UOI, AIAI, NAN, Grand Council Treaty #3, Union of Ontario Indians, and independent First Nations coordinated by the Chiefs of Ontario). Two federal representatives, from DIAND and Health and Welfare, also sat on the committee as observers. In a change from the usual approach to policy-making, Aboriginal organizations were brought in without a game plan previously set by the government. The steering committee, co-chaired by an Aboriginal and a government representative, established a plan for bi-monthly meetings, and set out a five stage process: development of the terms of reference, consultations, report and recommendations, feedback on the recommendations, and the articulation of a strategy and ratification. The terms of reference for consultations set out a number of principles for the strategy, including:

- addressing Aboriginal family violence needs in a flexible and culturally appropriate manner
- respect for the terms and principles of the Statement of Political Relationship in the consultations for the strategy;
- consensual decision-making by the steering committee;
- a community based process and strategy;
- a coordinated and comprehensive process and strategy⁷⁷.

In April 1992, the Minister Responsible for Women's Issues, Marion Boyd, and the Minister Responsible for Native Affairs, Bud Wildman, formally announced that the Ontario government and Aboriginal organizations would act as partners in developing the strategy. Funding of \$670,000, contributed by the eleven ministries, was allocated over two years. The announcement noted that the initiative reflected Ontario's commitment to work on a government to government level.⁷⁸ Apart from constitutional consultations, this amount is one of the largest sums ever provided by the province for consultations.

Between April and September 1992, Aboriginal organizations held consultations across the province. The consultations were intended to develop an Aboriginal definition of family violence; document community needs; review existing services, programs and policies; create an action plan for policy development; and identify roles and responsibilities in implementing the strategy. Over 6,000 people from 250 communities took part, resulting in the largest single consultation of Aboriginal people ever in the province. The findings from the consultations were consolidated by

⁷⁷ "Terms of Reference", Aboriginal Family Violence Consultation.

⁷⁸ ONAS, "Ontario Addresses its Commitment to Aboriginal Peoples," ONAS, November 1992.

the steering committee, which then developed a series of recommendations for Boyd and Wildman to take to Cabinet. General findings included a lack of services and financial and human resources, and cultural inappropriateness of those services that did exist. The consultation report concluded that "successful community controlled Aboriginal services and programs are those that have been designed, delivered and implemented by Aboriginal people." The report also presented an Aboriginal definition of the family violence, which was adopted by the Steering Committee:

Aboriginal people in Ontario define family violence as consequent to colonization, forced assimilation, and cultural genocide, the learned negative, cumulative, multi-generational actions, values, beliefs, attitudes and behavioural patterns practised by one or more people that weaken or destroy the harmony and well-being of an Aboriginal individual, family, extended family, community or nationhood.⁷⁹

The name of the strategy was also altered from Aboriginal Family Violence to Family Healing, reflecting the direction of strategy development and the Aboriginal approach to the problem.

The Steering Committee recommended to the ministers that:

1. Ontario recognize Aboriginal Family Healing as a priority (noting that the Government's Aboriginal agenda includes quality of life, which encompasses family healing);
2. The principles of healing and wellness guide the development of the strategy, and that the strategy be holistic and comprehensive, flexible, evolving, and ongoing to support the development of alternative and culturally appropriate services and programs. Services and programs should be designed, implemented, directed and controlled by the Aboriginal community. This was said to be in keeping with the SPR, and the report noted that "Aboriginal control and delivery of family violence programs and services was the most consistent recommendation overall that came out of the Aboriginal consultations."⁸⁰
3. The committee explore the role of the federal government, as jurisdictional uncertainty has created both a lack of and inconsistent services for Aboriginal peoples.

Following acceptance of these recommendations, the Steering Committee and smaller working groups proceeded to develop the strategy over the following months. A final report was prepared for September 1993. It presents a strategy to address the root causes and problems associated with family violence, and develops an approach based on prevention and community delivery. The strategy calls for a tangible shift in power, control and resources away from the province to Aboriginal communities. Rather than proposing specific models, the strategy provides a framework in which communities can develop initiatives to suit their own needs. The framework outlines the roles and responsibilities of Aboriginal organizations and the Ontario government and

⁷⁹ "Aboriginal Family Violence: Consolidated Report of Community Consultations", December 1992.

⁸⁰ Aboriginal Family Violence Joint Steering Committee, *Report of the Aboriginal Family Violence Joint Steering Committee*, December 1992, p. 8.

the resource and policy implications for implementation. The report also includes an overall management structure, and a preliminary estimate by Aboriginal organizations of the budget required for implementation. Some detail is provided about policy implications for various ministries, and potential legislative or policy changes are identified in preliminary form. The report also includes a section devoted to the justice system, proposing changes that do not require major legislative, structural or constitutional alterations. The report emphasizes that the government must ensure the long term commitment of resources, and ongoing comprehensive funding, and proposes that a series of protocols with the province outline the specific responsibilities of Aboriginal organizations and the government in such areas as strategy evolution and dispute resolution. In implementing the strategy, the report envisages a two stage process, beginning with the short term coordination of existing programs and funding, and moving to the devolution of control and authority to the Aboriginal community in the long term, subject to the readiness of both communities and the government, and the availability of resources.

At the time of writing, the report was before Aboriginal organizations and ministries for review, and the steering committee hopes for Cabinet approval in the spring of 1994. The outcome of this attempt in joint policy development remains uncertain. Vital issues of financing and implementation must be negotiated, and it remains to be seen whether real control will be passed to Aboriginal communities. The report also draws attention to the need to resolve jurisdictional uncertainties with the federal government, noting problems caused by federal off-loading, the failure to coordinate programs, and the federal focus on funding for status Indians on-reserve, which is inconsistent with the approach taken in the strategy. The report indicated the need for a mechanism for dialogue on these issues.

Discussion and Conclusions

While the outcome of this exercise remains uncertain, the process does signal a shift in the way policy is made. For the government, the process of developing the Family Healing Strategy represents an attempt to come to terms with its acceptance of a government to government relationship with Aboriginal peoples in the province. The final report describes the process in this way:

For both the Government of Ontario and Aboriginal communities, the Aboriginal Family Healing Strategy marks both a new approach to policy development and a tangible commitment to the successful realization of Aboriginal self-government. The Healing Strategy has been developed very much with the vision of self-government in mind and is in keeping with both the spirit and intent of the 1991 Statement of Political Relationship.⁸¹

Respondents in the government called the process "innovative." In many ways, the approach taken

⁸¹ Aboriginal Family Healing Joint Steering Committee, *For Generations to Come: The Time is Now. A Strategy for Aboriginal Family Healing*. Final Report of the Aboriginal Family Healing Joint Steering Committee, September, 1993, p. ii.

in this area corresponds with the government's guidelines for implementing the SPR. The Healing Strategy is a case in which initial stages of the policy process -- problem identification, definition, and policy development -- were either joint or controlled by Aboriginal organizations to a significant degree. In a break from standard government processes, the Aboriginal caucus participated in writing one of the Cabinet submissions, and the Aboriginal co-chair went before the Cabinet committee. One government representative on the steering committee noted that while the process was joint, ownership of the strategy really belongs to Aboriginal communities, as proposals came from the consultations, and the steering committee tried to remain true to the consultations in its work. Built on an Aboriginal definition of family violence, and the Aboriginal concept of the life cycle, the strategy was characterized as set in an 'Aboriginal paradigm.'

While most respondents spoke about the strategy in positive terms, it was clear that this new approach to policy making was not an easy task and presented major challenges for both parties. On the government side, ministries were forced to overcome the sectoral division of policy inherent in bureaucratic structures in order to meet Aboriginal requirements of a holistic, comprehensive approach. Some government respondents noted that this created a lengthy and cumbersome process, due both to the number of actors involved and the various interests that had to be balanced.

Others noted that some bureaucrats were uncomfortable with the interministerial, joint approach, and were concerned with their security and holding on to their turf. Participants from government also faced internal divisions over what their role should be, indicative of difficulties in coming to terms with the meaning of a government to government relationship in practice. Some committee members felt that they should negotiate with the Aboriginal caucus to develop mutually acceptable proposals, while others felt that the government should simply accept proposals put forth by the Aboriginal groups. While the government did not want to be seen as dictating the process, it also wanted a workable strategy. Tension was created as those on the Aboriginal side lacked the information base about practical issues such as costs and federal-provincial aspects.

There were also some difficulties due to the structure of government decision-making. The Aboriginal side wanted government representatives at the table who could make final decisions, but final decisions (budgets, etc.) must come from Cabinet. The process also began with policy people from ministries working on the strategy, but it became evident that more senior people were required. There were also questions of where to draw the line in a joint process. While the Aboriginal caucus did participate in writing one Cabinet submission, they did not participate in later submissions relating to funding issues, and internal sorting out of responsibilities between ministries. The government eventually decided overall budgets, leading some Aboriginal respondents to question the extent to which the process could truly be seen as a partnership.

As in other policy areas, on the Aboriginal side there were a variety of interests among parties. There is not *an* Aboriginal side, but a number of organizations representing different Aboriginal nations and interests. As a result, it was not easy to achieve consensus.

Finally, it is useful to examine this case -- recognized by participants as a significant step forward in the direction of self-government -- to obtain some sense of what the evolving shape of self-government might be. One might think that a fuller recognition of self-government would

lead to greater disentanglement between the governing structures of First Nations and the provincial government, and to greater autonomy for Aboriginal governments.

In fact, in the case of the Aboriginal Family Healing Strategy, one might argue that the reverse has happened, namely, a greater degree of interpenetration between the provincial administration and Aboriginal governing structures. Policy was developed through joint Aboriginal-provincial structures, although province-wide, provincially funded community consultations were carried out by Aboriginal organizations. A notable innovation, the participation of the Aboriginal caucus in the preparation of a Cabinet document and the appearance of the Aboriginal chair before the provincial Cabinet committee, carries the intermingling of government roles a step further.

In the absence of coherent Aboriginal government structures, an autonomous fiscal base and a clearly mandated set of responsibilities, it is perhaps unsurprising that self-government is as likely to mean creative joint management as it is to mean separate public policy-making and administration.

Indian Commission of Ontario

Background

In 1978, the Indian Commission of Ontario (ICO) was established as an independent body to identify, clarify and negotiate issues of mutual concern to Canada, Ontario, and First Nations in the province. The ICO is a unique tripartite institution in Canada, built on the belief that a neutral authority could provide an arena for the negotiation of solutions acceptable to all parties. Currently, the ICO is handling negotiations in a number of major areas, including specific land claims, policing, and gaming. As such, the ICO merits a closer look, both for its achievements and the obstacles to progress encountered by this type of structure.

The ICO was set up to facilitate the Ontario Tripartite Process (OTP), an intergovernmental negotiations mechanism established in March 1978 by Canada, Ontario and First Nations to address matters of concern to all parties, and to serve as an alternative to the courts for resolving conflict. The need for a high level forum for the resolution of issues was recognized, as was the reality that many issues involved both federal and provincial jurisdiction. Orders-in-Council by the federal and provincial governments established the OTP. The OTP is overseen by the Ontario Tripartite Council, which as it stands today is composed of the federal Minister of Indian Affairs, the provincial Minister Responsible for Native Affairs, and representatives from the First Nations of Ontario (AIAI, Grand Council Treaty #3, UOI, NAN, Chiefs of Ontario and Independent First Nations.)

In April 1978, Justice Patrick Hartt's preliminary report of the Royal Commission on the Northern Environment recommended the establishment of a body to facilitate the Ontario Tripartite Process. This led in September 1978 to the creation of the Indian Commission of Ontario, to act as a secretariat for Ontario Tripartite Council and a set of working groups operating under the OTC, and

to facilitate decision-making within the tripartite process. Hartt accepted the position as the first Commissioner of the ICO, and has been followed in that role by Roberta Jamieson (1985-1989), Harry Laforme (1989-1991), and Philip Goulais (1991 -).

In its first year, the process was fairly active. There were numerous meetings and planning sessions of the four working groups, Tripartite Council and Steering Committee. In 1979, representation on the Tripartite Council changed from collective representation through the Chiefs of Ontario to representation for each of the four status Indian organizations. However, progress in talks was limited and few issues were resolved. Between 1978 and 1985, the ICO met only irregularly. The tripartite Steering Committee fell into disuse by 1981. While the 1986 Declaration of Political Intent reaffirmed the commitment of the parties to the Tripartite Process, progress continued to be limited. Various reports issued by the ICO through the 1980s noted problems of lack of political will on behalf of the governments involved, the failure to empower negotiators, and a lack of understanding by the parties of the role of the ICO.⁸²

The situation reached a crisis point in the late 1980s. In its 1989-91 Report, the ICO noted that many participants in the negotiations had apparently lost confidence in the ability of the Commission to resolve disputes.⁸³ Parties had become frustrated with both the lack of progress in negotiations and the enormity of the issues at hand, and some questioned whether the mandate of the ICO should be extended. By the summer of 1989, the active negotiations facilitated by the ICO involved only 3 matters - policing on reserves, education negotiations under the Declaration of Political Intent, and fishing at and near Six Nations. Consultants were brought in by the parties to review the utility and effectiveness of the Commission and made a number of recommendations for change in a report released in August 1989.⁸⁴

A tripartite evaluation committee reviewed the report and made 4 major recommendations⁸⁵:

1. The senior steering committee should be re-established to enable senior officials of all parties to meet and monitor the progress of negotiations at the Commission, under the general direction of the Chiefs and Ministers of the Tripartite Council.
2. The mandate of the Commission should be extended for a five year period after March 31, 1990;
3. While the Commission should continue to be involved in land claims settlement, these negotiations must not monopolize the Commission's resources;

⁸² DEL Community Organization Services, Inc., *Process Without Contract: A Review of the Ontario Tripartite Process*, (Toronto: Prepared for the Tripartite Evaluation Advisory Committee of the Ontario Tripartite Process, 1982); Indian Commission of Ontario, *Report of the Indian Commission of Ontario*, (1985-1987).

⁸³ Indian Commission of Ontario, *1989-1991 Report of Activities*, p. 1.

⁸⁴ Fred Boden, Peter Turner and Associates, *Evaluation Report: Tripartite Process and the Indian Commission of Ontario*, (September 1989).

⁸⁵ *1989-1991 Report*, p. 32.

4. A more Commission driven management of negotiations should be encouraged, and the "Commissioner should have discretion to proceed with certain specific issues on his own initiative, subject to direction by the Senior Steering Committee."

These recommendations were adopted by the Tripartite Council in December 1989. In April 1990, the parties to the tripartite process agreed to renew the mandate of the ICO and the appointment of the Commissioner for a five year term. A new negotiation funding formula, the Participation Fund, which would provide a substantial increase in funding for the Indian parties, was developed, and implemented in August 1990.

The ICO also moved from a strictly neutral negotiator to a position of working more actively to develop a level playing field for negotiations. As well, the Commission hired more full time staff rather than relying almost solely on consultants.

The ICO Today

Under its current mandate⁸⁶ the ICO is required to facilitate negotiations and discussions to establish First Nation self-government and to resolve land claims. It has the authority to call meetings of parties, manage meetings, order the production of information and documents, and with the consent of the parties, suspend talks or refer matters to a court or tribunal, arrange mediation or arbitration to facilitate resolution of an issue, or recommend a formal inquiry into a matter as a way of clarifying issues. The most recent commissioner has not had to exercise powers of suspending talks or referring matters to a court or tribunal. The ICO also chairs meetings, keeps a record for all parties and generally monitors negotiations.

The ICO reports annually to the Tripartite Council, which meets only infrequently, primarily due to the difficulty of bringing the representatives together. As a result of the lack of meetings, and the number of items on the OTC's agenda, it has not functioned well. The real locus of decision-making has become the Senior Steering Committee, composed of the Indian Affairs Regional Director General for Ontario, the Secretary of the Ontario Native Affairs Secretariat, and senior officials in First Nations organizations. The terms of reference for the Steering Committee require it to meet at least four times each year, and its role is to manage the ICO agenda, determine each year's workplan, and monitor progress on issues and participation. Meetings are chaired by the ICO Commissioner.

The ICO has a staff of seven, which includes the Commissioner, a director of self-government negotiations, and a director of land claims negotiations. In various areas, including policing, individuals are hired on contract to advise or chair negotiations.

Each year, First Nations make a submission of items they would like to be part of that year's

⁸⁶ Order in Council P.C. 1992 - 248, February 10, 1992, Annex A, Functions and Duties of the Indian Commission of Ontario.

workplan. Some negotiations go to the ICO because it is the source of funding, others because of the nature of the issues or questions of jurisdiction. The Senior Steering Committee determines which matters will be considered by the Commission.

ICO operations are funded by Canada (2/3) and ONAS (1/3) (It is technically a three-way fund, but the First Nations' portion is covered by Canada.) Funding in 1992-1993 amounted to over \$1 million, excluding the Participation Fund. Canada and ONAS also fund the ICO for the co-ordination of land claim negotiations. The Participation Fund is contributed to by all three parties. A Participation Fund sub-committee includes senior representatives from each of Canada, Ontario, AIAI, NAN, Six Nations, Treaty #3 and UOI. Funding decisions are based on a review of individual proposals, and priority is given to projects involving negotiations, rather than implementation or pre-negotiation. Currently the First Nations Participation fund dollars go directly to the First Nations.

In its most recent report, the ICO noted that a period of consolidation and renewal for the Commission had followed the October 1992 referendum:

Perhaps as a result of recent Tripartite successes, as well as increased resourcing at the federal level to deal with specific land claims, and a renewed sense of urgency to progress on self-government issues, the Commission has been called upon more intensively by the parties than at any other time over the past three years to assist them to guide negotiations.⁸⁷

Currently, the ICO is involved in more than a dozen formal land claims against the federal and provincial governments. In relation to self-government, the Commission chairs negotiations on First Nations policing, First Nations jurisdiction over education, gaming on-reserve, fisheries co-management, and the creation of self-governing institutions for the Nishnawbe Aski Nation. It also coordinates discussions on First Nation economic development.

Negotiations involve various parties, according to the issues at stake. On the Ontario side, ONAS is not usually involved in actual negotiations. ONAS monitors progress, but leaves ministries and First Nations to negotiate on their own. Currently, ONAS is trying to help streamline the ICO process, and push ministries to take more responsibility and develop direct relationships with First Nations.

Recent achievements of the ICO process include the drafting of an agreement to establish the six new NAN reserves; the negotiation of four year province wide policing agreement; the Six Nations Policing Agreement, the NAN Self-Government Interim Measures Agreement; negotiations and drafting of the 1986 Indian Lands Agreement, and agreements in principle on the Great Lakes watershed specific land claim and a proposal for the settlement of Mississauga #8 land claim.

⁸⁷ Indian Commission of Ontario, *Tripartite Progress Report April 1, 1992 - February 15, 1993* (draft), p. 1.

Discussion

Since its inception, the ICO has had successes, but it has in the past been the focus of significant criticism. However, most of those consulted for this study stressed the value of having such an institution. One respondent noted that Ontario is "lucky to have the ICO," and suggested that the parties would want to create a similar institution if the ICO did not exist. While the process suffered in the past from a lack of understanding on the part of the parties, Ontario ministries are now learning about what the ICO is and does, and the process is functioning better.

At the same time, the ability of the ICO to effect the resolution of outstanding issues is hampered by a number of factors. These problems operate on several levels. Some are related to the ICO process, while other are more general, related to the nature of the issues and the difficulties of negotiating self-government and land claims, regardless of the arena.

Internally, the ICO is constrained by both financial and human resources. It has some difficulties in keeping up with its responsibilities and adhering to timelines. ONAS is trying to push the ICO to be realistic, and decide what it is capable of doing, given its funding and staff resources. One interviewee noted the problem of the ICO soliciting more projects to put on the workplan, when it should allow the Senior Steering Committee to set priorities.

While the ICO is meant to provide a level playing field for joint decision making, the disparity between the financial and human resources at the disposal of the parties limits this in practice. The ICO tries to ensure that the governments deal honestly and fairly with First Nations, and that the interests of all parties are met. In testimony before the Royal Commission on Aboriginal Peoples, Mark Laforme, the ICO director of self-government negotiations, noted that for the most part, the governments of Canada and Ontario are "uncomfortable with the role of the ICO." In some cases, the positions taken by the ICO leads government officials to accuse the Commission of a bias toward the Indian side. However, the Commission maintains that the ICO is being fair. Since the negotiating table is inherently unfair due to governments' greater resources and expertise, the ICO must look out for the interests of First Nations.

The success of ICO facilitated negotiations are not just dependent on the capacity of the ICO itself. The process is also affected by more overarching problems that plague self-government and land claims negotiations. The ICO's 1991 report noted that jurisdictional and constitutional disputes as to federal and provincial responsibility have created obstacles to the success of the tripartite process. The problem has lessened to some extent with the new Ontario government, but still has to be dealt with in all negotiations. In particular, a problematic issue is responsibility for cost-sharing and the availability of funds from the responsible government, if one can be determined.

Overall, the level of commitment to negotiate self-government agreements appears to be far greater than in the past. However, broken down into various sectors, the commitment varies. If there is likely to be a significant impact on third parties, the government is much more cautious, consistent with the approach also taken by Ontario in negotiations outside the ICO arena. In most cases,

negotiations involve various line ministries who represent themselves, rather than ONAS. The role of the province and positions of ministries varies according to what is at stake. For example, Consumer and Commercial Relations is taking a much harder line on what it is prepared to recognize as First Nation jurisdiction in gaming than the Ministry of Natural Resources would over trapping.

In another example, the Declaration of Political Intent process has also been slow and cumbersome.

While there is commitment from all parties to effect change, views on what change means varies from party to party. Discussions have been unwieldy due to the number of players and the lack of common understanding on how to proceed.

In the area of land claims, a 1990 ICO report noted that:

virtually all of the active claims problems arise from government negotiators' failure to respond quickly or fairly to issues or requests arising in the negotiations (or their simple non-attendance at meetings). The issues are not apparently resolved by having them addressed through the ICO due to its inability to break impasses or move the issues along and to compel co-operation. As a result, claims being negotiated through the ICO process have historically not had any greater degree of success than those being negotiated outside it.⁸⁸

All parties must give their prior consent before the exercise of ICO powers, and "in the area of land claims in particular, Canada and Ontario have not always displayed a willingness to give their consent even though the First Nations have been prepared to."⁸⁹

Conclusions

It appears from our discussions that the ICO has the potential to be a useful and valuable model. However, concerns raised about the Commission and by the Commission are nearly identical to those expressed in the late 1970s and early 1980s. The problems seem to lie in the willingness of the parties to commit themselves to the process. As Commissioner Philip Goulais has noted, "Where there is a commitment by both Canada and Ontario to resolve outstanding issues and to provide adequate resources which are necessary in dealing with outstanding issues, the answer is yes, the ICO has worked and will continue to be successful."⁹⁰

There are also questions about the future role of the ICO. Some respondents suggested that the

⁸⁸ Indian Commission of Ontario, *Discussion Paper Regarding First Nation Land Claims*, (Indian Commission of Ontario, 1990), p. 10.

⁸⁹ Indian Commission of Ontario, *Discussion Paper*, p. 10.

⁹⁰ Testimony of Commissioner Philip Goulais before the Royal Commission on Aboriginal Peoples, Toronto, Ontario, June 93.

ICO should have an increased role in negotiations. For example, the Commission could administer research for claims, rather than each party doing its own research and fighting over the results. Funding for claims negotiations could also be channelled through the ICO. However, these changes would require more funding and an altered mandate. Others suggested that the ICO may not be necessary. Money spent to keep the ICO in operation might be better directed to training in Aboriginal negotiation techniques, etc. As well, given the high stakes of negotiations, even if the ICO were given a greater role the two governments might still undertake a duplicate research effort.

The ICO seems to labour under many of the difficulties suffered by other intergovernmental bodies which inhabit the ambiguous terrain between and among federal and provincial governments. Invested with uncertain mandates lying somewhere between coordinating responsibility and executive power, and attempting to respond to the varying expectations of their creators, their existence is often marked by repeated debate about their purpose and proper functions. This seems to be an existential reality for many such bodies, yet they offer a structure which is at times used to achieve ends which would be difficult to achieve in their absence and they hold out the haunting possibility of significant future advantage if intergovernmental agreement could only permit the clarification of coherent responsibilities.

Chapter VIII. CONCLUSION: NEW RELATIONSHIP, NEW CHALLENGES

Our task in this study has been to describe and assess the relationship between the Government of Ontario and the Province's Aboriginal peoples. In particular, we have examined the extent to which the Province's policies and programs have supported the development of Aboriginal self-government or have impeded that development. In doing so, we have described, both in the text and in the appendices, the range of programs and policies existing in the Government of Ontario that directly relate to Aboriginal people.

For purposes of the study, we have interpreted the notion of self-government in a comprehensive sense, taking it to include both sweeping 'framework' statements or arrangements, such as the *Statement of Political Relationship*, as well as specific programs or government activities which provide or might provide for autonomous Aboriginal management or administration or for greater Aboriginal participation in such management or administration. We have attempted to define in what way and at what stage of the policy and program cycle Aboriginal participation might exist, whether it is at the policy conception, program design and approval, implementation or on-going administration stage. This approach is described more fully in the opening chapter of the study.

Our detailed findings have been outlined in the body of the report. What of our general observations and conclusions?

The Past

As we indicated in Chapter 2, for most of Ontario's history as a province within Confederation relations with Aboriginal people were minimal and indirect. The Government of the Province fairly consistently took the view that indigenous peoples were the responsibility of the federal government under Section 91(24) of the *Constitution Act, 1867*, and as much as possible left it to Ottawa to deal with Aboriginal matters. Its major involvement was indirect, arising as an implicit dimension of the Province's long-running dispute with Ottawa concerning provincial ownership of land and resources. Oliver Mowat carried on a battle with the Government of Canada about provincial control for about 30 years - from the late 1880s until the early years of the 20th century - and much of the territory in question was Indian land or land which had been ceded by the Indians.

This posture of systematic non-engagement with Aboriginal matters as such was sustained by the Province until well after the Second World War. Even as the Province became in fact more involved with Aboriginal issues it continued to insist for a good many years on the principle of federal responsibility.

Nevertheless, provincial involvement in Aboriginal affairs increased in the years following World War II for reasons which are outlined earlier in the study. One can observe a disjunction between formal policy and day-to-day administration during the early part of this period. For most of the post-war Conservative era, Ontario's declared policy position emphasized the role and responsibilities of the national government, while the administrative and program realities on the ground disclosed a growing level of practical involvement in Aboriginal affairs on the part of the

Province. The activity of indigenous peoples during the debate that led to the 1982 constitution, together with the series of First Ministers' Conferences on Aboriginal matters which followed its ratification, forced the issue into provincial political and policy consciousness.

The tension between policy conservatism and an increasing tempo of administrative activity was dissolved when the Liberals took power in 1985, initially with the support of the NDP. The appointment of Attorney General Ian Scott as Minister Responsible for Native Affairs and the adoption by the Peterson Government in 1985 of a corporate native affairs policy marked the start of a period of provincial activism based on an acceptance of the importance and legitimacy of the provincial-Aboriginal relationship and on the belief that provincial responsibilities in this field should be acquitted with energy. Coincidentally, Aboriginal reluctance to acknowledge any authority other than the Government of Canada was dwindling as concerns of native people and the responsibilities of provincial governments became increasingly enmeshed and the weakening of the federal role became more and more evident. The evolution of this new relationship is described in the latter part of Chapter 2.

The post-war period illustrates the interrelationship between institutional development and political leadership. The role of the provincial government in Aboriginal affairs was expanding inexorably in the years following World War II, and the daily administration of the public business of the Province reflected that. Partly because of that evolution, together with the goad of constitutional discussions, the Province's political leaders came to recognize that they had responsibilities in this area of Canadian life and over time assisted the Province in accommodating itself to this new reality. While Ian Scott began to exercise his responsibilities for Native affairs energetically in 1985, it is important to remember that he was preceded by the earlier and more tentative steps taken by William Davis, Roy McMurtry and Tom Wells. Equally, one should not lose sight of the fact that the strong personal commitments of Bob Rae and Bud Wildman and the active Aboriginal policy development of the New Democratic administration rested on a platform of institutional development and earlier political leadership constructed by both Conservative and Liberal governments.

The Present Circumstances

In one sense, then, the election of the NDP as the Government of Ontario in 1990 simply marked a continuation and strengthening of the period of provincial activism in Aboriginal matters that had begun in the early 1980s. The Aboriginal agenda moved closer to the centre of government decision-making and the tempo of change accelerated, but the essential direction had been established over the previous decade - that is to say, an open acknowledgment of provincial responsibilities in the field and a determination to tackle the problems in concert with Aboriginal people.

Yet in a deeper sense, the election of the NDP and in particular the assumption of the premiership by Bob Rae marked the beginning of a new relationship between Aboriginal peoples and the Government of Ontario. Indeed, it is no exaggeration to say that the Premier and Government of Ontario played a critical role in the beginning of a redefinition of this relationship at the national

level, a redefinition in which most of the governments of this country have now participated.

Bob Rae made it very clear from the moment he assumed office that the Province's relationship with indigenous peoples would be a centre-piece of his administration - not just one priority among many, but manifestly one of the most central issues that his Government would address. His October 2, 1990 speech to the Self-Government Symposium of the Assembly of First Nations, given the day after his Government's swearing in, communicated that message in no uncertain terms. This was his first opportunity as Premier to state his recognition of the inherent right of Aboriginal people to be self-governing, and the Premier declared that he was prepared to transfer powers and resources to Aboriginal communities in function of that recognition. He asserted that he would not allow federal-provincial squabbles to impede progress in Ontario.

This issue was identified as a priority in the new Government's first Throne Speech the following month and was deepened and extended in the December 18, 1990 Statement to the Legislature by Bud Wildman, the Minister Responsible for Native Affairs.

Within a year the Government had negotiated and signed a Statement of Political Relationship with most First Nations in the Province, recognizing that First Nations exist in Ontario "as distinct nations, with their governments, cultures, languages, traditions, customs and territories...." In so doing, Ontario became the first government in Canada to formally recognize the inherent right to self-government of Aboriginal peoples and to do so in a manner consistent with Aboriginal conceptions of that right.

In March, 1992 the ultimately abortive Charlottetown constitutional process began. It was a-typical of previous rounds of general constitutional discussion in at least two respects; for the first time, Aboriginal leaders were full participants in the negotiating process and for the first time a constitutional provision to recognize the inherent right of self-government was seriously under discussion among the governments of Canada and ultimately agreed to by these governments. It is widely recognized that both of these innovations owe more to Ontario's aggressive pursuit of the Aboriginal agenda than to any other single factor.

It is such initiatives as these which justify speaking of the last three years in Ontario as the start of a new relationship. These steps, and in particular the negotiation and signing of the *Statement of Political Relationship*, awakened hope in many Aboriginal people in the Province that a new era was beginning. They are also what lies behind the widespread view in the Native community that the personal commitment and good faith of the Premier and his Native Affairs Minister are genuine.

Yet it is our impression from the interviews we conducted with Aboriginal representatives that disappointment and cynicism about the pace of reform in Ontario are widespread in the Aboriginal community. While most people acknowledge the good intentions at the top, many see very little positive change in the system as a whole and even less improvement at the level of the Aboriginal communities themselves. The perceived disparity between high and honourable intention on the one hand and the snail's pace of reform on the other creates a feeling of let-down and in some cases a bitterness in the light of what is alleged to be another missed opportunity.

To some extent this situation may be understood as the almost inevitable consequence of negotiating a significant and positive change in direction. If an historic shift in policy direction is to take effect in a government the size and complexity of Ontario's, it is probably essential that this development be communicated to the people of the Province, to the Aboriginal people most immediately concerned and to the Province's public servants by a clear and bold statement of the new policy and by a symbolic gesture which will dramatize the change. The Premier's speech to the AFN conference, the Minister's Statement in the Legislature and the signing of the Statement of Political Relationship on 6 August 1991 on Mount McKay "in the territory of the Ojibways of Fort William", to quote the Special Bulletin of the Chiefs of Ontario, clearly fulfilled this requirement. Naturally, hopes for a rapid transformation of their circumstances ballooned within the Aboriginal community of Ontario subsequent to these events, and in consequence managing expectations has proven to be a difficult task for both the Aboriginal and provincial leadership.

However, if our interlocutors inside and outside government are right, there are other substantial reasons which explain the concerns of those who perceive a disparity between high and positive intentions on the one hand and relatively few practical improvements on the other. The reasons which help to account for this perceived disparity fall into three general categories and a brief consideration of them is a useful way of taking stock of the present situation.

General Factors

First, it is obvious to everyone involved in the enterprise of implementing the inherent right of self-government that new and unfamiliar territory is being charted. It involves new issues, new processes, and, ultimately, a new social and political paradigm that will materially alter the world view and human environment in which the life of Ontarians, Aboriginal and non-Aboriginal, is carried on.

The content of self government is by no means clear, and its specification requires complex negotiations in which the parameters of the exercise are necessarily obscure to both sides. To offer an obvious example, self-government for Aboriginal peoples living in urban areas must mean something very different from self-government for a First Nation living in an integrated community on a land base. But what does it mean in each case? It is inevitable that there is a wide variety of views, both within the Aboriginal community and within the Government and the people of Ontario, and that these views evolve as experience grows. This is not a routine trip from one known point on the compass to another; it is genuinely a voyage of exploration in which the ultimate destination is determined in part by the nature of the journey itself.

The most appropriate processes for developing self-government arrangements and structures are also being developed in part by trial and error. Clearly, there is a puzzle for all participants in seeking to fashion a process of negotiation which in a sense assumes that what you are trying to negotiate already exists in practice. How does one negotiate the form and content of self-government in a manner which is consistent with its prior recognition? This, too, has required experimentation and patience from all sides as the most appropriate arrangements in a given case

are worked out. The impression we have received from our enquiry is that, in response to this issue, there now tends to be an earlier involvement of Aboriginal representatives in a given decision-making and policy development process and a more open approach to the specification of conditions and policy goals prior to the start of intergovernmental discussions.

The largest frame of reference in which to place the challenges created by this profound innovation is what we have called a shift in the paradigm of social and political reality in which we all live. Clearly, this is a factor affecting any North American society attempting to seriously re-define its relationship with an indigenous population, and it is one from which Ontario and Ontarians are not immune. To recognize the inherent right of self-government for the Aboriginal population within a community is to engage in a re-definition of the origin and nature of the majority society as well as to address the circumstances of Aboriginal nations and communities. It is not possible to proceed very far down this path without a reconsideration of your history, the terms by which you possess the land on which you reside, your assumptions about sovereignty and conventional government structures, and the very vocabulary you use to describe significant dimensions of your social and political world. The controversy surrounding the 1992 anniversary of the 'discovery' of the 'New World' by Christopher Columbus speaks eloquently to this point. These shifts in consciousness are not won easily and require alterations in attitude and behaviour far greater than anyone can foresee at the outset of the process of change.

The second general factor is related to the previous point, namely, the constraint imposed by public opinion. While it is true to say that there is a good deal of generalized sympathy in the public at large for the Aboriginal cause, these positive feelings are not universally held and in many cases they appear not to be deeply rooted. As the widespread implications of a thorough-going recognition of Aboriginal self-government begin to be known, people start having second thoughts as they achieve a more practical understanding of the impact that new arrangements might have on traditional practices and institutions that they are comfortable with.

A number of our interviewees noted that concerns are being expressed in some quarters of the Ontario public service about whether the reforms are going too far and about how the interests of the government and the people of Ontario will be protected; thus, there is resistance to Aboriginal reforms in some quarters of the Ontario public service. More prosaically, there is also the natural bureaucratic desire to protect turf. We have noted elsewhere in this study that public resistance to the introduction of new arrangements with Aboriginal peoples is highest in those fields, such as hunting and fishing and land claims, in which the perceived interests of the two communities are often directly in conflict. Finally, one must acknowledge that racist attitudes to Native people exist in Ontario, and they create a considerable challenge for those who are attempting to fashion a new relationship between Aboriginal people and the majority society.

All of these forces act as a 'drag' on policy and administrative reform and require that the Government commit substantial time and energy to public education and to explaining what the goals of the Government are and how they are being pursued. This is both a general challenge imposing itself on the Government and a more specific necessity, for example, in bringing the public service along at an appropriate pace, engaging in active third-party consultations where

Government-Aboriginal negotiations are certain to have a significant impact on other Ontarians, and combatting racism through a unit such as the Ontario Anti-Racism Secretariat.

The third general factor which bedevils efforts to keep up the pace of reform is the impact of the severe economic recession on government revenues and on the Province's capacity to allocate new resources to priority areas. The period of greatest policy activism in this field, from 1990 to the present, unhappily coincides with the economic recession from which the Province has still not recovered. While existing levels of government expenditure on Aboriginal matters have been fairly well protected - certainly in comparison with a great many other areas of government activity - the Province has simply not had the money to invest in new arrangements, and this has made brisk progress more difficult to achieve.

Government Factors

A factor that permeates all action in the area of provincial-Aboriginal relations is, of course, the presence and role of the national government. The primary responsibility for Aboriginal people, historically and presently, lies with the Government of Canada, and there is virtually no policy or program field of any significance that does not reflect a federal presence. Inevitably, this becomes a major consideration and reference point for both the Aboriginal community and the Government of the Province in contemplating a possible initiative. How does it fit with federal policy? How does one reconcile changes in a relevant provincial program with ongoing federal administration? Where the two governments differ in priorities or approach, how do the differences get sorted out? Are we talking about a trilateral process of discussion, two bilateral processes or a single bilateral process?

There is as well the additional concern which arises inevitably if one jurisdiction is expanding its level of activity, while the other is cutting back. Clearly, there are concerns about fiscal off-loading that haunt provincial politicians and civil servants in these circumstances and complicate efforts to move forward.

If the federal Liberal Government, elected in October 1993, operates, as it declares it intends to do, on the assumption that the inherent right to Aboriginal self-government already exists as an Aboriginal and treaty right, this will mean that, with respect to fundamentals, Queen's Park and Ottawa will share the same premises. It is possible, in these circumstances, that the tensions between the two orders of government will be reduced to some extent.

A second governmental factor that reduces the pace of reform is the fact that it takes time for a shift of priority or a new sense of urgency to communicate itself through a very large bureaucracy. This need not in any way be a function of resistance or bad will; it is simply in the nature of large-scale administrative structures. The alteration of the bureaucratic culture, the creation of new programs, the fashioning of sometimes radically different ways of delivering existing programs - in big governments, these all take time.

A third factor, particularly influential in 1992, was the Charlottetown Round of constitutional

discussion. Inevitably, that process consumed the time and energies of key Aboriginal and provincial Government leadership and diverted them from focusing their efforts on non-constitutional matters within the Province. This was probably true across the country, and the fact that the Charlottetown Accord was not approved meant that time had to be spent after 26 October 1992 sorting out what had happened, picking up the pieces and re-directing one's efforts. Ontario's Round Table process was originally set up to assist in the implementation of the *Statement of Political Relationship*, but it was soon taken up with assisting the provincial Aboriginal leadership and the Government of Ontario in developing their constitutional negotiating approaches. At the time of writing it had not recovered from the failure of Charlottetown, nor had it succeeded in giving itself a new and compelling mandate. It is clear that some of the after-effects of the constitutional round have extended well beyond the end of the referendum campaign.

Aboriginal Factors

There are several factors relating to the Aboriginal community itself which need to be mentioned in connection with this issue.

First, the diversity in Native organization, languages, cultures and communities in the Province presents a reality of forbidding complexity for any government that is seeking to make changes on a broad front. The needs and aspirations of the 128 First Nations in Ontario quite naturally vary from one case to another, and to this must be added the less well-known existence of the various Metis and other unorganized Aboriginal communities in the Province. The very definition of community and self-government assumes a strikingly different guise, depending on whether one is talking about a First Nation endowed with a territorial base or Aboriginal people living in Metropolitan Toronto.

The governing structures to which many First Nations are subject can be awesomely complex and these further complicate simple and direct action, both for the Aboriginal communities themselves and for other governments seeking to relate to them. To make the point, one of our interviewees pointed to Akwesasne, admittedly an extreme example, and noted that the people of Akwesasne are compelled to function within at least 6 jurisdictional environments: the Mohawk Council; the Iroquois Confederacy; the American Tribal Council; the Provinces of Ontario and Quebec and the State of New York; the United States federal government; and the Canadian federal government. Making progress on self-government is not an easy task in these circumstances.

A second Aboriginal factor is the relative weakness of administrative structures within Native communities and in many cases their limited capacity to deal at this stage in their development with the range of governance issues facing them. Not surprisingly, since for a long time they have been the recipients of public services rather than the self-governing administrators of those services, they have had little opportunity to generate the domestic expertise and professional skills necessary for the conduct of these public functions. Several people interviewed mentioned the difficulty a number of Ontario Aboriginal communities experienced, when confronted by a phalanx of Provincial ministries, each in its own field seeking to explore new arrangements with its Aboriginal 'clients'.

It was noted as well that at times Aboriginal communities found it difficult to 'close' on negotiated agreements that were designed to accomplish enduring settlements; it seemed that their memory of agreements that were signed and ignored and agreements that proved ultimately to be contrary to the best interests of Aboriginal people got in the way. A rhythm of innovation and development, consistent with the evolving capacities of the various First Nations themselves, needs to be discovered.

A third factor slowing progress is the complexity and weak accountability lines of the political organizations representing Aboriginal interests at the provincial and national level. It is to be expected that the variety which is a feature of the Aboriginal communities themselves would be reflected in a complex network of Aboriginal political organizations, and this is indeed the case. However, their respective mandates and representative bases are not always clear and, in truth, are frequently the subject of contention. A regional political organization, such as Grand Council Treaty #3, may claim to represent all its people, on and off reserve; the Ontario Metis and Aboriginal Association may claim to speak for Treaty #3 people who are off-reserve; and the Ontario Native Women's Association may assert that it represents Treaty #3 women. A multiplicity of representational forms is a normal feature of modern life, so this is not at all surprising in itself. The difficulty lies in the fact that the functional consequences of this situation are not clear and agreed on, in part no doubt because, in the context of self-government negotiations, the authority and resource implications of proceeding one way or the other are very significant.

In addition, the accountability lines that bind the Native leadership to the membership of the Aboriginal communities appear in many cases to be sketchy and uncertain. A number of the Aboriginal persons interviewed made it clear that they did not believe themselves to be well represented by their political leadership, nor did they have the sense that their leaders were politically responsible and accountable to them. The connections were not there. In this respect, they strongly resembled the members of the larger political community who have expressed similar concerns.

These general, governmental and Aboriginal factors, then, are among the most important reasons why it has been difficult to translate good words and good intentions into improvements at the rate that many would hope or expect.

The Government of Ontario's Response to these Problems

It is clear that new ground is being broken in the effort to place the relationship between Aboriginal peoples and other Ontarians on a different footing.

The Aboriginal community has never before faced the need to think through its relationship to provincial as well as federal jurisdiction and to do so on the premise of the inherent right to self-government. The Government and the Ontario Public Service have certainly never before

attempted seriously to work through the implications of a pre-existing right of self government of indigenous peoples - peoples, moreover, who until very recently have been set aside as the concern of another jurisdiction and other processes. And it is also probably true that never before have the majority of Ontarians been invited as urgently to consider what justice for Aboriginal people requires in this part of North America.

People are coming to realize that recognizing the inherent right of Aboriginal self-government is the easy part; the heavy slogging comes in working out the practical implications of that right and in giving it concrete expression in the day-to-day life of individuals and communities. The recognition of the source of the inherent right is unquestionably a large step forward and a condition for what must then follow, but in truth it does no more than set the stage for the long haul, which must be directed at the negotiation of the content of that right. The full meaning of the inherent right will only be disclosed with the completion of negotiations designed to bring its recognition into full existence.

This is a pathway no one in Ontario has walked down before. It is not surprising, therefore, that there are false starts and trial and error as those who are seeking to make it work search for the right way, that there are some people who doubt the wisdom of embarking on the journey at all, and that there are others who harbour unrealizable hopes for the happy life that will prevail when the ultimate destination is finally reached.

The Government of Ontario, fairly soon after its accession to power and its recognition of the inherent right, realized that it was not well equipped to carry the necessary process forward, and undertook a variety of initiatives which have been documented in Chapter 5 and 6 above.

- It pushed ahead with constitutional reform when that avenue appeared to be open.
- It gave Native affairs to a committed, senior cabinet minister and ensured that he was able, through his membership on the inner cabinet and the creation of a sub-committee of cabinet on Aboriginal affairs, to insist that priority attention be given to the matter.
- It strengthened and elevated the profile of the Ontario Native Affairs Secretariat so that it was better equipped to give the necessary administrative and policy leadership and has adapted and expanded ONAS subsequently as seemed necessary.
- In 1991 it commissioned a general review by an external expert of the Government's capacity to move its Aboriginal agenda forward and created an interministerial task force to follow up on the findings.
- In 1992 it created a committee of deputy ministers, chaired by the Secretary of the Cabinet, to set short-term priorities and establish a timetable to which ministries would be required to adhere.
- It developed, or is developing, a range of framework and corporate policies designed to permit negotiations and program development to proceed more efficiently.
- It has engaged in a comprehensive Aboriginal expenditure and program review which will clarify the nature and extent of Ontario's current involvement in the field.
- It has substantially preserved the Aboriginal spending envelope from the cut-backs visited on most other areas of government expenditure and responsibility.

- It has attempted, in a variety of program areas as detailed in Chapter 6, to address specific problems and to capitalize on specific opportunities. Some of these, such as family healing, have been substantial and innovative exercises.

Despite these and other measures which the Government of Ontario has taken to advance the Aboriginal agenda, it is not difficult to understand why scepticism and disappointment should be expressed by a number of Aboriginal commentators. The Government's initiatives, taken together, are complex and obscure; it is not an easy matter for someone outside government to appreciate the often *recherché* logic of what is going on inside. Many of the measures aim to put the Government in a position to act more effectively in the future, but do not, themselves, resolve immediate pressing problems; observers see lots of activity, but not much in the way of palpable results. Some people contend that the Government is spending a good deal of time and energy spinning its wheels. These factors, combined with the impatience, expectations, opinions and constraints outlined in the previous section of this chapter, easily produce the scepticism and disappointment alluded to.

Yet it must be said that, by any normal indicator used to assess a government's priorities, Aboriginal affairs are without question a central priority of the current Government of Ontario, not just at the level of political commitment or abstract policy enunciation, but at the level of execution, implementation and public administration. The measures described in this report, some of which are summarized above, do not reflect simply a shallow or casual policy commitment or the personal preferences of the Premier and some of his senior political colleagues. They bespeak rather a determined effort to alter the direction of the provincial ship of state. They are manifestly designed to embed in the institutions, practices, policies and programs of the Government of Ontario this new approach to Aboriginal affairs and to assist the people of Ontario to reach a new settlement with the Aboriginal peoples with whom they share the Province.

Looking Ahead

Although not fully appreciated as such, the recognition of the inherent right of Aboriginal self-government and the establishment of a new relationship between the Province's first peoples and other Ontarians is a massive undertaking. We used the notion of a 'paradigm shift' earlier to suggest the nature and the dimensions of the transformation that is implied. Ultimately, all parts of Ontario society and the views Ontarians hold of themselves and of one another will be altered. It is not to be expected that this will happen easily or overnight.

Ontario and Aboriginal peoples living in the province have declared that there is to be a new relationship between them. This, however, is not the end of the story, but the beginning - the beginning of what will surely be a long, hard process of construction during which time the substance of that new relationship will be created. The new relationship generates new challenges, and it is in the framing and meeting of these that the determination and the creativity of the parties to this process of change will be tested.

The current policy environment surely presents the best opportunity in generations to radically alter

Aboriginal-Provincial relations in a manner consistent with Native aspirations. Early indications are that the emergence of the new national government may create greater harmony at the level of principle between Ottawa and Queen's Park. It is in the interests of all who welcome the prospect of basic reform to take advantage of this opening. The best security for future progress will be found in showing how reform can be made to work today.

As important as any specific initiative or reform is the need to ensure that the new course which has been set is irrevocable. The more the new understanding of the relationship can be embedded in the programs and practices of the Government and the political culture of Ontarians, the less likely that new circumstances will occasion a slackening of the pace of change or an actual reversion to old practices. Indeed, the establishment of a framework in provincial legislation for Aboriginal self-government (something which does not at present exist) would testify to a durable, ongoing commitment on the part of the Province, but prudence would dictate that this be done at a point in Ontario's evolution when it would be broadly understood and accepted by the bulk of the provincial population. One Aboriginal interlocutor very usefully reminded us of how easy it would be to revert to the old ways, even after a more sympathetic government had been in office for a full term; strike a legislative committee, hold hearings giving high profile to third-party dissidents, call for a further review and the slowing of the pace of change, and pretty soon the energy and commitment that has been evident in the previous mandate is dissipated, and earlier practices and attitudes reassert themselves. To attempt to guard against this, the opposition parties in the Legislative Assembly need to be kept well informed of what is going on and why, and they need to be encouraged to recognize the inherent right and the importance of continuing with its implementation.

At the time of writing, we were unable to discover any serious attempt on the part of the Aboriginal leadership of Ontario to engage the opposition parties in the Legislature in a dialogue about self-government, and no apparent effort had been made to secure policy commitments from the opposition parties with respect to Aboriginal matters, in the event that they formed the next government.

The Conservative Party of Ontario has no formal policy on Aboriginal affairs, although there is some discussion about developing one in the upcoming months. It is apparently to be expected that an incoming Conservative government would build on the evolving experiences and practices of former provincial governments. The Conservative spokesman for Native affairs expressed the view that the Party supports the principle of self-government, but that the concrete meaning of the principle will evolve over time and in the context of specific agreements with particular communities. It is a less pressing issue than the need to find some means of settling Native land claims. Any attempt to do the latter will face a number of constraints, among them the difficulty Ottawa and Queen's Park sometimes have in coordinating their activities, the limited availability of financial resources and the interests and concerns of the non-Aboriginal community.

The Ontario Liberal Party has not elaborated a formal Native affairs policy, although the Liberal spokesman for Native affairs indicated that an incoming Liberal government would likely extend the policies of the Peterson administration of the 1980s. It would also build on the work that the

NDP Government has done since that time, but would place heavy emphasis on public education and on reassuring Ontarians directly affected by initiatives in this field that their interests would be acknowledged and protected.

In conclusion, it seems clear that the paradigm shift -- the transformation of which we speak -- will only be secured when it is lodged in the hearts and minds of the people of Ontario. Aboriginal and non-Aboriginal people have together inhabited the land which is now Ontario for centuries. A just and enduring mutual accommodation of these communities cannot be accomplished by leaders alone, however wise and humane their leadership may be. The members of the communities themselves must join hands in a spirit of friendship, equality and reconciliation. That is, ultimately, the challenge which this new relationship invites Ontarians to address.

APPENDIX A: Ontario Chronology

1763 - 1857	Pre-Confederation treaties, including a series of land purchases that cover most of southern Ontario, and the Robinson-Huron and Robinson-Superior Treaties of 1850, are signed.
1873	Treaty No. 3
1875	Treaty No. 5
1905-6	Treaty No. 9 (Adhesion signed in 1929)
1923	Williams Treaties
1924	Canada and Ontario enter into the Ontario Lands Agreement which is designed to give Canada the right to dispose of surrendered Indian lands for the benefit of Indians. The agreement provides that one half the consideration payable from mining dispositions shall be paid to the Province.
1953	Premier Frost appoints a Select Committee to enquire into the Civil Liberties and Rights of Indians in Ontario. The Committee reports in 1954. Among its recommendations is the extension of the franchise to all Indians in the province.
1954	Provincial vote extended to all Indians in Ontario.
1965	1965 Indian Welfare Agreement - Ontario and the federal government sign agreement to make provincially designed social services in Ontario available to Indians.
1969	Federal White Paper is released with a strong reaction against it by Indian organizations.
1973	Teme-Augama Anishnabai file a caution over a 6,000 km ² tract of land claimed by the First Nation.
1975	Establishment of Ontario Native Advisory committee on the Criminal Justice System. The committee is restructured to ensure native control in late 1976, and is renamed Ontario Native Council on Justice in 1977.
1977	Royal Commission on the Northern Environment appointed to investigate development north of 50th parallel in Ontario.
1978	In its interim report the RCNE recommends a tripartite process to resolve disputes.

The Ontario Tripartite Process (OTP) is established by federal and provincial governments and Indian leadership as a high level forum for identification, clarification, negotiation and resolution of issues of common concern to the parties. Parties include federal government, Ontario government, 4 status Indian organizations and Independent First Nations of Ontario.

The Tripartite Council establishes the Indian Commission of Ontario (ICO) to facilitate the tripartite process. The ICO has the power to convene and adjourns meetings, request information from the parties, impose deadlines, suspend negotiations, make recommendations to the Tripartite Council, and act as mediator or arbitrator.

- 1979 First specific claims are presented through the ICO.
- 1981 Beginning of tripartite First Nations Policing Arrangements.
- 1981 Report of the Ontario Task Force on Native People in the Urban Setting
- 1985 Establishment of a special cabinet portfolio and designation of a Minister of Native Affairs as part of Attorney General's responsibilities.
- October, 1985 Ontario Corporate Native Affairs Policy framework commits government to: 1) constitutional entrenchment of Aboriginal right to self-government; 2) entering into self-government negotiations; 3) assisting Aboriginal peoples in becoming more self-reliant; 4) providing services to Aboriginal peoples in non-discriminatory and culturally sensitive manner.
- December, 1985 Ontario government, the federal government and First Nations (parties to tripartite process) sign the Declaration of Political Intent. The DPI states the commitment of the parties to enter into tripartite discussions to resolve issues related to self-government, jurisdiction, and powers. Education is selected as the first sector for negotiation.
- 1986 Ontario Lands Agreement - ambiguities in the wording of the 1924 agreement created many years of dispute over mineral rights. The 1986 agreement allows Canada, Ontario and individual bands to enter into specific agreements to resolve outstanding issues surrounding unsold surrendered lands and minerals underlying them.
- February, 1986 Nishnawbe Aski Nation Memorandum of Understanding is signed by the Nishnawbe Aski Nation, representing 46 First Nations in northern Ontario, and the

governments of Canada and Ontario. The MOU commits parties to negotiations "for the purpose of recognizing NAN self-government within the context of Canadian Confederation" and calls for 11 sets of negotiations to be conducted simultaneously within 2 years, on a range of issues from lands for reserves to social services.

December, 1989

Addendum is signed to NAN MOU to focus negotiations on lands and resources, including environmental impact planning and mitigation; policing; and social services.

December 14, 1989

Guidelines for the Negotiation of Self-Government are tabled in the provincial legislature by Ian Scott, Attorney General and Minister Responsible for Native Affairs. Guidelines expire in September 1991.

October, 1990 At an Assembly of First Nations/University of Toronto symposium, Premier Rae announces that recognition of the inherent Aboriginal right to self-government will govern the conduct of Aboriginal affairs in the province.

October, 1990 Formation of Ontario Native Affairs Secretariat, head of ONAS assumes Deputy Ministry status.

December 5, 1990

A \$9.3 million land settlement is signed between the province and 5 First Nations on Manitoulin Island (a sixth band, Wikwemikong, decides not to sign) after 10 years of negotiations. This is the first time that a settlement of this type is reached without the federal government.

December 18, 1990

"Aboriginal Reform Agenda" - the Minister Responsible for Native Affairs, Bud Wildman, outlines province's native affairs objectives and principles in a Statement to the Ontario Legislature. The agenda has five objectives: 1. establishment of First Nation self-government arrangements, 2. negotiation of land claims settlements with First Nations, 3. raising the quality of life in Aboriginal communities by improving provincial programs and funding arrangements, 4. addressing the self-government and program concerns of Aboriginal people who live off-reserve, 5. negotiating a statement of relationship with First Nations that will guide future relations between the government of Ontario and all First Nations in the province.

April, 1991

Memorandum of Understanding on economic development is signed between Canada, Ontario and the Ontario Metis and Aboriginal Association. The MOU sets up a process to ensure that Metis and off-reserve Indians can access economic development and skills training programs of both levels of government.

May 23, 1991 Wendaban Stewardship Authority established with the Teme-Augama Anishnabai. The Stewardship Authority, composed of representatives appointed by Ontario and the First Nation with an independent chair, is to be involved in all aspects of resource management in the area, initially in four townships.

May 28, 1991

Ontario Interim Enforcement Policy on Aboriginal rights to hunt and fish. The interim policy incorporates Ontario Native affairs principles, reflects the guarantee of Aboriginal rights in Section 35 of the Constitution and responds to the Sparrow case (priority given to Indian food fishery). Is intended to limit the incidents of status Indians charged under federal and provincial fish and game legislation while harvesting food in traditional and treaty areas. The interim policy to remain in effect until replaced by negotiated agreements with Aboriginal peoples.

June, 1991

In 1991, Ontario and Golden Lake Algonquins sign a "Statement of Intent" which commits Ontario to begin negotiations in June 1991 on the provincial aspects of the Golden Lake claim.

August 6, 1991

Statement of Political Relationship (SPR) signed between Premier of Ontario and a majority of Ontario First Nations and First Nations organizations. The SPR recognizes the inherent right of First Nations to be self-governing within the Canadian constitution, and commits Ontario to negotiate self-government agreements on a government to government basis.

August 15, 1991 Supreme Court rules in Bear Island case that the Teme-Augama Anishnabai surrendered Aboriginal rights to land by accepting a reserve and treaty payments. The Province agrees to continue negotiations over stewardship of Temagami land.

October 15, 1991

Algonquins of Golden Lake and Ontario sign a hunting agreement, the first agreement signed after interim policy. It deals with hunting within the area Algonquins claim as traditional territory.

December, 1991

Nishnawbe-Aski First Nations Without Reserves Agreement - an agreement reached by federal and provincial governments, NAN and six First Nations to establish the six communities as reserves under the *Indian Act* and to establish basic community infrastructure. It is the first federal-provincial agreement in the country whereby the province has committed to provide funding for on-reserve projects. Most funds are to be administered through a new native corporation to be established to oversee planning and construction of the facilities.

Spring, 1992 Ontario wide policing agreement is signed. It provides an umbrella under which First Nation regional policing negotiations will occur.

June 2, 1992

The Government of Ontario and the Anishinabek Nation announce a framework of guiding principles for future fishing agreements. More than 40 Aboriginal communities may use this framework as a basis to negotiate specific fishing agreements with the Province.

August, 1992 Ontario and Teme-Augama Anishnabai enter into substantive negotiations on a Treaty of Co-Existence.

October, 1992

Ontario and Golden Lake First Nation sign a second interim hunting agreement for the area of the land claim, including a section of Algonquin Park designated for hunting. The agreement replaced an interim agreement of October 1991, and sets forth seasons, harvest limits and other provisions for hunting.

October 27, 1993

Negotiation of the first major on-reserve charitable gaming agreement in Ontario, between the province and the Wauzhushk (Rat Portage) First Nation. The process, when completed, should result in the First Nation regulating and licensing its own charitable gaming activities.