Government to Government:
Aboriginal Peoples and British Columbia

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Contents

Executive Summary

The study's general goals are (1) to review the history and current status of the relationships between Aboriginal peoples and the province of British Columbia, and (2) to assess the manner and extent to which actions or inaction of the provincial government have impeded or enhanced the realization of self-government in Aboriginal communities.

Scope of the Study

The historical review covers the period from contact in 1774 to 1986, with the greatest emphasis upon the period since the Second World War. For the current period, the relationship is examined in terms of provincial policy toward assertions of Aboriginal rights and in terms of the most significant aspects of policy and program development in the major provincial ministries. The effects of the province's actions on self-government of both land-based First Nations and urban Aboriginal communities are assessed.

Principal Method of Inquiry

The main methods of inquiry used in pursuit of the research goals were literature review; examination of news media reports; collection and examination of documents and records from Aboriginal organizations, government ministries and other relevant entities; interviews and consultations with Aboriginal representatives, government officials, and members and staff of the British Columbia Treaty Commission; and attending meetings of the First Nations Summit and of several urban Aboriginal organizations.

History of the Relationships

British Columbia entered Confederation in 1871 virtually devoid of treaties with Aboriginal peoples, and from the beginning it rejected the continuing Aboriginal demands for recognition of title, for treaties, and for self-government. After the Second World War the province gave Indians the franchise and encouraged economic integration. Aboriginal demands intensified after 1969, but it was a series of court injunctions favouring Indian claimants, together with road and rail blockades, that led the Social Credit government to agree to negotiate land claims in 1990.

Current Status of Relationships

Guidelines for tripartite treaty negotiations, centring on a Treaty Commission to supervise and monitor the process, were set out in 1991. Since then, establishing the process has been the most prominent activity in the relationship between the province and Aboriginal peoples, represented by the Summit of First Nations; the process began in late 1993, with claims submitted by groups encompassing some 65 per cent of the status Indian population.

The New Democratic Party has now completely reversed the province's historical policy stance by formally acknowledging both Aboriginal title and the inherent Aboriginal right of self-government. The province, the Summit and the Treaty Commission all expect that the British Columbia treaties will include full provision for self-government; the federal government has not yet agreed explicitly. It is noteworthy that the decisions of the B.C. courts in denying any inherent right of self-government (in the *Delgamuukw* case) have had no effect on this aspect of provincial policy.

The major provincial ministries and Crown corporations have given accelerating attention to Aboriginal concerns. There has been an opening of the governmental decision-making process to Aboriginal consultation and representation; although there is much Aboriginal dissatisfaction with results so far, the potential for influence is growing.

Many reserve communities and some urban Aboriginal organizations have gained direct participation in provincial program delivery. Some reserve communities or tribal councils have gained full local control through formal agreements. These developments have occurred mainly in social policy areas such as child care and education, where community needs can be clearly expressed and where competing non-Aboriginal interests are either absent or not well organized. Urban Aboriginal populations, with their diversity of internal origins and lack of political unity, have been less able to achieve such local control.

Provincial Impact on Achievement of Self-Government

The province's formal acknowledgement of the inherent right of Aboriginal self-government has been a major and positive recent development.

Concerning First Nations citizenship, the province has taken no action to hinder decisions or policies or rights of First Nations.

Similarly, the province has had limited impact on First Nations governance. Agreements allowing local control of program delivery have, however, enhanced First Nations' *de facto* jurisdiction, as have a number of interim measures agreements. As well, the province has fully supported the Sechelt self-government initiative. For the future, the province endorses having self-government protected within treaties.

Concerning intergovernmental structures and processes, there has been substantial action by the province. A range of policy forums, advisory bodies and formal agreements now exists. Recognition that its relationships with First Nations are unique in being government-to-government now underlies and typifies the province's general approach. This approach will be embodied in the treaty negotiations and in the treaties themselves.

Concerning financial ability, the province has provided program funding to urban organizations, is contributing to treaty process costs, and has agreed to share in the costs of treaty settlements.

Policy Recommendations

British Columbia and Aboriginal peoples have made remarkable progress in their relationships over the last decade. The major Aboriginal political demands have been accepted by the province, and the province and Aboriginal peoples have embarked upon developing a full range of government-to-government relationships. The recommendations that might have been made a decade ago are now being implemented.

The greatest danger to effective negotiations and relationships now comes from hostility, fear and misinformation among the province's non-Aboriginal public. Expanding the role of the Legislative Committee on Aboriginal Affairs could remedy this situation to some extent.

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Introduction

Assertions of Aboriginal title and of an inherent Aboriginal right of self-government have long been the focus of Aboriginal political activity in British Columbia. Such assertions emerged promptly wherever and whenever the province's original peoples first recognized the implications of European settlement, governments and cultures. The quest for recognition of collective Aboriginal rights and for accommodation of the exercise of those rights within the Canadian political system has been at the forefront of First Nations political activity since before British Columbia joined Confederation in 1871.

After Confederation, successive provincial governments denied the legitimacy of Aboriginal title and self-government. Substantial movement from that position did not occur until 1990. Since then, Aboriginal issues have moved from their place as a footnote on the provincial agenda to become the focus of major policy, program and, increasingly, institutional development.

This paper is one of sixteen case studies of the relationships between Canadian governments (federal, provincial, territorial, municipal) and Aboriginal peoples. The purpose of these reports is to review the history and current status of the relationship and to assess the manner and extent to which actions (or lack of action) of domestic governments have impeded or enhanced the realization of self-government by Aboriginal communities.

Approach

The research questions posed by this project are very broad in scope, as they must be to allow some degree of comparability among highly diverse situations found at the community, regional, provincial, territorial and national levels in Canada. The responses to the research questions are presented in the sections that follow this introductory section.

The second section deals briefly with the long and intricate history of Aboriginal political activity in British Columbia and with the policy positions of colonial and provincial governments on Aboriginal issues. The third section presents an abbreviated socio-demographic sketch of

Aboriginal peoples in British Columbia; it includes only such information collected in the 1991 Aboriginal Peoples Survey as was available at the time of writing. The current array of Aboriginal governments, political, social, economic, educational and other institutions is described in the fourth section, as is the recent evolution of government machinery in the Aboriginal policy area. In the fifth section we seek to identify the major Aboriginal issues on the agenda of the current British Columbia government and to examine the policy instruments being used to give effect to the policy strategies chosen by the government. Finally, in the last two sections, we examine the impact of past and present British Columbia governments on the realization of self-government among Aboriginal peoples in the province.

Aboriginal Self-Government ─ A Provisional Definition

> Possibly the area of greatest confusion and misunderstanding between native and non-native is that of self-government. (Lheit-Lit'en Nation N.D.)

The main objective of this research project is to assess the impact of the provincial government on Aboriginal self-government. To do so, we require an operational definition of self-government. As is the case during the formative stage of all major concepts, however, no short dictionary-type definition can be either generally accurate or analytically helpful. It is also the case that no one general *model* of self-government can be put forward as a typical example, for there is much diversity in the approaches that different Aboriginal communities are already taking. This diversity will almost certainly persist, with each First Nation demanding the right to design its own governing system. In time, perhaps in a decade or so, a short, generally accepted definition of Aboriginal self-government will have emerged. In the meantime, any proposed brief definition will merely become fodder in the wider debate over Aboriginal rights.

What can be asserted, however, is that in practice in British Columbia, Aboriginal self-government is and will be community-level government. Thus for any particular Aboriginal self-government, the same general aspects or features can be identified as exist in other types of community-level governments:

1. the formal legal or constitutional basis of the community and of its government;
2. the structures of government (such as councils, staffs, and advisory bodies);
3. the procedures for selecting or appointing community government leaders and officials;
4. the ways community members interact on a day-to-day basis with leaders and officials;
5. the formal jurisdiction of the government, that is, its powers and responsibilities;

6. the actual actions and programs carried out by the government (typically these are more limited than the formal jurisdictional powers might imply);
7. the financing of the government and its activities;
8. the relationships of the community and of its government with neighbouring communities and their governments;
9. in a federal state, the relationships of the community and its government to provincial and federal politicians and governments.

Underlying and infusing each of these aspects is the question of community autonomy. Although few proponents ─ or critics ─ of Aboriginal self-government would disagree that autonomy is an essential element of self-government, there is no agreement on the question of how autonomy is defined or how it is best guaranteed in practice.

Among Aboriginal leaders and political activists in British Columbia two broadly differing views are evident on this question. One view might be said to be extremely principled: its adherents assert that autonomy can be said to exist only if it is recognized as an inherent Aboriginal right and guaranteed through treaty or through the Constitution of Canada. Adherents of this view in fact deny that there can be any distinction between autonomy and the way it is guaranteed: there is no autonomy if there is no fundamental guarantee that puts the autonomy beyond the power of provincial legislatures and the federal Parliament.

The other view is more practical and pragmatic; its adherents readily recognize and value *de facto* autonomy (that is, the actual day-to-day ability to make community-level decisions free of outside control) and consider the issue of formal guarantees of this autonomy to be a separate issue. Few, if any, adherents of this pragmatic view are opposed to constitutional guarantees of self-government, but in the meantime they wish to get on with the task of governing their communities. The difference between the extremely principled and the practical/pragmatic approaches was expressed by a practical and pragmatic Nuu-chah-nulth leader when he said about certain adherents of the other view, "They talk about self-government. We practise self-government."

The two broadly differing views are especially in evidence concerning the Sechelt community, which is no longer governed by the *Indian Act*, but instead by the *Sechelt Act*, a special act of Parliament that the community negotiated to its own satisfaction. (The Sechelt

model is discussed later in this report.) The extremely principled critics are hostile to the Sechelt model, notably for its reliance on Parliament rather than on assertions of an inherent right of self-government. The critics depicted the Sechelt community as having sold outs its birthright, as having been induced to proceed over a modern-day buffalo jump. The same critics are equally scathing about the communities that have entered into self-government negotiations being conducted by Indian and Northern Affairs Canada under authority of the *Indian Act*.

Adherents of the practical/pragmatic approach regard the Sechelt model and also the negotiations under the *Indian Act* as reasonable ways to gain actual freedom from outside control. They also accept as worthwhile the growing number of service delivery agreements between the province and First Nations or tribal councils. The principled critics, on the other hand, are suspicious of any arrangements that rely on provincial or federal statute; they most certainly deny that such arrangements can be seen as examples of self-government; and they are even more suspicious of reliance on provincial legislation than of reliance on federal legislation.

The same two general viewpoints extend into other areas of Aboriginal concerns in British Columbia. The extremely principled perspective is, for example, uneasy with the treaty process now getting under way; its adherents do not accept the province as having a right to full participation, and they prefer not to negotiate until the other side has fully acknowledged the fundamental principles asserted by the Aboriginal side. The pragmatic perspective welcomes the treaty process; its adherents were at the forefront of those working to achieve it; they are willing to go to the negotiating table as soon as the other side is willing to, for they regard the negotiating process itself as a further means of educating the public and of pressing the other side to recognize the validity of Aboriginal assertions.

The authors of this study side with the practical and pragmatic approach; they regard the province as having a major role in contributing to the evolution of Aboriginal self-government; they are confident that First Nations and tribal councils, as well as urban Aboriginal organizations, have the knowledge and ability to judge their own best interests in deciding whether, and how, to co-operate with the province.

To date, most discussion of self-government in British Columbia has been in the context of governance on a land base, with the familiar notion of governing within territorial boundaries. Self-government *off* a land base must also be considered, however, if for no other reason than that the majority of Aboriginal people in British Columbia, including about half the registered

Indian population, live off-reserve in urban centres. Whatever the particular features, and however their autonomy is, or is not, guaranteed, all community governments, by definition, exist in order to govern. In his paper "Critical Issues in First Nation Self-Government", Robert Bish points out that governments provide

> a process whereby people can resolve a common problem or achieve a common objective ─ where a distinguishing feature is that when decisions are made or laws passed, all are bound by those decisions or laws. Governments, in contrast to clubs or societies, are not purely voluntary ─ they may use their authority to require or forbid actions and enforce their laws. (Bish 1985, p. 6)

Bish notes that not all problems and objectives are the concern of all governments. In a federal system, each order of government has its own sphere of activities and responsibilities. Each member or citizen is, in turn, subject to the jurisdiction of several different governments. Governments are bound by rules or understandings about their structure and operation; members or citizens are bound by rules about how they influence and interact with, and get services from, their various governments. Community-level governments are bound by rules or expectations of another sort, those relating to their relationships with their community neighbours and with provincial, or territorial, and national governments. Finally, rules about financing governments are almost invariably of paramount concern and can be considered separately.

Understanding the functioning of a particular government, or of a type of government, requires knowledge of the four types of rules:

1. rules about membership and citizenship ─ relating to such matters as who is subject to the jurisdiction of which government and who is eligible for benefits and services;
2. rules about the government itself ─ pertaining to the first seven elements listed earlier, including structure, operation, and jurisdiction;
3. rules about relations between governments ─ pertaining to the last two elements on the earlier list; in the case of Aboriginal governments, these relations will be with other community-level governments (both Aboriginal and municipal) and with governments at the provincial or territorial and national levels;
4. rules about the financing of government ─ about the raising of local revenues, and about transfers of funds from other governments.

Using the four categories of rules or understandings facilitates identifying the

fundamental requirements of a self-governing system. An Aboriginal community that is satisfied that it has achieved a workable set of rules, in all four areas, has attained self-government. Aboriginal self-government thus exists to the extent that a community has developed, and is satisfied with, a set of rules covering the four areas. This is the provisional definition guiding the present study, and the framework adopted for answering the question about how the actions (or inaction) of provincial governments in British Columbia have enhanced or impeded the development of Aboriginal self-government. In this view, self-government is not an all-or-nothing phenomenon; it can exist in varying stages of development; it can exist in one area of jurisdiction and not in others; it can be achieved on a schedule that reflects the priorities and capacities of the Aboriginal community in question. As Abele and Graham suggest,

> Self-government is a *practice* as well as a condition. Under any constitutional regime, administrative systems and suitably trained personnel, as well as procedures through which agencies co-operate with the communities they are serving, must be developed along lines complementary to the goal of aboriginal self-government. (1989, p. 143)

It should be emphasized that the focus of this research is on government of Aboriginal people through institutions and processes they control *as* Aboriginal people. Aboriginal persons, like other Canadians, can (and do) take part in political processes at the provincial or territorial and national levels. Also, many Aboriginal persons live in, and take part in, non-Aboriginal communities. The research approach assumes that Aboriginal governments exist within the Canadian federation, and that Aboriginal persons will retain their other Canadian citizenships.

Some Other Definitions

Several terms are used to refer to persons of Aboriginal ancestry in British Columbia: `Indian', `Aboriginal', `Native', and `Native Indian' are the most common nouns used to refer to persons whose ancestry is primarily within what is today British Columbia. Each term has its Aboriginal critics, yet each is also commonly used by Aboriginal persons. The term First Nation is used increasingly to refer to communities of status Indians living on-reserve. `Tribal group', `tribal nation' and, less often, simply `nation' are used to describe the various distinct linguistic groups (such as the Nisga'a, Haida, Shuswap, Okanagan, etc.), each of which is composed of a number of First Nations. A `tribal council' is the governing body or assembly of a particular tribal group.

`Tribalism' is used in this study to describe the political and other emphases given to the

tribal groups and tribal councils, usually in contradistinction to the Indian bands and band councils prescribed by the *Indian Act*. Tribalism was a significant force in the early provincial period, and it revived after the Second World War to become again a highly potent political movement.

`Métis' is the other common term; it is used most often to describe persons associated with the Prairie Métis communities, but at times is used more generally to mean any person of `mixed' ancestry.

Methodology

Research for this report was conducted primarily through

- a series of interviews with some thirty officials of the government of British Columbia, with a smaller number of officials of major Aboriginal organizations in the province, and with members and staff of the British Columbia Treaty Commission;
- examination of policy and program documents, annual reports, press releases and speech notes relating to provincial government initiatives;
- media reports in the B.C. Aboriginal press, primarily *Kahtou* (published in Sechelt, B.C.), and documents provided by Aboriginal organizations, including the B.C. Association of Friendship Centres, United Native Nations, and the Pacific Metis Federation;
- attending meetings of the First Nations Summit and of several urban Aboriginal organizations;
- submissions by Aboriginal groups and individuals to the Royal Commission on Aboriginal Peoples, and summary documents prepared by the Commission;
- a limited number of secondary sources, notably *Aboriginal Peoples and Politics*. (Tennant 1990)

Comments on the draft report were solicited from reviewers in the provincial government and from Aboriginal individuals with extensive experience in and knowledge of Aboriginal/provincial relations in British Columbia. The authors are grateful for the comments of these readers and recognize that a review of the report does not constitute approval of its contents. Comments from reviewers for the Royal Commission were also very helpful.

Limitations and Disclaimers

Rather than providing a detailed overview of all current government initiatives, which would have entailed a report of hundreds of pages, this report seeks to identify trends and to mention some particularly interesting developments in provincial/Aboriginal relationships. At the same time, it is possible at least theoretically to speak of `government' positions on Aboriginal policy issues. This is not possible with respect to First Nations views on provincial initiatives and the effect of those actions on Aboriginal government. As discussed later in the paper, there is more diversity among Aboriginal peoples in British Columbia than anywhere else in Canada; there are multiple organizational viewpoints and differences within organizations. Comments from the Aboriginal perspective included in this paper *cannot* be considered representative of `Aboriginal opinion' in B.C., although we have attempted to identify some viewpoints that seem reasonably prevalent among Aboriginal organizations and individuals.

The major body of research for this report was completed in the fall of 1993; the final draft was submitted to the Royal Commission approximately one year later. Because individual programs are presented as indicative of trends in provincial policy, the authors have not attempted to incorporate program changes that occurred in the year intervening between the draft and final reports. Information on the progress of the treaty process is, however, current as of October 1994.

This report does not include either a detailed list of programs directed to Aboriginal persons or organizations or a comprehensive budget summary. The principal reason for these omissions is that there is no authoritative source for such information. Program and expenditure data presented in the report are thus anecdotal in nature and indicate expenditure trends rather than spending totals.

History

1774 to the Second World War

Although the Spanish reached what is now British Columbia in 1774, followed by the British four years later, colonization was slow, and direct efforts to change and control Aboriginal political, social and economic systems did not ensue until the middle of the next century. During the first 75 years of contact, however, Aboriginal peoples were powerfully affected in two ways: by the fur trade and by the introduction of foreign diseases. (Duff 1964) The trade in furs altered

patterns of interaction within and between tribal groupings, while epidemics of smallpox, influenza, measles, tuberculosis and venereal diseases, together with the effects of alcohol, depleted a population of at least 100,000 (and probably much higher) to a level of about 60,000 at the time Vancouver Island became a British colony in 1849. The population continued to decline until 1929, when it reached a low point of about 22,000 status Indians. (Duff 1964)

By the mid-1870s, major elements of Aboriginal policy, especially positions on Aboriginal title and self-government, were established in British Columbia. James Douglas, governor of the colony of Vancouver Island and of the mainland colony established in 1858, signed several treaties on the southern part of the Island and at Fort Rupert on the island's north end. In all, 14 purchases of Aboriginal title to lands were concluded, amounting to a total of about 360 square miles. Douglas signed no more treaties after 1854 and, while continuing to acknowledge Aboriginal title (at least on the Island), did nothing further to extinguish it. Instead he initiated a policy that he believed would open the way to a future in which individual Indians could be "prosperous, secure and equal". (Tennant 1990, p. 37) Reserves were allocated, generally on a basis of ten acres per family, although some, such as the Kamloops and other interior reserves, were much larger. Indians were also allowed to pre-empt land on the same basis as non-Indians. The right of pre-emption was significant; Aboriginal people outnumbered white settlers for many years and could have owned and occupied most of the arable land in the colony ─ a significant source of economic power. This would have been allied to political power, as Douglas evidently intended that Indian people should have the franchise like anyone else.

After 1864, when Douglas retired, everything changed. Joseph Trutch assumed responsibility for `Indian' policy and was later primarily responsible for negotiating British Columbia's union with Canada. Where reserves exceeded the supposed ten-acre `rule' established by Douglas, Trutch reduced them; the Kamloops reserve was cut on his instructions to less than half its former extent. He denied the existence of Aboriginal title and promulgated a view of `Indians' as having been primitive nomads, a characterization that neatly supported his other actions. During this period, the right of pre-emption was abolished for Aboriginal people, and in 1872, Aboriginal people lost the provincial franchise. After Confederation, the federal *Indian Act* was applied in British Columbia. By allowing only registered Indians to live on Indian reserves, the Act divided families and weakened communities. Until the 1980s, for example, Aboriginal women who married anyone who was not registered lost their Indian status. The Act gave

sweeping powers of regulation over reserves and bands to the minister and department of Indian Affairs and allowed the imposition of a chief and council structure (a watered down version of a municipal government) on Indian bands. (`Custom' selection of band leaders was also provided for by the Act.) The Act did not recognize tribal groupings, which might have made a considerable difference to the political evolution of Aboriginal people in B.C., especially in light of the importance of tribalism today as a major focus for political and administrative organization. For coastal peoples especially, the 1884 abolition of the potlatch and other traditional ceremonies destroyed, or drove underground, the major Aboriginal social, economic and political institutions.

By the 1870s the major elements of Aboriginal policy were in place in British Columbia; the policy was established during a period when the first peoples experienced dramatic losses of population, which must have seriously demoralized individuals and dislocated social, political and economic organization. Yet almost from the beginning of colonization, Aboriginal groups protested the occupation of their traditional lands and the suppression of their traditional governing institutions.

By the 1870s Coast and Interior Salish chiefs were organizing to claim recognition of tribal ownership of lands and to demand treaties. In 1887, Nisga'a and Tsimshian chiefs from the north coast travelled to Victoria to demand recognition of title and self-government and negotiation of treaties. Premier Smithe's response was the by now established rejection of Aboriginal title, coupled with the assertion to the delegation that "When the whites first came among you, you were little better than the wild beasts of the field." (quoted in Tennant 1990, p. 58) This pattern of Aboriginal demands for recognition of title and provincial rejection of the claim continued through the 1920s. A common assertion of provincial politicians was that Indian people were incapable of developing and pursuing the "land question" on their own but were being guided and indeed manipulated by meddling whites, especially Protestant missionaries.

During this time, new reserves were established on the basis of approximately ten acres per family (continuing the pre-union formula), as opposed to the 640 acres per family allocated in the Prairie treaties, a disparity that added to the Aboriginal conviction of unfair treatment by governments. Between 1913 and 1916, a joint federal-provincial commission (which became known as the McKenna-McBride Commission) toured the province in an effort to "settle the Indian land question", but only by examining and adjusting reserve size. The commission had no

mandate to discuss the question of Aboriginal title and refused the frequent appeals of Indians to be heard on the issue. The commission's recommendations (which were eventually implemented by the two governments without abiding by the surrender requirements of the *Indian Act*) added 136 square miles of land to Indian reserves and removed 74 square miles; the latter was appraised at about five times the value of the lands that were added.

In the years following the commission, Aboriginal political activity accelerated. Potlatches were held openly (and their participants arrested and jailed in some cases) and a new pan-British Columbia organization was founded: the Allied Indian Tribes of British Columbia. The Allied Tribes petitioned for and eventually obtained an enquiry to be conducted by a joint committee of the Senate and House of Commons. At the hearings, held in 1927, the committee rejected claims to Aboriginal title, denied the need for treaties, blamed Indian unrest on their white advisers, and recommended that they (and the whole pursuit of the "Indian land question") be curbed. Parliament moved promptly to amend the *Indian Act* to outlaw the raising of money by any person to pursue any claims-related activity. The Allied Tribes collapsed, and the pursuit of Aboriginal title and self-government lapsed into quiescence for almost a quarter of a century.

Aboriginal political activity did not cease, however. The Native Brotherhood of British Columbia, comprising representatives of most of the tribes on the central and north coast, was formed in 1931. Prohibited by law from pursuing the land question, the Brotherhood pursued legalization of the potlatch, replacement of residential schools by day schools in the villages, and greater recognition of Aboriginal rights in hunting, fishing and timber harvesting on off-reserve lands. The Brotherhood became the major voice for Aboriginal fishermen, eventually assuming the role of their bargaining agent.

After the collapse of the Allied Tribes, Aboriginal issues declined in significance for the provincial government. It took the province until 1938 to transfer lands to the federal government for Indian reserves that had been agreed to more than two decades earlier. Indians became politically invisible, like relics in a society with other things, such as the depression, on its collective mind. Until the Second World War, most Aboriginal people lived on-reserve; most of their children attended religious boarding schools; and the Aboriginal population was either in decline or just beginning to emerge from historically low levels. It was commonly believed until this time that many Aboriginal groups would simply die out and that the Aboriginal persons who did survive would eventually assimilate into mainstream society.

The Second World War to 1986

After the Second World War, the provincial government instituted a number of legislative changes to expedite the integration of Aboriginal people into the dominant society. In 1947, the provincial government repealed legislation denying the vote to non-white British Columbians, including Indians. (Frank Calder, of the Nisga'a Nation, was elected to the provincial legislature two years later.) In 1949, the *School Act* was amended to allow Indian children to attend public schools, with the federal government paying their tuition. Prohibition of Indian pre-emption of Crown lands was removed in 1953 (when it no longer mattered very much, as most of the available lands had been pre-empted). After the passage of the revised *Indian Act* in 1951, the province passed legislation opening beer parlours to Indians and, in 1956, exempted goods sold by Indians to other Indians on-reserve from social security (sales) tax.

British Columbia was the first province in Canada to grant Indians the provincial franchise; it was also the first to appoint a standing advisory committee to inquire into the status and civil rights of Indians in the province. The *Indian Inquiry Act* came into force in March 1950. For more than 20 years, the Provincial Advisory Committee on Indian Affairs (later the Indian Advisory Committee) advised the government on Indian policy and reported on Aboriginal issues in the province, including the extension of provincial programs and services to Aboriginal people. The committee included Indian members from the outset, although the first Indian chairman was not appointed until 1963.

During its tenure, the Indian Advisory Committee pursued several main themes unwaveringly. The first was the insistence that integration offered the best future for Aboriginal people; the second was the view that education was the main, indeed the only, avenue to successful integration. `Integration', as opposed to `assimilation', meant that Aboriginal persons would preserve their identity and community/tribal memberships, while participating fully in the larger economy. The committee believed that the active interest and support of non-Aboriginal people was essential to the process and, in 1956, accelerated its public relations campaign and began reporting on the activities of organizations and citizens' groups that were taking an interest in Indian welfare.

The tenure of the committee coincided with rapid increases in both the size of the Aboriginal population in British Columbia and in its rate of urbanization. Between 1962 and

1973, the population of registered Indians rose from 38,400 to 49,590. The percentage of off-reserve Indians rose from 14 per cent to 33 per cent. (Indian Advisory Committee 1973) Most provincial programs and services were made available to Indians residing off-reserve, as well as to any enfranchised or other `non-status' Aboriginal person, although the federal government paid the costs of health and social programs for Indians who had lived off-reserve for less than a year (a practice that is no longer followed).

The province extended a number of its services to on-reserve Indians, including agricultural extension services, some highway and hydro construction, and water advisory services. Many reserves were served by provincial public health agencies, under agreement with the federal government. Child welfare services were also extended to Indian reserves.

Perhaps because of the participation of Aboriginal members on the committee, coupled with the long-standing membership of individuals such as Wilson Duff, curator of anthropology for the provincial museum, the committee maintained a stance that was pro-integration, but not pro-assimilation and acknowledged the importance to Aboriginal people of the Indian land question. By the mid-1960s, the committee's reports not only included the activities of provincial departments and organizations such as the YWCA and the Boy Scouts but also focused increasingly on the activities of Aboriginal organizations: the Native Brotherhood, the Indian Homemakers' Clubs, the growing number of tribal councils and federations, and the network of Indian centres or friendship centres, which were being established to help ease the transition of Aboriginal people from rural reserves to urban life. In 1968, the Committee observed that

> The greatest hope for Indian progress lies in the emergence of Indian leadership and initiative in solving Indian problems. Indian organizations are supplying this leadership and are strongly stressing the need for a voice in making the plans and decisions in programmes important to their daily life. (1968, p. 10)

As part of its support for "Indian leadership and initiative", the Advisory Committee recommended that the provincial government share in financing a community development program in Aboriginal communities. The government agreed, and a program began with the appointment of a community development worker in Port Simpson in 1964.

The year 1969 was an eventful one for Aboriginal peoples everywhere in Canada, but especially in British Columbia. The federal White Paper on Indian policy was released; two major B.C. Aboriginal organizations were formed ─ the Union of B.C. Indian Chiefs (UBCIC) and the B.C. Association of Non-Status Indians (BCANSI); and, perhaps most significant, the Nisga'a

Tribal Council launched its court action claiming unextinguished title to their traditional lands. Also in 1969, the British Columbia government created the First Citizens' Fund, a $25 million endowment whose earnings were to support cultural, educational and economic development proposals put forward by Aboriginal communities.

In 1972, the Social Credit government of W.A.C. Bennett was toppled by the NDP. The new government agreed to negotiate return of, or compensation for, lands cut off by the McKenna-McBride Commission, but it asserted that Aboriginal title, if it existed, was a matter for the federal government to settle. A year later, the Supreme Court of Canada ruled in the *Nisga'a* case that Aboriginal title had existed before British Columbia was created but delivered a split decision on whether the Nisga'a still had title. As a result of the decision, the federal government agreed to negotiate claims to Aboriginal title in non-treaty areas.

In 1974, the Indian Advisory Committee became a branch of the department of the Provincial Secretary, and its role became that of administering the First Citizens' Fund, an activity that had been carried out formerly by a committee of cabinet ministers. Over its two decades of operation, the committee's own reports reveal the degree to which its hopes for a progressive and orderly integration of Aboriginal people into the dominant society had fallen short of realization. There were in those years significant increases in the number of Aboriginal children in public schools at the elementary level, but Grade 12 graduation and enrolment in post-secondary programs remained at dismally low levels.

In 1973, the committee could report only 285 Indian pupils in Grade 12. With a provincial unemployment rate at 6 per cent, the Indian unemployment rate was 40 per cent. (Indian Advisory Committee 1973) Provincial social assistance expenditures had increased every year since they were first made available to Indian people, and the number of Indian children in the care of the province had shot up from almost none in the 1950s to about 30 per cent of the total caseload in the 1960s, a level that has remained almost constant since. Clearly, the program of the Advisory Committee, which presumably was a fair reflection of the views of the provincial government, was simply not working. Although there were notable individual and community successes, all the major indicators pointed to social and economic dislocation on a grand scale.

It seemed as though most Aboriginal people were not going to integrate on the terms of the dominant society; by the early 1970s, historical demands for recognition of Aboriginal government and increased self-determination or self-government once again dominated the

agenda of the major Aboriginal organizations in the province.

The NDP were defeated in 1975, before the commencement of negotiations on the cut-off land issue. Negotiations were started by the Social Credit administration in 1981 and resulted in lands being returned to bands that had lost them, or the payment of compensation.

Also in 1975, the two big Aboriginal organizations ─ UBCIC and BCANSI, both of which had received funding from the provincial First Citizens' Fund ─ collapsed. The collapse followed a decision taken by members of both organizations to reject government funding in favour of independence and autonomy, a decision that resulted in both groups laying off their sizeable staff complements and closing their offices. This dramatic decision was in large part the culmination of increasing unhappiness on the part of the grass roots with what they considered to be big, wasteful organizations that served the interests of the Aboriginal leadership and non-Aboriginal governments more than they did the interests of the people. The major source of grassroots disillusionment was the complete lack of progress in the development of a province-wide land claim for submission to the federal government. The Nisga'a meanwhile had submitted their claim to the federal government. Negotiations began in 1976, without provincial participation as negotiators, although the province did attend discussions in an observer role.

The collapse of the big organizations further stimulated the growth of tribalism; new tribal councils were formed, and land claims preparation now became focused at the tribal level. Three of the major established tribal councils ─ those of the Nisga'a, the Nuu-chah-nulth (still called the West Coast District Council), and the Gitksan and Wet'suwet'en ─ provided guidance and leadership in the formation of a number of the new tribal councils. Often the new councils were based on the district councils of chiefs that the department of Indian and Northern Affairs had been establishing since the late 1960s. In any case, the notion of `one big claim' on behalf of all British Columbia Indians now disappeared permanently. In the future, land claims would be prepared for the most part by tribal councils, and the tribal groups would be the major political entities among the Aboriginal population.

Both the UBCIC and BCANSI recovered somewhat after 1975. The latter changed its name to United Native Nations, opened its membership to registered Indians, and supported the growth of tribalism and tribal identity. UBCIC on the other hand opposed the trend toward tribalism and remained committed to the band as the major unit of Indian political organization. As a result it steadily lost support to the emerging tribal organizations. The spread of tribal councils across the

province served as the almost exact geographic counterpart to the decline of the UBCIC.

Aboriginal organizations attempted throughout the late 1970s and early 1980s to establish a common province-wide forum or coalition to allow First Nations to speak with one voice on matters of major concern, notably the land question and, by the early 1980s, the drafting of the new Canadian Constitution. Such a demonstration of unanimity and solidarity would enhance political pressure on the federal and provincial governments, each of which was quick to point to any differences of opinion among Aboriginal groups. Aboriginal political leaders realized also that political solidarity would be an important factor in establishing credibility with the larger British Columbia public.

In 1983, a unanimous position was established through the British Columbia Aboriginal Peoples' Constitutional Conference (APCC), which empowered James Gosnell of the Nisga'a Tribal Council to seek recognition of Aboriginal title in the Constitution on behalf of all Aboriginal people in the province. The campaign failed, however, with the issue being debated through a series of first ministers conferences on Aboriginal rights, at which the province of British Columbia was one of the main opponents to constitutional recognition of Aboriginal title.

Although the APCC continued to meet periodically, the three major Aboriginal political organizations continued to be the United Native Nations, the Native Indian Brotherhood and the UBCIC. Several years later, the APCC was replaced as a political forum by the First Nations Congress, which did to a greater extent become the political voice of Aboriginal peoples in the province. The UBCIC, however, remained apart from this new development.

In the mid-1980s events were set in train that would lead to the provincial government agreeing, at last, to negotiate with Aboriginal groups concerning their assertions of Aboriginal title and the right of self-government. Commencing in 1983, various tribal groups and their non-Aboriginal supporters instituted a series of protest blockades. These included a blockade of logging access to Meares Island by the Nuu-chah-nulth in 1984 and obstruction of logging on Lyell Island by the Haida in 1985. These and other protests were used almost exclusively to block resource extraction and were based on the assertion of Aboriginal title. The protests focused on the provincial government's refusal to negotiate land claims. In most cases, Aboriginal groups went to court seeking injunctions, and in major instances, they achieved legal victory, and therefore political success against the province as well. The first major victory, which established the vital legal precedent, came in the British Columbia Court of Appeal, when

the majority granted the Aboriginal applicants an injunction against McMillan-Bloedel Ltd., halting logging on Meares Island pending settlement of the Aboriginal title claim to the island. The court was critical of the province for seeking to ignore the title issue and indicated that negotiations were the appropriate remedy.

More injunctions followed. In each case the province's legal ability to authorize resource development in land claim areas was, in effect, suspended by the courts. Resource companies themselves began to wonder whether provincial negotiation of Aboriginal claims might serve their interests better than continuing to fight injunctions and face blockades. By 1986, the stage was set for the new Social Credit administration under Premier Bill Vander Zalm to begin revisiting a provincial policy that had been firmly established since 1871.

Present Context

The 1991 census identified 170,667 persons of Aboriginal ancestry living in British Columbia. Of these, 101,135, or just over 3 per cent of the total population of B.C., indicated that they identify with their Aboriginal ancestry. Both of these numbers are understated, however, because of incomplete enumeration of Indian reserves, with the understatement more serious for `identification'. The numbers are likely closer to 173,000 and 107,000 respectively.

As is the case elsewhere in Canada, the Aboriginal population of British Columbia is a young population. About 35 per cent are under the age of 15, and more than 50 per cent are under the age of 24. (cited in Ktunaxa/Kinbasket Tribal Council 1993)

About 90,000 people of Aboriginal ancestry in B.C. are registered Indians (B.C. Ministry of Finance and Corporate Relations 1993a, p. 41); about half of them live off-reserve. The Aboriginal population is concentrated on the coast, especially the Lower Mainland and Vancouver Island, and in the Thompson-Okanagan region. The largest concentration, some 40,000 persons, is located in the Greater Vancouver area. (Statistics Canada 1993b)

In some regions of the province, Aboriginal people make up a significant proportion of the population. Results from the 1986 census indicate that almost 25 per cent of the population of the north coast and about 15 per cent in the north central region of the province are people of Aboriginal ancestry. It is estimated that before contact almost 40 per cent of the Aboriginal population of what is now Canada lived in B.C., with the majority concentrated on the coast and in major river valleys. Societal institutions, including politics and government, were generally

more complex and specialized among the coastal groups, although there was considerable variation throughout the area. Implementation, rediscovery or adaptation of these traditional governing structures and processes is a major focus of current Aboriginal self-government activity.

Using language as a basis of classification, there are ten major Aboriginal groups in British Columbia: Athapascan (Central and Northeast B.C.); Inland Tlingit, Haida, Tsimshian, Kwakiutl (Kwagiulth), Nuu-chah-nulth, Bella Coola, and Coast Salish, all on the coast; and Interior Salish and Kootenay, both in southeastern B.C. There are 199 Indian bands or First Nations in British Columbia, some one-third of all those in Canada. The average First Nation population (that is, status Indian population) is thus under 500 persons. Seventy-two per cent of Canadian reserves (just over 1600) are located in the province; most are very small, amounting to only a few tens of acres; only about a quarter of them are populated. Each Indian band thus has, on average, about eight separate reserves.

Most First Nations are affiliated with a tribal council. Most of these are organized on the basis of linguistic affiliation, although some reflect geographic factors and administrative relationships with the federal government. The North Coast Tribal Council, based in Prince Rupert, is the best known example of a geographic/administrative tribal council; its purpose is to deal with the federal government concerning administrative and funding matters; it includes the bands from the Haida, Nisga'a and Tsimshian tribal councils that are located within relatively easy travel distance of Prince Rupert. However, each of these three tribal groups also has its own tribal council, which is responsible for political matters, including land claims preparation and negotiation. There are some 30 tribal councils in the province. Education and employment/income levels differ significantly between the Aboriginal and general population. The accompanying tables provide more detail.

Levels of Education

	Aboriginal Population (%)	*Total Population (%)*
9 years or less	14.3	5.0
Secondary Education(with or without graduation)	48.4	42.4

Some Post-Secondary	14.2	14.5
Post-Secondary Certificate/Diploma	19.9	25.4
University Degree	2.8	12.1

Source: Statistics Canada, *Aboriginal Peoples Survey, 1991*.

Total Income

	Aboriginal Population (%)	*Total Population (%)*
Less than $2,000	22.9	13.1
$2,000-$9,999	31.0	19.7
$10,000-$19,999	22.6	22.2
$20,000-$39,999	17.5	27.9
$40,000 or more	6.0	17.0

Source: Statistics Canada, Aboriginal Peoples Survey, 1991).

The greatest educational differences between Aboriginal and non-Aboriginal populations are at the lowest and highest levels of educational attainment, with intermediate levels being roughly comparable.

Sixty-one per cent of Aboriginal people over the age of 15 are in the labour force, compared with 67.6 per cent of the total B.C. population in the same age category. The Aboriginal unemployment rate is almost 28 per cent, compared with an overall rate for British Columbia of just over 10 per cent.

Aboriginal people receive significantly lower incomes, on average, than other British Columbians. More than half the Aboriginal population receive incomes lower than $10,000, compared with less than one-third of the total population. Only 6 per cent of Aboriginal people received incomes higher than $40,000, compared with 17 per cent of all British Columbians. About 28 per cent of Aboriginal people reported receiving social assistance for some period

during 1991. (Statistics Canada 1993a)

Results from the 1986 census indicate that the proportion of Aboriginal persons employed in resource industries (e.g., fishing, logging, mining) is about double the proportion of the non-Aboriginal population employed in the same industries. The percentage of Aboriginal people employed in government and other service industries is slightly above that for non-Aboriginal persons, while the proportion of all employed Aboriginal people who work in the wholesale and retail trade sector is about two-thirds that of non-Aboriginals. (B.C. Ministry of Finance and Corporate Relations 1993a, p. 42) In general, unemployment rates are higher and educational levels and incomes are lower for Aboriginal people living on-reserve than for those off-reserve.

Many Aboriginal individuals and communities in British Columbia, as elsewhere in Canada, face serious social and health problems, including high rates of suicide, chronic mental and physical health problems, substance abuse, and family violence. A report undertaken for the British Columbia Royal Commission on Health Care and Costs found that "alcohol abuse was common in 93 per cent of Native communities, and drug abuse common in 81 per cent. In Vancouver, 40 per cent of the registered users of the needle exchange program are Native". (cited in Frank 1992, p. 5) Aboriginal children account for about 35 per cent of children in care of the province, and more than 50 per cent of these children are placed in care under a court order, as opposed to a voluntary agreement with the child's family.

This very brief socio-demographic portrait suggests that the challenges facing Aboriginal individuals and communities are more acute than, and in several ways very different from, those facing other British Columbians. Employment, education and skills development are widespread concerns but are more acute for a very young population with historically low levels of employment ─ employment that is, moreover, concentrated in declining resource extraction industries. As First Nations exercise jurisdiction over a wider range of activities, the relative lack of Aboriginal persons trained in technical and professional fields will be a continuing challenge. In other areas, such as health care, the most acute Aboriginal concerns differ from those of British Columbia as a whole, with respect to both the nature of health concerns and the preferred models of health care delivery.

Actors and Processes

The Province

The Social Credit government

The Social Credit administration of Premier Bill Vander Zalm (1986 to 1991) showed greater interest in Aboriginal issues than any of its predecessors had done and began, in 1987, to develop specific government machinery for developing and implementing Aboriginal policy. The Native affairs secretariat, within the ministry of intergovernmental relations, and a cabinet committee on Aboriginal affairs were established in 1987. The following year, the secretariat was replaced by the ministry of Native affairs. Its first minister, Bruce Strachan, communicated widely and openly with Aboriginal groups; this approach was continued by his successor, Jack Weisgerber. Eric Denhoff was deputy minister for the bulk of the period. Both ministers met regularly with Aboriginal groups in the province to discuss the Indian land question and other policy issues. However, neither they nor the government acknowledged any legitimacy to assertions of Aboriginal title and the right of self-government. During this time,

> new and better relations were developed with Indian communities, tribal groups and political organizations, all of which were now generally accepted as legitimate interest groups within the provincial political process. (Tennant 1990, p. 235)

Also at this time, however, the Native title project was established in the ministry of the attorney general. Its purpose was to disprove the validity of assertions of Aboriginal title and the inherent right of self-government that had now been brought before the courts by the Gitksan and Wet'suwet'en peoples. The case, which was now being heard by Mr. Justice McEachern in the Supreme Court of British Columbia, was known as the *Delgamuukw* case ─ Delgam Uukw being the name of the senior Gitksan hereditary chief. The Native Title Project was disbanded after the New Democratic Party had replaced the Social Credit Party in 1991 and had decided to pursue a somewhat different legal strategy in the *Delgamuukw* case. (The case is discussed further later in this study.) It was disbanded only after the province's legal team was replaced in the appeal of the *Delgamuukw* case.

In July 1989, Vander Zalm appointed the Premier's Council on Native Affairs with a mandate to "review provincial policies affecting aboriginal people and to meet with tribal councils across the province to hear their concerns". (B.C. Premier's Council 1990) The following year, the council, which included three Aboriginal members as well as the minister of

Native affairs and a northern member of the legislature, met with eleven tribal councils and several individual bands and organizations. The summer of 1990 brought events and decisions of historic consequence in the relations between the government of British Columbia and the Aboriginal peoples of the province. The vital events were initiated by the dozen or so First Nations that erected road and rail blockades to mark their support for the Mohawk of Quebec in their conflict with the governments of Quebec and Canada. The majority of the blockading First Nations in British Columbia were located in the south-central interior of the province, where the UBCIC remained relatively strong.

The British Columbia protests quickly came to focus on British Columbia grievances, and especially on the continued refusal of the province to acknowledge the validity of Aboriginal assertions and agree to negotiate. In response, the premier requested an immediate interim report from his advisory council. In marked contrast to the premier of Quebec, Mr. Vander Zalm went, news media in tow, to several of the blockades where he talked to the protesters. In one of the most noteworthy meetings, the premier and his officials sat beside the British Columbia Railway tracks, in lawn chairs provided by their hosts, while Lillooet chiefs in war paint lectured them concerning Aboriginal rights.

In its interim report, submitted in late July, the advisory council recommended a number of measures to enhance social well-being and economic development of Aboriginal peoples but focused on the land question and self-government. Concerning self-government, the council identified three approaches: constitutional entrenchment, legislated self-government and incremental self-government (transfer of services such as health or child care to a band or tribal council). The council recommended that

> ...the provincial government actively look for opportunities to accelerate the process of legislated and incremental self-government, and to encourage discussion of constitutional entrenchment of self-government during any future review of the Canadian Constitution. (B.C. Premier's Council 1990, p. 7)

In the council's view, however, the "outstanding issue of aboriginal land claims was the overriding concern of the tribal councils visited". (p. 8) The council concluded that the issue "must" be addressed, that it could not be settled successfully without the province's involvement, and that the province should participate in negotiations:

> Currently, title to and management of the land and natural resources which, in part, might form the basis for a settlement of some claims, are vested in the

> Provincial Crown and, thus, it is vital that the Government of British Columbia be an active participant at the negotiating table.
>
> In addition, the Province should be at the table to ensure that the interests of all British Columbians are taken into consideration as part of the negotiations between Canada and Indian bands.
>
> We do not believe that the Government of British Columbia by agreeing to such a recommendation, would in any way be relieving Canada of its legal and financial obligations to Native people or the Province. (p. ii)

The council recommended further that the province move quickly to establish a specific process for receiving, assigning priority to and beginning the negotiation of land claims.

The premier responded promptly. On 8 August 1990, he announced that the British Columbia government accepted all the recommendations of the Council on Native Affairs, but he also stated that the government specifically rejected Aboriginal title as the basis for entering into negotiation of land claims. The province would, rather, "assist the Government of Canada to effect a just settlement of Native land claims...(but)...the ultimate financial responsibilities must rest with the federal government". (British Columbia 1990)

The province's agreement to move on land claims negotiations occurred a few months after the conclusion of the trial argument in *Delgamuukw* v. *British Columbia*. Although Mr. Justice McEachern would not deliver his judgement in the case for some months, by this time the general trend in court decisions on Aboriginal rights suggested to senior government officials in the ministries of the attorney general and Native affairs that the court's decision could well favour the plaintiffs. Officials were also intensely aware of the series of continuing injunctions that had begun with the Meares Island case five years earlier.

Over the next several months, the provincial government began to put in place mechanisms to receive, analyze and respond to Aboriginal claims. In September, the Native Claims Registry was established within the ministry of Native affairs. A few weeks later, the premier and his entire cabinet met with Aboriginal leaders from across the province. The same leaders met at about the same time in a similar meeting with Prime Minister Brian Mulroney. In October, the province formally agreed to join the Nisga'a negotiations, which had now been under way between the federal government and the Nisga'a for almost 15 years.

The meetings between Aboriginal leaders and provincial and federal leaders were unprecedented. The Aboriginal side of organizing the meetings was handled by the leaders of the First Nations Congress. The FNC leaders, however, regarded the meetings, and the prospect of

actual negotiations, as implying the need for new roles and perceptions at the province-wide level of Aboriginal political activity. For this reason, the Aboriginal leadership was styled the `First Nations Summit' in the two historic meetings. There was also some hope that the UBCIC would find the new name sufficiently attractive to allow it to participate, but this hope was not fulfilled. In any case, the First Nations Summit, composed of the representatives of any First Nation or tribal council choosing to participate, soon became, and still remains, the political entity representing the majority of Aboriginal persons and peoples in British Columbia. The FNC continued to function for a few years but eventually faded away.

In early December, the British Columbia Claims Task Force was established. Having been proposed by the Summit, it was an unprecedented tripartite body established to recommend how the three parties could begin negotiations and what the negotiations should include. It was to consist of two federal members, two provincial members, two members nominated by the First Nations Congress, and one member nominated by the Union of British Columbia Indian Chiefs. But the UBCIC refused to participate on the grounds that recognition of Aboriginal title by British Columbia must be a precondition for the commencement of negotiations.

While the Task Force deliberated, the province proceeded to enunciate principles for the settlement of claims and to appoint a Third Party Advisory Committee representing major resource sectors, unions, business organizations, municipalities, recreation, tourism and environmental groups. (B.C. Ministry of Native Affairs 1991) At the inaugural meeting of the advisory committee in April 1991, two working groups were formed: one to deal with fisheries, the other with interim measures. The latter was to advise on occupation, use and management of lands and resources in a particular area pending the settlement of a land claim in that area. By this time, the Social Credit administration had also enunciated its policy on self-government arrangements:

> The Province supports negotiated self-government arrangements which respect and maintain the constitutional framework, and is willing to make changes to provincial policy and legislation in order to achieve these arrangements. Although the Province maintains that this is primarily an area of Federal jurisdiction, it will negotiate aspects of self-government which deal with areas of provincial jurisdiction. (B.C. Ministry of Native Affairs 1991)

The increased emphasis given to Aboriginal affairs in British Columbia was reflected in the growing budget of the ministry of Native affairs. From a total of $2,296,000 in fiscal year

1989-90 (excluding First Citizens' Fund and Cut-Off Lands expenditures), the administrative budget of the ministry climbed to $6,971,400 in 1991-92, a threefold increase. Meanwhile, other ministries were establishing a variety of `Aboriginal' units or installing Aboriginal advisers, generally in planning, policy and co-ordinating roles. A number of ministries quickly established their own Aboriginal advisory councils or task forces to produce special reports on Aboriginal issues. These developments are discussed in more detail later in the paper.

In early 1991, Mr. Justice McEachern (who by this time had been promoted to chief justice of the British Columbia Court of Appeal) ruled entirely against the Aboriginal position in the *Delgamuukw* case, although he did rule that the provincial government had a continuing "fiduciary duty" to ensure that Aboriginal hunting and other sustenance practices were not interfered with arbitrarily. The decision was a bitter defeat for the Gitksan and Wet'suwet'en, especially because a major feature of the ruling was the judge's view that the Aboriginal societies had been "primitive" ─ lacking not only the use of the horse and the wheel, but also any developed system of law and government. However, with the provincial and federal governments already having agreed to negotiate, the McEachern decision could have little effect upon public policy. The Gitksan and Wet'suwet'en proceeded to appeal to the Court of Appeal.

In late June 1991 the Task Force submitted its report and recommendations. It made no mention of the McEachern ruling. Its major recommendation was that

> First Nations, Canada, and British Columbia establish a new relationship based on mutual trust, respect, and understanding ─ through political negotiations. (B.C. Claims Task Force 1991, p. 19)

The Task Force made 19 recommendations in all, including a recommendation that "each of the parties be at liberty to introduce any issue at the negotiation table which it views as significant to the new relationship". (p. 82) First Nations government, constitutionally protected within treaties, would be, in the view of the Task Force, "an essential component of a new relationship". (p. 22) To facilitate the process of negotiations, the Task Force recommended that an independent treaty commission be established, consisting of a full-time chairperson and four commissioners, two to be appointed by the First Nations and one each by the provincial and federal governments.

With a provincial election in the offing, the British Columbia government accepted "in principle" the appointment of an independent treaty commission but avoided any detailed

response to the Task Force report.

The New Democratic government

At its convention in March 1990, the B.C. New Democratic Party had endorsed a sweeping policy statement on Aboriginal issues entitled "Towards a Just and Honourable Settlement: Indian Land Claims in British Columbia". The party stated its commitment to a number of principles, including

- recognition of aboriginal title and of aboriginal peoples' inherent right to self-government
- renewal of constitutional processes aimed at entrenching aboriginal peoples' inherent right to self-government in the Constitution of Canada. (NDP 1990)

`Self-government', in the context of the party's statement, was linked clearly to treaty settlement, as these would provide for "aboriginal jurisdiction over...lands and resources". For Aboriginal people in urban areas, the NDP proposed to ensure that

> the principle of aboriginal control is respected and that specialized programs and services are designed and delivered by off-reserve and urban aboriginal communities themselves....Aboriginal control of specialized programs and services reflects the New Democratic Party's recognition of the distinctive economic, social and cultural rights of the province's off-reserve Indian and Metis communities.

Following its electoral victory in October 1991, the new government quickly affirmed its commitment to the major elements of its Aboriginal policy. Among its first actions was to rename the ministry of Native affairs the ministry of Aboriginal affairs. On December 10, Premier Michael Harcourt and minister of Aboriginal affairs Andrew Petter met with the First Nations Summit to announce acceptance of all the recommendations of the B.C. Claims Task Force. In his remarks, Premier Harcourt outlined the benefits he expected to flow from claims settlement:

- reduction of economic uncertainty and an improved climate for investment;
- resolution of conflicts between competing resource users;
- declines in the cost of social assistance;
- a self-reliant native economy and native communities;
- improved natural resource management practices and shared resource management;
- spillovers of economic activity into the non-aboriginal community.

Nor, said Mr. Harcourt, would provincial action be limited to claims settlement. The province would, in addition, "begin addressing the pressing needs of aboriginal people". The Premier envisaged "practical areas" in which the province and Aboriginal people could work toward "self-sufficiency" and "self-government": post-secondary education, economic development and the sharing of resources, health, alcohol and drug counselling and programs for children. (Harcourt 1991, p. 4)

Following Premier Harcourt's remarks, Andrew Petter laid out the basis for the "new relationship" to be forged between the Aboriginal and non-Aboriginal peoples of British Columbia: recognition of the "political legitimacy" of Aboriginal title and the inherent right of self-government. "Political legitimacy" was a new twist ─ an attempt, apparently, to deal with the still unresolved legal status of Aboriginal rights and designed to withstand a court decision whether it confirmed or denied Aboriginal rights.[i]

The province's December 10 announcement was hailed by most Aboriginal leaders in British Columbia. The UBCIC, however, pointed out that the government, while acknowledging "political legitimacy" was still preparing to argue in the *Delgamuukw* appeal that Aboriginal rights had been extinguished. (Vancouver *Sun*, 14 December 1991) The NDP government did hire new lawyers to argue the government's case in the appeal, but they altered the argument by agreeing that not all Aboriginal title had been extinguished.

The province's announcement was generally greeted with enthusiasm by the mainstream media as bringing an end to economic uncertainty and costly court battles and offering an opportunity to correct historical injustices. Most non-Aboriginal commentators expressed concern, however, about the possible extent of settlement costs and the potential effects on third parties.

Aboriginal expectations were high in the final days of 1991. But before negotiations could begin, two things were required: the establishment of an independent treaty commission and the conclusion of an agreement between the federal and provincial governments on sharing the costs of negotiating and settling treaties, including the costs of the treaty commission itself. These two steps took more than a year to accomplish, with a memorandum of understanding on cost-sharing and the appointment of the treaty commission finally achieved in the late spring of 1993. Also in 1993, the British Columbia Court of Appeal partially reversed the ruling of the B.C. Supreme Court in the *Delgamuukw* case by establishing that Aboriginal title had not been

entirely extinguished in British Columbia. A limited form of Aboriginal title, that of non-exclusive use and occupancy, was held to exist in non-treaty areas. The Appeal Court ruled, however, that no right of self-government had survived the creation of colonial government. Although the ruling fell far short of what the Aboriginal claimants had hoped for, it did determine unambiguously that Aboriginal title was still in effect in British Columbia.

Ministry of Aboriginal Affairs

Rapid growth of the ministry of Aboriginal affairs accompanied the growth of Aboriginal issues as a major concern of the provincial government. The ministry underwent a major restructuring in 1992, with seven branches being reorganized into four divisions: management services, aboriginal relations, treaty negotiations, and policy, planning and research. Considerable staff turnover, especially at senior levels, marked the early period, with three different deputy ministers serving in a two-year period.

Ministry staff found themselves consulted often by other ministries in the development of Aboriginal programming, with the staff participating in numerous inter-ministry and intergovernmental committees. Initially, the major roles of the ministry related to research, policy planning and inter-ministerial co-ordination on Aboriginal issues and policies, while its program responsibilities (such as legislative responsibility for the First Citizens' Fund and the Heritage, Language and Culture Council) were relatively minor. With the onset of treaty negotiations, however, the ministry is in the process of assuming major responsibility in this field, one that will keep the ministry in a politically prominent and sensitive position into the foreseeable future. The growth in the ministry's importance has been reflected in the growth of its budget; it was $18.2 million for 1993-94, a 13 per cent increase over the previous fiscal year.

First Nations

Political organizations

For on-reserve status Indians in British Columbia, the main political and administrative units of government are the bands and tribal councils. As noted earlier, tribal councils have become increasingly important organizational units, reflecting both the significance of tribal identity, and the potential for realizing greater political power and administrative economies of scale than could be achieved by individual bands. Unlike bands, tribal councils are not mandated by the

Indian Act or dictated by any other federal or provincial legislation, although most are incorporated as societies under provincial law.

The oldest tribal councils, notably including those of the Nisga'a and the Nuu-chah-nulth, have been in existence since the 1950s. The success and stability of the older tribal councils would appear to rest on two main factors: the continuing identity of traditional cultural groupings and the establishment of contemporary relationships that reflect First Nations objectives rather than those of other governments. Geographically, the more stable tribal councils are located in the north and central coastal regions on the outer coast of Vancouver Island. On the inner south coast, tribal councils have been less durable, and a number of bands remain unaffiliated with any council. Among both the Kwagiulth (also known as the `Kwakiutl') and the Island Salish peoples, the pattern has been one of several tribal councils existing simultaneously, each representing communities linked by proximity or by political alliances among band leaders. In the interior of the province the formation of tribal councils tended to be inhibited by the remaining strength of the UBCIC, so they did not become fully developed until the late 1980s.

The development of strong tribal or `national' organizations has been accompanied, however, by a continuing quest for a unifying province-wide political voice for all Aboriginal persons and peoples in British Columbia. Since the successes of the Allied Tribes in the early part of the century, various organizations have attempted to bring together Coast and Interior peoples; since the 1970s there have been efforts to bring together rural and urban, status and non-status, and even Métis and Indian persons into unified political organizations.

Given the enormous diversity of Aboriginal peoples and concerns within British Columbia, it is not surprising that no unified, all-inclusive organization or forum has emerged. At present, there are two major organizations representing primarily on-reserve status Indians: the First Nations Summit and the Union of British Columbia Indian Chiefs. UBCIC has existed since 1969, although today the number of supporting First Nations is only a fraction of what it once was. Its members are the chiefs of Indian bands, and its main strength is in the central and southern interior among the Okanagan, Stl'atl'imx, Thompson, St:olo, Tsilhqot'in (Chilcotin) and Shuswap nations.

The First Nations Summit has the support of the majority of tribal councils and the majority of First Nations. By comparison with the UBCIC, the Summit has a looser structure; it is more of a representative forum and co-ordinating body than a formal organization. The UBCIC

has a typical executive structure and specific membership, while the Summit has neither. The Summit consists of representatives of the tribal councils and First Nations that attend Summit assemblies. The Summit's main leadership structure consists of two co-chairs (one from the coast and one from the interior) and a three-member task force that arranges and co-ordinates the Summit's dealings with provincial and federal governments and with the Treaty Commission.

The UBCIC declined to send a representative to the Claims Task Force, in part because of its view that treaty negotiations between First Nations and governments are nation-to-nation discussions; in this view, the province is not a nation and hence has no status in negotiations. More recently, however, UBCIC signed a memorandum of understanding (MOU) with the province respecting the establishment of a government-to-government relationship and in particular providing for a joint policy council of chiefs and cabinet ministers. This MOU and other agreements between the province and First Nations are discussed later in the study.

The United Native Nations was formed in 1976 after the collapse of the British Columbia Association of Non-Status Indians. Membership in the new organization was open to both status and non-status Aboriginal persons; the term `nation' specifically meant tribal nations (that is, tribal groups). The UNN now describes itself as the "largest political off-reserve Aboriginal organization...in British Columbia". (UNN 1993) As well as being a political voice for off-reserve peoples, UNN is heavily involved in delivering programs and services, particularly in housing, through the British Columbia Native Housing Corporation.

Before it collapsed in 1975, BCANSI included many Métis in its membership; at times they dominated the leadership of the organization. The UNN and the Métis parted ways, however, and later several exclusively Métis organizations were established, notably the Louis Riel Metis Association, based in the lower mainland. In the mid-1980s, the Louis Riel Association was disbanded, in part because of financial difficulties. The Pacific Metis Federation was then formed and became British Columbia's member organization on the Métis National Council. The Louis Riel Metis Association was then revived and, together with the Pacific Metis Federation and the Vancouver Island Metis Association, held a unity conference in early 1993. The hope was to form a united front for negotiations with the provincial and federal governments.

Women's organizations

Formal organizations of Aboriginal women have existed in British Columbia since before the

Second World War, when the Native Sisterhood was formed in association with the Native Brotherhood of British Columbia. In 1968, the Indian Homemakers' Association was established on the foundation of 40 reserve-based Homemakers' Clubs. It was active through the 1970s and early 1980s before fading from prominence; its leadership was centred in the lower Fraser Valley. During the same period the Native Women's Society was active in the interior, and it is still active today; its leadership is centred in Kamloops.

There are a number of regional and local women's organizations in British Columbia, several of which are members of the Aboriginal Women's Council, which is based in Vancouver. The Professional Native Women's Association of B.C. has been active and prominent since the early 1970s, primarily providing a forum and network for Aboriginal women holding professional and administrative employment. While Aboriginal women's organizations have varied concerns and objectives, all are concerned with social, cultural, health, education and justice issues.

Service and sectoral organizations

The distinction between `political' and `service' organizations in B.C. is not a sharp one. `Political' organizations take on service delivery roles, in part because of the scarcity of funding for advocacy, policy development and other political activities, which must be accommodated within the funding provided for services and programs. Conversely, many service organizations play a political role, defined in terms of either their service interests or on a broader stage.

The oldest and most widely established organizations in the off-reserve Aboriginal service network are the friendship centres. Originally drop-in and referral centres, particularly for Aboriginal youth, friendship centres began during the 1970s to offer a range of direct services, which now extend to the areas of substance abuse, employment, family support, legal services, cultural retention, health, housing, education, employment and cross-cultural awareness. Almost a quarter of all friendship centres in Canada are located in British Columbia. Because of their history and the broad range of services they deliver, friendship centres see themselves as providing strong leadership in urban Aboriginal communities, a role they see as deserving more support and financial recognition for policy development, advocacy and service co-ordination activities.

There is a wide range of other service and sectoral organizations in British Columbia,

most of them concerned with social services, health, justice, housing, education or culture. URBAN, for example, is a coalition of organizations delivering services in the Greater Vancouver area. In recent years, however, organizations concerned with resource management and economic development, especially in the fishing industry, have emerged, most of them formed by a particular tribal group or by several in the same region. The Native Brotherhood, now in its sixth decade of existence, remains active and strongly supported, primarily on the central and north coasts, its areas of traditional strength.

A network of Aboriginal capital corporations has also been established, most of them serving the membership of particular tribal groupings. The successful conclusion of treaty negotiations would see these and similar organizations acquiring greater profile and significance, as land and resources are returned to the ownership and control of First Nations.

Overview of Governmental Activity

Contemporary Issues

The pre-eminent issue in Aboriginal policy in British Columbia is without doubt the negotiation and settlement of modern treaties. First Nations, the provincial government, and the federal government are all engaged in building up the machinery and resources that will be needed to negotiate the many treaties (potentially some 50 or 60) that will be required. Given the time and resources that have been required to reach similar agreements in Quebec and in the North, it is fully evident that the British Columbia treaty process will be lengthy and will require considerable human and financial resources.

At the same time, there is a growing awareness that treaties will not and cannot settle all Aboriginal issues in British Columbia. Relationships between Aboriginal peoples and their neighbours will become more detailed and time-consuming, not less, as a result of increased Aboriginal jurisdiction over lands, resources, and services. Many Aboriginal individuals will choose to live away from treaty settlement areas, but will have membership rights in their home communities; relations between home communities and residents away will require much effort. In addition, there are considerable numbers of Aboriginal persons in the province, including primarily Métis and urban Indians from other parts of Canada, who will not be subject to treaties at all. The treaty process must thus be seen as providing for only a part of the evolving relationship between Aboriginal and non-Aboriginal British Columbians. This section seeks to

highlight some major issues in the development of this relationship, under the following headings: the establishment of a government-to-government relationship between First Nations and the provincial government; treaty negotiations; local government, taxation and services; lands and resources; economic development; justice; education; child welfare; health; and culture, language and recreation.

Establishing Government-to-Government Relationships

There is now no lack of advisory or consultative processes established between the B.C. government and First Nations organizations. Most of these have been constituted to deal with a particular program or policy area; members have been appointed because of their personal expertise or as representatives of particular organizations, groups or interests. The proliferation of Aboriginal advisory bodies reflects not only the increasing importance of Aboriginal interests in the policy arena, but also the trend toward more consultative `open' government, which is one of the NDP policy priorities. (B.C. Cabinet Planning Secretariat 1993)

The growing number of advisory and other groups has been a source of some dismay for both Aboriginal organizations and public servants. Aboriginal members of advisory groups tend to find the requirements time-consuming and the results far short of what they had been led to expect initially in terms of policy and program control. Aboriginal members typically find it impossible, even with the best of efforts and intentions, to keep their constituent groups fully abreast of advisory group activities, let alone of actual policy developments. Not surprisingly, then, the First Nations Summit has called for an end to advisory groups, on the grounds that they are ineffective and that in any case it is only the Aboriginal political leadership that has a mandate to represent the interests of Aboriginal peoples. The political leadership would prefer government-to-government policy forums.

One particular difficulty with the more important of the advisory groups is that Aboriginal members are frequently political leaders, while government-appointed members are public servants. From the perspective of Aboriginal political leaders, the kinds of issues that can be addressed by public servants and the kinds of commitments they can make are often frustratingly limited. An Aboriginal leader, who is probably on a first-name basis with the minister, is not likely to appreciate the constraints felt by a bureaucrat who is several steps down the hierarchy.

From the perspective of government officials, attempts to carry out their day-to-day responsibilities are sometimes hampered by what they consider to be the politicization of administrative decisions. As discussed later, interim measures agreements have provided for explicit consultative mechanisms, but provincial officials and First Nations often disagree on what `consultation' means in practice.

In short, the advisory group consultative process has been, with a few exceptions, a continuation and expansion of conventional approaches to government interaction with interest groups. The NDP government has, however, committed itself to a new government-to-government relationship with First Nations. This new commitment is discussed later in this paper.

Treaty negotiations, when they begin, will be conducted explicitly on a government-to-government basis with First Nations. In accordance with the recommendations of the B.C. Task Force, First Nations are responsible for the choice of Aboriginal negotiating groups or groupings. Implicit in the recommendations, and in precedents from elsewhere, is the requirement that any one group or grouping must be identified with one traditional territory or with several contiguous territories. Thus, it is certain that the negotiations will be conducted by individual First Nations, by several neighbouring First Nations, or by individual tribal councils.

Many existing and continuing aspects and issues in the relationships between Aboriginal and non-Aboriginal British Columbians, notably those of a broad province-wide policy nature, are of pressing immediate importance; and many of these aspects will not be covered by treaty (as there will, of course, be no province-wide treaty of any sort). In early 1993, the provincial cabinet approved the establishment of government-to-government forums with major Aboriginal political organizations to address such issues. The forums are two-tiered. Leaders of Aboriginal organizations and members of cabinet are to meet a few times each year to discuss political issues and develop agendas for the forum. This first tier is to be supported by a senior officials working group and a series of working groups and technical committees, as necessary. The purpose of these forums is to address broad policy issues, including those that may require changes in legislation or regulation, and to promote consistent approaches among line ministries to implementing a government-to-government relationship with First Nations.

The first of these agreements was negotiated with the Union of B.C. Indian Chiefs and signed in June 1993. The agreement establishes a joint policy council of chiefs and cabinet ministers and explicitly acknowledges a number of issues of particular concern to the UBCIC in

establishing relationships with the province. The agreement confirms that a government-to-government relationship between UBCIC and British Columbia will not

- derogate from the bilateral nation-to-nation relationship between First Nations and the Government of Canada;
- derogate from the federal government's fiduciary obligations to First Nations;
- affect in any way aboriginal rights, treaty rights and aboriginal title or constitutional developments or negotiations. (UBCIC and Government of British Columbia 1993)

The joint policy council provides a forum for discussion with the province of issues related to treaties, such as extinguishment of Aboriginal rights, without involving UBCIC in the Treaty Commission process, which it has rejected. Other issues proposed for discussion include matters related to preservation of heritage and culture, provincial powers to expropriate reserve lands, and child welfare and education issues.

The second of these government-to-government agreements was signed with the First Nations Summit in late August 1993. It is directed specifically to the negotiation of interim measures agreements before and during treaty negotiations. `Interim measures' are interpreted to include

- the jurisdiction and authority of First Nations over the protection, management, use, allocation and development of their lands, waters and resources within their traditional territories; the jurisdiction and authority of First Nations in areas such as education, child welfare, justice, health, taxation, business and aboriginal languages; and any other matter which the Parties agree to deal with. (First Nations Summit and Government of British Columbia 1993)

The province has indicated an interest in establishing forums for discussion with other First Nations organizations as well, including the Treaty 8 Tribal Association (representing bands in northeastern B.C. that signed Treaty No. 8 with the federal government at the turn of the century). Discussions have also been held with Métis organizations and urban organizations such as the United Native Nations. These latter discussions are greatly complicated by the considerable fragmentation of urban Aboriginal political activity ─ which is related in turn to the diversity of tribal and geographic origins ─ and by the competing claims of various local groups. The provincial government is understandably reluctant to complicate the urban situation further by anointing any one group or by trying to set up representative forums unilaterally.

The province has also undertaken to establish agreements that provide for processes to resolve issues that do not require legislative, regulatory or broad policy changes. These agreements provide negotiating protocols and monitoring mechanisms for sectoral agreements negotiated between a First Nation and one or more provincial ministries. An early example of this type of agreement is the memorandum of understanding between the Tsilhqot'in (formerly Chilcotin) Nation as represented by the Tsilhqot'in Tribal Council and the government of British Columbia as represented by the ministries of Aboriginal affairs; economic development, small business and trade; environment, lands and parks; and forests, signed in June 1993. Items initially identified for discussion under the Tsilhqot'in agreement include forestry, fish and wildlife enforcement, water rights issues, education, social issues, and mining issues. From the provincial perspective, the establishment of such protocol agreements was intended to deal with a wide range of specific issues in a more comprehensive, systematic, and efficient way. (The provincial government has now retreated somewhat from the Tsilhqot'in model, in which Aboriginal Affairs played a major co-ordinating role; since mid-1993 most interim agreements have been negotiated by specific line ministries.)

Treaty Negotiations and Self-Government

As mentioned earlier, First Nations were identified specifically by the B.C. Claims Task Force as the major Aboriginal participants in treaty negotiations. First Nations self-government is identified in the Task Force report as the hallmark of a "new relationship which recognizes the unique place of aboriginal people and First Nations in Canada". (B.C. Claims Task Force 1991, p. 16) The new relationship, states the Task Force, must be based on "recognition and respect for First Nations as self-determining and distinct nations with their own spiritual values, histories, languages, territories, political institutions and ways of life". The report recognizes the autonomy of First Nations to determine

- the scope of issues to be negotiated
- the manner in which First Nations choose to organize and structure themselves for treaty negotiations
- the resolution of issues relating to territorial overlaps among first nations
- ratification procedures

The Task Force report also recommends that no First Nations in British Columbia be excluded from the treaty negotiation process on the basis of inclusion in either one of the

Douglas treaties or Treaty No. 8. Without Aboriginal consent, of course, no new process could undo any of these old treaties or their provisions. What new treaties could do is amend or supplement the old treaties, as in allowing Vancouver Island First Nations a more extensive land base than the Douglas treaties provided.

In the framework agreement pertaining to the Nisga'a treaty negotiations, the only negotiations under way in British Columbia at the end of 1994, Nisga'a self-government is identified as a subject for negotiation. The framework agreement, which was signed in 1991, defines Nisga'a government as dealing with jurisdictions and powers of the institutions and structures of Nisga'a government; issues concerning Nisga'a authority over lands and resources are to be dealt with separately. (Nisga'a Tribal Council, Government of Canada and Government of British Columbia 1991, p. 4) In 1991, the federal government was still insistent, as it had been in the northern land claims agreements or treaties, that self-government was not to be provided for in treaties but rather to be sanctioned by separate parliamentary statutes. Such statutes would not have the status of treaties and so would give no constitutional protection to self-government.

What has still not been widely appreciated in British Columbia is that the Task Force endorsed having the British Columbia treaties include self-government fully within their provisions. In order not to wave any unnecessary red flags at the time, however, the Task Force did not devote any of its 19 formal recommendations to this point but simply stated its endorsement in the text of the report. The Treaty Commission has operated on its explicitly stated assumption that self-government will be included in the treaties; Aboriginal leaders expect that it will be included; the provincial government expects that it will be included; officials in the office of federal treaty negotiations privately expect that it will be. However, the federal government has not yet given its explicit agreement.

The Claims Task Force recommended that a treaty commission be established to oversee the treaty negotiation process in the province. No such body had existed previously in Canada; however no previous treaty process had involved anything approaching the number of separate negotiations that would occur in British Columbia. The commission was to be the `keeper of the process'; it was not itself to conduct any negotiations. The Task Force proposed the following roles, or mandates, for the commission:

1. Co-ordinating the schedule for the start of negotiations;
2. Deciding the amount and distribution of funds required by the First Nations to participate in the process;

3. Determining the readiness of each of the parties to begin negotiations based upon criteria that they have agreed to;
4. Encouraging timely negotiations by assisting the parties to establish a schedule and monitoring their process in meeting deadlines;
5. Identifying the need for and providing dispute resolution services as requested by the parties;
6. Submitting annually to the Parliament of Canada, the Legislative Assembly of British Columbia, and the First Nations, a report on the progress of negotiations and an evaluation of the process;
7. Developing an information base on negotiations to assist the parties;
8. Providing a public record of the status of each negotiation and documents which the parties agree to make public. (B.C. Claims Task Force 1991, p. 38)

As for each separate negotiation, the Task Force laid out a six-stage process modelled on the experience gained in reaching land claims agreements in the Yukon and the Northwest Territories:

1. Submission to the Treaty Commission by a First Nation or group of First Nations of a "statement of intent to negotiate a treaty". Neither the provincial nor the federal government can formally start the process.
2. Preparation for negotiations. Within 45 days, the Commission holds a meeting for the three parties to discuss plans and preparations, and to set a date for the start of Stage 3. Before this date, the Commission is responsible for assessing whether each of the parties is adequately prepared; if any one is not prepared, a new and later date is set.
3. Negotiation of a "Framework Agreement". This agreement covers specific procedures (such as those for ratification), establishes a target timetable, and crucially, sets out the objectives or principles of the negotiations along with the specific subjects to be negotiated.
4. Negotiation and ratification of an "Agreement in Principle". This is the draft final treaty.
5. Negotiation of final technical and legal aspects of the Treaty, followed by formal ratification of the Treaty.
6. Implementation. As the Task Force observed, "While the task of the negotiators is now complete, the work of establishing the new relationship continues... The implementation of the treaty will require continuing goodwill, commitment and efforts on the part of all parties. (pp. 42-47)

The five treaty commission members were appointed in April 1993 (two of them by the First Nations Summit, one each by the provincial and federal governments, and the chief commissioner jointly by the Summit and the two governments). When the British Columbia Treaty Commission Agreement had been signed by the three parties in September 1992, it had been understood that the enabling legislation would be introduced in the provincial legislature

and in Parliament. No legislation had been introduced by April 1993, compelling the chief commissioner to spend considerable time ensuring that the 1992 agreement did provide sufficient legal authority for the commission to operate.

As of October 1994 the province had passed the requisite legislation, but it had not been proclaimed; however, the necessary legislation had not even been introduced in Parliament. The two governments were also dilatory in providing funding to enable the commission to operate and the treaty process to commence. Although the two did finally agree, in June 1993, on how to share costs, they had still not actually committed the necessary funding by the following November. At that time the commission forced the governments' hands by announcing that it would begin receiving statements of intent in December 1993.

Three years earlier, noting that 22 comprehensive claims had been filed in the province under the previous federal claims policy, the Task Force had estimated that 30 would be the maximum number of claims that would be submitted under the new process. Within a week of the 15 December 1993 opening date, however, almost 40 statements of intent had been submitted to the commission, with a handful more arriving in subsequent months.

As of 31 October 1994, the commission had formally accepted 43 statements of intent. Thirteen of these were from tribal councils; the remainder were from individual First Nations (in this case, individual Indian bands). Altogether, the groups that had submitted statements represented some 65 per cent of the status Indian population in the province. The majority of tribal councils (9 of the 13) were from the coast, while almost half the individual bands were Island Salish or Mainland Coast Salish. (B.C. Treaty Commission 1994, p. 17) What had not been expected by the Task Force was that so many small bands would present their own claims individually, rather than doing so through a tribal council.

The 35 per cent of the status Indian population from which statements have not yet been received is located mainly in the central and southern interior of the province. Some of the First Nations in this area have declined to participate because they support the stance of the UBCIC (although several interior First Nations that otherwise support the UBCIC have submitted statements of intent). However, it would appear that the reason most of the interior First Nations and tribal councils have not yet submitted statements is simply that they have not yet completed the necessary preparations.

The 45 days following 15 December 1993 were extraordinarily busy for the commission

and the two governments as the required meetings were held with the First Nations and tribal councils whose statements of intent had been accepted. The meetings were held in the traditional territories of the Aboriginal groups, in locations and settings chosen by the groups. The meetings typically involved traditional ceremonies and usually evoked much emotion among the Aboriginal audiences. By October 1994, the commission had certified four First Nations as being prepared to proceed to the third stage, that of negotiating framework agreements. It was expected that one or two negotiations would be under way by the year's end, with others following in 1995.

During the summer of 1994 there had emerged within the province a sustained pattern of criticism directed not only at many aspects of interim measures and the treaty process, but at the very principle of negotiation itself. The criticism had a number of non-Aboriginal sources, notably among commercial and sports fishing interests, local logging groups, and more generally among the political opponents of the two governments, especially the Reform parties of British Columbia and Canada. The province's most prominent radio talk show host provided an effective forum for the critics and for the voicing of public fears and concerns. (However, the provincial Liberal Party, which formed the official opposition in the legislature, avoided making any hostile criticism and devoted considerable effort to informing its legislators and party members about Aboriginal assertions and perspectives.)

Much of the public criticism was based on ignorance or misinformation. A good number of the critics appeared to believe that Aboriginal claimants were intent on gaining full present-day ownership and control of their entire traditional territories. Many critics were of the view that successful assertion of claims based on Aboriginal title would result in confiscation of fee simple title from private property owners. The provincial government especially, and not entirely logically, was castigated for having allowed a "secret" process to develop (this at a time when negotiations had not even begun). The premier's statement that the province had concluded about 100 interim measures agreements was seen by some critics as evidence that land and resource concessions were being made to Aboriginal peoples in a process that was both secret and out of control.

In 1991 one of the Task Force recommendations had been that "Canada, British Columbia, and the First Nations jointly undertake public education and information programs". (B.C. Claims Task Force 1991, p. 68) In its first annual report, in June 1994, the commission was

blunt on this point.

> The three Principals, in the view of the Commission, have not carried out their obligations to inform the public... the Principals have been slow to move on this issue... It is clear that the absence of accurate information from the Principals has led and will continue to lead to apprehension and resistance from interest groups and the public... The Treaty Commission believes there is an urgent need for the Principals to launch a more comprehensive information program and urges the Principals to expend considerable effort in this regard. (B.C. Treaty Commission 1994, pp. 24-25)

Four months later a comprehensive program had still not emerged, and the commission itself was devoting some of its resources to producing a one-hour video to fill part of the void.

The premier, however, did capitulate to the criticisms of secrecy; in September he announced unilaterally that once negotiation sessions had started they would be for the most part open to public attendance and to news media coverage. The announcement brought new criticism of the premier, this time from the leaders of the First Nations Summit. They indicated that they had no real objection to making the negotiations largely public, but they did point out, tartly, that the Treaty Commission Agreement of 1991 provided that details of negotiation processes were to be agreed to by all three parties in each local negotiation and could not be dictated by any one party.

Local Government, Taxation and Services

Taxation and services

Compared with that in other provinces, much of the B.C. Aboriginal population is urbanized. Many reserves are located in close proximity to urban areas, with 26 municipalities having a total of 45 reserves actually within their boundaries. (Taylor and Paget 1989) Because of their small population, it is difficult for many individual bands to provide municipal services for their members, and they have consequently entered into a variety of service agreements with municipal and other non-Aboriginal suppliers. (Bish 1992)

Until the late 1980s municipalities and school districts, or

the province in the case of reserves outside municipal boundaries, levied property taxes on leaseholds held by non-Indians on reserve lands. This practice was considered unsatisfactory by both First Nations and municipalities. Aboriginal governments complained that such taxation lowered the market value of leaseholds (and hence the value of revenues to bands or to the

individuals holding certificates of possession) and that the taxing authorities did not provide the same level of services to reserve leaseholders as they did to taxpayers in the rest of their jurisdiction. Some municipalities complained about difficulties in collecting taxes and the requirement that they forward tax levies of school districts and other governments to those governments whether or not they collected from taxpayers. (Bish 1992, pp. 3-4)[ii]

In 1980, the Tripartite Local Government Committee Respecting Indian Local Government in B.C. was established to address these issues. The Committee proposed legislation that would allow for a range of delivery mechanisms for community services on reserves, including

1. extension of existing services by non-Indian government local authorities to both Indian and non-Indian areas of reserves
2. tax revenue sharing
3. local services commission
4. full local government status

While there were no immediate results from the work of the committee, the Sechelt First Nation was directly involved in the committee and particularly supported the inclusion of the full local government option. (Taylor and Paget 1989, p. 301)

Concerns about services and taxation persisted through the early 1980s. In 1986, Chief Manny Jules of the Kamloops Band persuaded Indian and Northern Affairs Canada (INAC) to finance a detailed study of the tax and service relationship (entitled *Property Taxation and the Provision of Government Services on Indian Reserves in British Columbia*). While this study was in process, Chief Jules and INAC developed Bill C-115, which amended the *Indian Act* to allow all bands to undertake property taxation of all reserve lands, including conditionally surrendered lands. The property taxation study and several associated case studies found that there was considerable variation between the value of reserve leasehold taxes and the value of services provided to taxpayers. In general, taxes on commercial leaseholds yielded revenues greater than the share of service costs usually covered by property tax. The reverse was true where leaseholds were primarily residential.

The response of the provincial government to the passage of Bill C-115 was, first, to pass Bill 77, the *Indian Land Tax Cooperation Act*, which authorized B.C. government authorities and

local governments to provide tax administration services to Indian bands. The act did not address the main issue, however, which was the taxation of Indian lands without the permission of bands and without the provision of services.

In 1990 the province replaced Bill 77 with Bill 64, the *Indian Self-Government Enabling Act*. The act established exclusive jurisdiction of bands for taxation of band lands and delivery of services to those lands. The province offered full "home ownership grants" to leaseholders paying taxes and has now withdrawn from school taxation on reserves implementing taxation without correspondingly reducing school services. The legislation was passed over the opposition of the Union of B.C. Municipalities, whose view was that because non-Indian leaseholders have no voice in band government, it is unfair for bands to be able to tax them.

A number of B.C. bands have implemented taxation regimes and entered into service arrangements with neighbouring local governments. Not unexpectedly, bands choosing to exercise this option have typically done so where revenues significantly exceed associated service costs. (Bish 1992)

It should be noted that provincial action in this matter related exclusively to `vacating' the property tax field in respect of non-Indian leasehold interests in reserve lands. The initiatives taken by bands in respect of property taxation relate to non-Indian occupants and do not appear to suggest any directions with respect to taxation of *Indian* property interests under self-government. Taxation of any sort remains a highly charged issue among Aboriginal people.

Self-government and the Sechelt

In 1988, the Sechelt Indian Band embarked on a unique, and controversial, experiment in self-government. Initially, a number of Aboriginal critics accused the Sechelt of abandoning traditional governing structures and settling for an inadequate system of local government in an ill-advised and hasty effort to escape the *Indian Act*.

As Taylor and Paget point out, however, the model "was developed for a highly urbanized, strategically located, relatively prosperous band, holding lands with immense development potential", and was never intended by the Sechelt as providing a blueprint applicable to other Aboriginal peoples. At the same time, the Sechelt approach does contain several elements consistent with definitions of self-governance, notably the establishment of a Sechelt constitution that provides for

- a membership code;
- composition of band council, term of office, tenure of members, election procedures and band council procedures;
- financial accountability of the council to band members including audits and reports;
- rules for referenda;
- rules and procedures for disposition, rights and interests in Sechelt lands;
- legislative powers of the council;
- other matters relating to the government of band. (Taylor and Paget 1989, p. 315)

The legislative actions of the band under its constitution are laws, not by-laws, and have the status of federal laws.

Sechelt member Theresa Jeffries has described the impact of the self-government model, and the constitution specifically, as follows:

> ...the Sechelt band has achieved a high degree of political and administrative autonomy. Decisions can be made without having to await a yea or nay from Ottawa. The ability to establish a membership code means that we can define ourselves in tribal terms, while the ability to control the disposition of Sechelt lands means that the land and resource base which form the foundation of the band economy are under our control. Possessing a rich land and resource base, the band is engaged in land development, specialty forest products manufacturing, gravel extraction, forestry, aquaculture, aircraft leasing, and operating a charter and scheduled airline. (Jeffries 1991, p. 85)

The Sechelt model is established by federal statute, principally the *Sechelt Indian Band Self-Government Act*, which effectively removes the band from the purview of the *Indian Act*. (Paget and Taylor 1989, p. 312) The legislative structure is complex, embodying two institutions established under federal law: the Sechelt Indian Band and the Sechelt Indian Government District. Powers of the band can be transferred by referendum to the government district, with the exception of powers relating to membership in the band and disposition of rights and interests in Sechelt lands.

The Sechelt Indian Government District (SIGD) is treated by the province as though it were a municipality. The SIGD is a member of the Sunshine Coast Regional District (the provincially established regional government). Provincial legislation also provides for an advisory board to the district council as a vehicle for the significant number of non-Indian residents of Sechelt lands to be heard and given consideration.

Jeffries (1991) and Taylor and Paget (1989) give detailed descriptions of the Sechelt

model, which will not be repeated here. It is worth emphasizing, however, that while the province played a secondary role in the Sechelt experiment, provincial co-operation was necessary to recognize the jurisdiction of the Sechelt Indian Government District and to clarify matters of provincial jurisdiction with respect to the Sechelt band, including the power of the SIGD to adopt laws of British Columbia as its own laws. The principal provincial statute, the *Sechelt Indian Government District Enabling Act*, provided for the creation of an advisory council (mentioned above) and for the district to participate in the benefits normally available to municipalities in the province. The provincial statute further allowed the B.C. cabinet to suspend provincial property taxes on non-Indian occupiers of Sechelt lands.

Two other provincial statutes were passed to facilitate Sechelt self-government: the *Land Title Amendment Act* and the *Sechelt Indian Government District Home Owner Act*. The first of these allows the Sechelts, and any other band in the province, to gain access to the province's land registration system. The second statute provided for the payment of home ownership grants to all homeowners on Sechelt lands.

As Taylor and Paget note, the provincial government was for many years supportive of greater integration of Indian governments into the provincial local governments system. During the era when the Sechelt model was under negotiation, British Columbia was firmly opposed to constitutional entrenchment of self-government and to negotiation of claims based on Aboriginal title. From the provincial perspective, the establishment of a quasi-municipal form of self-government for the Sechelts provided an opportunity to demonstrate the potential for self-government without constitutional entrenchment and without the establishment of a third order of government. The philosophical position of British Columbia on the bases for self-government has, of course, changed. The *practical* arrangements achieved under the Sechelt model, and also through the more widely accepted developments in property taxation and local service provision, may, however, provide some models or guidance for other self-government initiatives, especially in urban settings.

Lands and Resources

Conflicts over land and resource ownership, use and development have been of critical importance in defining the relationship between Aboriginal and non-Aboriginal people in British Columbia. One of the major objectives of treaty settlement is to resolve such conflicts in a

comprehensive and enduring manner. In the meantime, however, First Nations and the provincial government are faced with a number of challenges relating to

- fulfilment of the province's legal (fiduciary or trust-like) obligations with respect to Aboriginal rights to use of lands and resources;
- appropriate protection of lands and resources pending treaty settlement;
- settlement of outstanding (often long-standing) disputes, such as provincial trespass on reserve lands;
- opportunities for Aboriginal economic development involving use of the natural resource base; and
- relationships between treaty and non-treaty initiatives and more provincial land and resource planning exercises, notably the CORE process (B.C. Commission on Resources and the Environment).

Attempts to address these issues are, in practice, often intertwined. Provincial obligations to provide priority to Aboriginal people in the harvesting of wildlife may be fulfilled, for example, through initiatives that recognize greater resource management authority by First Nations and that generate employment and other economic benefits in the exercise of that authority. In other cases, economic development initiatives may make up part of the compensation for past provincial trespass on reserve lands. Because of these interconnections, specific initiatives related to lands and resources are discussed here according to how they relate to provincial program and policy categories. Obviously, these categories may well differ from those that may be relevant from the perspective of any particular First Nation, which may, for example, see all these issues as based in the assertion of Aboriginal rights to land and resources.

Court rulings that give priority to Aboriginal use of fish and wildlife for food, social and ceremonial purposes and that affirm more general Aboriginal rights to lands and resources have obligated the province to accommodate these rights in the management of provincial resources. The resulting provincial measures range from consultation with First Nations to a variety of co-operative and joint management activities. Some of these initiatives are contemplated under formal agreements such as the Tsilhqot'in memorandum of agreement discussed earlier; others are more specific or more informal.

The provincial government also grounds its policy stance relating to greater Aboriginal

participation in land and resource management and development in its overall commitment to a new relationship with First Nations based on equity and social justice. It sees co-operative arrangements as opportunities to demonstrate its good faith, with the hope of providing a more solid foundation of trust and confidence for the treaty negotiation process.

Interim measures

`Joint stewardship' was the term used originally by the British Columbia government to describe proposed new arrangements with First Nations for management of lands and resources within traditional territories. `Interim measures' is now the term used for pre-negotiation agreements pertaining to lands and resources and for arrangements in other areas such as health, education or justice. The principles developed by the province for joint stewardship arrangements continue to guide interim measures in land and resources and include:

- recognition that First Nations have a *sui generis* or unique legal interest in land;
- recognition of the contribution of both traditional and technical aspects of resource management;
- respect for the existing legal rights of non-Aboriginal British Columbians;
- preservation of the government's ability to exercise its powers under statute;

> The province asserts that interim measures agreements
>
> will not involve vetoes or moratoria unless the parties agree that a particular limited action is necessary to protect certain defined aboriginal interests. Where interests of third parties are involved, they will be consulted. (B.C. Aboriginal Affairs 1992b)

In principle, too, the details of interim measures will not be binding on treaty negotiators.

Fish and wildlife

The principle of Aboriginal priority access to fish and wildlife resources, subject to conservation concerns, now appears to be well established by court decisions, although rights to Aboriginal commercial exploitation of these resources (except as established by treaty) remain in dispute. In 1993, the ministry of environment, lands and parks distributed "Interim Guidelines on Aboriginal Use of Fish and Wildlife" as a step toward establishing formal guidelines for assessing Aboriginal sustenance needs and establishing clear enforcement regulations. These guidelines establish allocation procedures for Aboriginal sustenance use that vary according to conservation

concerns and the species in question. The guidelines state that

> The nature of sustenance use will be defined, to a large extent, by First Nations communities, based on local circumstances and traditional use patterns. Aboriginal interests in resources are to be treated as communal, rather than individual in nature, and to apply within the traditional territory of a First Nation. Where agreements are reached, First Nations will be responsible for authorizing individuals to harvest resources on behalf of the community. (B.C. Environment, Lands and Parks 1993, p. 9)

The ministry of agriculture, fisheries and food has also developed an interim consultation policy on decisions concerning resource allocations within its mandate. The guidelines are intended to ensure, first, that no allocation decisions that would affect First Nations in their traditional territories are made without consulting the relevant First Nation and, second, that decisions will take into account the allocation needs of the First Nation. In many areas, the harvesting activities of non-Aboriginal persons, as in wild oyster gathering and marine plant harvesting, are matters of local dispute. While not providing for a First Nation veto on permits for such activities, the guidelines direct that "in circumstances where First Nations objections would effectively disallow branch-approved activities in a specified area, where possible, [staff would] seek... alternative sites". (B.C. Agriculture, Fisheries and Food N.D.)

Both ministries ─ environment, lands and parks, and agriculture, fisheries and foods ─ have small Aboriginal affairs units, involved primarily in planning, co-ordinating and facilitating ministry initiatives and in liaison with other ministries and with regional staff. The environment ministry has recruited Aboriginal liaison officers for several regional offices. As of mid-1993, a First Nations field liaison officer was being recruited for the aquaculture and commercial fisheries branch of agriculture, fisheries and food.

Co-operative management projects affecting wildlife and fish have been undertaken with a variety of First Nations governments and organizations. Several of those established under the mandate of the environment ministry relate to training and education in resource management; others relate to co-operative research, enhancement and enforcement projects. For example, studies have been undertaken since the mid-1980s in co-operation with the Interior Indian Fisheries Commission regarding steelhead conservation, while several South Okanagan bands are involved in a multi-agency strategy to map, identify and protect vulnerable wildlife species in the region. In addition, a co-management agreement has been reached with the Cowichan Band on Vancouver Island to improve environmental management in the Cowichan watershed and in

Cowichan Bay.

The ministry of agriculture, fisheries and food has entered into a number of planning and management agreements with First Nations, including

- development of a short- and long-term fisheries plan with the Alliance Tribal Council and a similar project with the Sliammon Band for marine resource planning;
- development of an inventory of kelp resources (Heiltsuk Tribal Council) and a Native fisheries guardian program to aid ministry enforcement of kelp harvesting (Kwakiutl Band ─ Fort Rupert);
- development of management plans by the Haida Nation for the commercial and recreational fishery, to be negotiated on a tripartite basis with Canada.

The ministry is also assisting several First Nations to assess and develop the agricultural potential of band-owned lands.

Altogether, the role of the province in the management of fishery resources is comparatively minor, as fisheries are primarily a matter of federal jurisdiction. Fisheries themselves, however, are of intense importance to Aboriginal peoples, whether in the context of the treaty process or otherwise.

Forestry

More than 85 per cent of British Columbia Crown land falls under the administration of the ministry of forests. Harvesting rights to timber are allocated under two types of tenures: area-based and volume-based. Tree farm licences are area-based, while tenures under the timber supply area are allocated by volume. As of 1991, tenures held by Aboriginal individuals and companies in B.C. (either independently or as partners in joint ventures) amounted to less than one per cent of the year's annual allowable cut. Preservation of forest resources against future treaty settlements and the achievement of increased access by Aboriginal peoples to forestry-based opportunities are critical issues for First Nations in B.C.

In November 1991, the Task Force on Native Forestry presented its report and recommendations to the B.C. ministers of Forests and Aboriginal affairs. The Task Force, which had been mandated "to recommend ways to increase Native participation in the forest sector", had been chaired by the president of the Intertribal Forestry Association. In its report, the Task

Force stated that

> Even though land claims were not within the mandate of the Task Force, the issue was raised at every meeting. Native people believe land claims settlements will give them the control necessary to address and correct the economic problems and social ills resulting from a system which has excluded them from the decision-making process. (B.C. Task Force on Native Forestry 1991, p. 1)

The first general recommendation of the Task Force was thus that land claims be settled as a requirement for resolution of Aboriginal economic development problems. The Task Force recommended further that First Nations acquire more control over forest lands in their traditional territories either through the regular tenure system or through joint ventures and other contractual arrangements with forest companies and the forests ministry. Other recommendations included the following:

- that increased emphasis be given to training and education of Aboriginal people in forestry;
- that Native participation in silviculture and fire protection be rapidly increased;
- that a Native Forestry Capital Pool be created;
- that Aboriginal people be more involved with the planning and management of forest resources in their traditional territories.

To facilitate implementation of the Task Force recommendations, the report recommended that a First Nations Forestry Council be established.

Aboriginal issues have gained considerable profile within the ministry of forests since the latter years of the Vander Zalm administration. A one-person office was established first to provide some policy focus, but issues were handled primarily at the regional level, with little overall direction or consistency. The land use policy branch took on responsibility for Aboriginal issues in 1991, and the following year an Aboriginal affairs section was established within the ministry's corporate policy and planning branch. In addition to this central office unit, the ministry has placed more than 20 Aboriginal liaison officers in fire district offices. The role of the district staff is to provide information on, and encourage Aboriginal participation in, ministry programs and to consult with Aboriginal peoples on their priorities in terms of training and development of forestry opportunities.

The ministry of forests considers itself well placed to pursue an agenda of economic and

social development based on the forestry resource base. In fiscal year 1992-93, the ministry spent about $4.5 million in connection with Aboriginal initiatives, including funding to support forestry research relating to the Nisga'a treaty negotiations and some $2.7 million in silviculture contracts awarded to First Nations contractors. Five years previously, the ministry had been spending only about $50,000 annually on Aboriginal initiatives.

Economic development agreements between the ministry, bands or tribal councils and, in some cases, forestry companies are formalized in memoranda of understanding that reflect the provincial principles guiding `interim measures'. The agreements are intended to promote economic self-sufficiency of Aboriginal communities, increase Aboriginal participation in resource planning, and create local advisory/consultative councils. One of the ministry's priorities is to encourage First Nations and the forest industry to recognize joint opportunities that do not require government involvement to negotiate or implement. Other activities include negotiations to increase First Nations access to timber harvesting tenures and support for projects that attempt to marry Aboriginal resource information with ministry inventories. The First Nations Forestry Council, as recommended by the Task Force, was established in late 1992. Composed of 12 Aboriginal representatives and 8 representatives from the forest industry, the council was established to make recommendations on the issues raised by the Task Force. As of mid-1993, however, a clear agenda for the council had not yet emerged.

Trespass and other issues

In November 1992, an Aboriginal issues project was established in the Highways and Transportation ministry to deal with a long list of issues, including past and current trespass on reserve lands, the acquisition of access to reserve lands for future highways, and the provincial right under Order in Council No. 1036, which allows the province to expropriate up to 20 per cent of reserve lands for road purposes without compensation. OIC 1036, which authorizes an expropriation power not used in any other Canadian jurisdiction, remains highly controversial in British Columbia. While the power has been used only rarely in the last 20 years, some First Nations claim that it is often used as a threat in negotiations and thus has a larger impact than its actual recent invocation would suggest.

It is also the case that many bands did lose reserve lands through the more frequent use of OIC 1036 in the past; for these bands the injustice ranks with all the more publicized reserve

cut-offs of the 1920s. As with the cut-offs, the removal of reserve lands must be seen in the context of the fact that British Columbia reserves were ─ solely because of provincial policy and actions ─ excessively small in the first place. The injustice of the cut-offs was recognized initially by the province's first NDP government, and the resolution of the cut-offs issue was negotiated by the Social Credit government. Presumably the issue of reductions under OIC 1036 will be addressed in treaty negotiations, or possibly in a government-to-government policy forum.

The Aboriginal issues project was established, with a two-year sunset clause, to advise the ministry and to co-ordinate negotiation of highways-related issues at the field level. In an attempt to foster more co-operative, less confrontational approaches to dispute resolution, the ministry has also arranged staff training in First Nations culture and has sought greater involvement of First Nations in highway design and siting. A frequent type of dispute arises when First Nations reject market value assessments for lands as a basis for compensation and claim instead on the basis of loss of past use and extraction of resources. Out of a total of approximately $2 million allocated to the Aboriginal project, a modest amount of funds is available to top up land acquisition costs.

Results from the negotiating process have been slow in coming. The ministry is highly decentralized; regional staff are as yet unused to the new relationship with Aboriginal communities, and First Nations communities themselves are often slow to reach consensus on the settlement of disputes. In some cases, it is not clear that the issue of trespass by a highway right of way is the real issue involved; sorting out grievances and concerns is time-consuming and often frustrating for both sides.

Land use planning and Aboriginal issues

The B.C. government has instituted a number of land and resource use planning processes, the most comprehensive of which has been assigned to the Commission on Resources and Environment (CORE), established in July 1992. The *CORE Act* mandates the development of a province-wide strategy for land use and related resource and environmental management. The plan is to be developed through regional and local participatory planning processes and is to include a dispute resolution system. CORE is mandated further to facilitate the co-ordination of land- and resource-related issues within government and to encourage the participation of

Aboriginal people in the CORE process.

In its 1992-93 annual report, CORE notes that both CORE and the Treaty Commission

> ...have a fundamental responsibility to recognize and remedy historical and continuing injustice to the social, economic, political and cultural interests of Aboriginal people. These [the Treaty and CORE] processes will resolve uncertainties over land use, as well as jurisdictional issues of title and self-government. (CORE 1993, p. 11)

In practice, Aboriginal participation in the CORE process has been limited and tentative. Most Aboriginal groups (including those with pragmatic leadership) have been concerned that participation in a regular governmental process like CORE's might prejudice their rights to lands and resources, and they further reject a process that places First Nations on the same footing as non-governmental interests, rather than on a government-to-government basis with the province. Moreover, establishing a negotiating mandate for a few individuals to represent a diversity of First Nations has been problematic in its results. As well, First Nations have considered the funding support available for participation to be inadequate. (CORE 1993)

In an attempt to convince First Nations that participation in CORE processes would not prejudice Aboriginal rights or the treaty process, the provincial government addressed an open letter to First Nations, stating that

> Jurisdiction and ownership to be discussed during treaty negotiations will not be limited by land use planning negotiations occurring in the province. In other words, the use, ownership of the lands and jurisdiction to manage the lands may change as the result of negotiating treaties. (cited in CORE 1993, p. 38)

Despite such assurances, few First Nations have participated actively in the CORE process. It seems likely that First Nations will continue to view participation in CORE and other multipartite planning processes as potentially compromising, or at least diverting attention from the resolution of land and resource issues through the treaty process and the implementation of effective measures in the interim to protect Aboriginal rights to lands and resources.

Special agreements outside the CORE process, such as that signed in December 1993 between member bands of the Nuu-chah-nulth Tribal Council and the provincial government concerning logging in Clayoquot Sound, appear to be the more likely vehicle by which the province and First Nations will deal with Aboriginal concerns on land and resources pending treaty settlements. The Clayoquot issue was, and to some extent remains, unique in the degree of political controversy associated with it (although the bulk of the controversy has pertained to

non-Aboriginal environmental interests rather than to Aboriginal interests). Because of Clayoquot's salience, indeed, the NDP government exempted the decisions from the CORE process when it established that process.

The agreement gives five First Nations some control over logging plans for the Clayoquot region and so served to avert a court injunction threatened by the Aboriginal groups. About a month before the agreement was signed, the provincial ombudsman had issued a report condemning the provincial government for failing to consult meaningfully with the affected First Nations and for failing to demonstrate clearly how land use decisions for Clayoquot Sound would not prejudice upcoming treaty negotiations with the Nuu-chah-nulth.

Economic Development

Questions of economic development and resource management are inextricably intertwined, with greater Aboriginal control over land and resources seen as key to a more prosperous and secure economic future for First Nations.

Aboriginal economic development strategy

In mid-1992, the B.C. cabinet directed what was then the ministry of economic development, small business and trade to develop a comprehensive Aboriginal economic development strategy. The strategy was expected to be released in 1994.

First Citizens' Fund loan program

In 1987, the legislation governing the First Citizens' Fund was amended to allow for loans to be made from the interest earned on the fund, and a new Native Economic Development Advisory Board was established within the ministry of Native affairs. The board, which replaced the former First Citizens' Fund Advisory Committee, was to advise the ministry on appropriate strategies to support Aboriginal economic development.

The loan program provides loans up to a maximum of $75,000 for the creation, expansion and upgrading of Aboriginal businesses. The program provides a 50 per cent loan guarantee and contributes 52 per cent of the loan repayment, after the client has repaid the first 50 per cent of the principal plus interest. The program is administered through several Aboriginal capital corporations and two Aboriginal organizations that provide post-loan advisory services. (B.C. Legislative Assembly 1993) In June 1992, at the initiative of the minister of Aboriginal affairs,

the Select Standing Committee on Aboriginal Affairs was authorized by the Legislative Assembly to review the First Citizens' Fund loan program. The committee's report, submitted in June 1993, recommends a number of changes to the program, including its transfer from the ministry of Aboriginal affairs to the ministry of economic development, small business and trade and the regional allocation of funding allotments on a per capita basis to ensure more equitable access to the program. The report recommends further that the province lend funds to the Aboriginal capital corporations to increase the base of lending capital.

The committee supported continuation of the basic design and intent of the program, however, and its comments in this regard illustrate some of the conflicting opinions between First Nations and the provincial government and within the Aboriginal community about economic development activities and the provincial role in their delivery:

> While conducting its business, the Committee was involved in a number of discussions about the value of programs that promote economic development in comparison to those which promote social or cultural development.
>
> Some witnesses stressed that Aboriginal communities must have strong economies to support their aspirations for self-government. They believe that business development programs like the Loan Program are essential because they help build these economies by generating employment, servicing the needs of communities, and providing Aboriginal people with skills and experience directly related to the establishment and maintenance of small business.
>
> Other witnesses were more sceptical of the value of business development programs. They were concerned that entrepreneurship and the individualistic nature of capitalism is not compatible with the community-orientated, collectivist approach of traditional Aboriginal culture, and believe that the provincial government should not impose Western ideas of economic development on Aboriginal people...
>
> While it is sympathetic to the voices urging the revival of a grant program that supports community projects, the Committee believes that small business development within Aboriginal communities benefits the individual entrepreneur and the community at large. Building strong economies is an essential part of Aboriginal social, cultural and political development. (B.C. Legislative Assembly 1993, pp. 9-10)

In response to representations that responsibility for managing the First Citizens' Fund and its program be transferred to the First Nations community, the committee concluded:

> The Committee supports further involvement by First Nations in the administration and delivery of the Loan Program. However, it cannot recommend that the Fund that supports the Loan Program be transferred to an Aboriginal organization. The First Citizens' Fund is composed of public monies which are to be held in perpetuity by the Province. (p. 14)

The role played by the legislative committee was unusual. In the B.C. legislature the standing committees associated with the major ministries are, for the most part, window dressing. They meet rarely. Even more rarely are they given an opportunity to investigate and provide recommendations that will be taken seriously by the government. Despite early indications to the contrary, the NDP government has proven no more willing than its predecessors to open up the committee process. The role given to the Aboriginal affairs committee was thus exceptional. As we suggest in the conclusion of this study, however, the major participants in the broad policy area of Aboriginal affairs could well benefit if a greater, and more continuous, role were given to the committee. The general public would also benefit from the provision of the greater information that committee proceedings would entail.

Social Policies, Programs and Services

Provincial government involvement with Aboriginal peoples has a relatively long history in the major social policy and program
areas, including education, child welfare, health, justice, and culture and language. As one provincial official put it, "most action on the ground" has been in social policy areas, especially in connection with services for the off-reserve population. Over the years, the province has entered into an increasing number of arrangements by which Aboriginal peoples are either involved in provincial program development and delivery on an advisory basis or contracted with to deliver provincially funded programs. Most of these arrangements are by no means unusual in Canada, and many of them simply parallel the evolution of contracting out to deliver social services through a variety of non-governmental organizations.

A number of arrangements have been established, however, that have extended the frontiers of Aboriginal autonomy and authority in the planning, development and delivery of services under the jurisdiction of the province. Examples of these initiatives (and this is by no means an exhaustive list) can be found in the areas of justice, child welfare, education, health, and preservation of culture and language.

Justice

In October 1992, the ministry of the attorney general prepared an inventory of justice initiatives and programs related to Aboriginal peoples. Included in the inventory were numerous examples

of youth support, education, community development, legal services, prevention, mediation and diversion programs, and Native courtworkers and counselling programs. The latter two programs (now funded through the Legal Services Society of B.C.) are among the longest established justice programs directed to Aboriginal peoples.

Many of these programs were implemented in response to the 1988 report of the Justice Reform Committee, entitled *Access to Justice*. It observed that "many native British Columbians have little or no confidence in the existing justice system; many see Canadian justice as imposing values which are at odds with traditional Native justice". (B.C. Solicitor General, Attorney General and Native Affairs 1990, p. 4) However, the committee itself had sought rather little input from Aboriginal persons or communities; as this deficiency became apparent, the ministries of solicitor general, attorney general, and Native affairs undertook a round of consultations on Native justice in the fall of 1989. As a result, the government undertook to

- enhance and promote the understanding of Native history, traditions and culture within the justice system and to enhance and promote Native understanding of the justice system, the law and the role of police;
- improve communication, co-operation and co-ordination among the police, the government and Native people;
- provide Native communities with significant opportunities to assume responsibility for the delivery of justice programs and services;
- develop a framework for policies and procedures to accommodate pre-court diversion; alternative policing; sentencing and conditional release programs undertaken by Native communities;
- provide additional career opportunities for Native people in the justice field. (B.C. Solicitor General, Attorney General and Native Affairs 1990)

Funding of $2.5 million was identified for pilot initiatives over a three-year period.

The province has funded and participated in several innovative programs intended to support Aboriginal aspirations for justice services incorporating traditional laws and practices, among them the following.

Unlocking Aboriginal Justice ─ Gitksan and Wet'suwet'en Nation: This three-year pilot project began in August 1990, co-funded by the provincial and federal governments. The program involves research about, training in, and implementation of traditional laws, as well as development of protocols among the Gitksan and Wet'suwet'en houses and with justice agencies, to deal with individual offenders.

South Vancouver Island Justice Project: The South Vancouver Island Justice project

was established in 1991, funded by the province and several federal agencies. The project had two components: first, a cross-cultural education portion in which justice system officials from southern Vancouver Island met for workshops with Aboriginal elders; and second, the formation of an elder council to be involved in diversion, sentencing alternatives, counselling, dispute resolution and teaching of traditional values. The 18-month pilot project concluded in December 1992. The project remains the most ambitious yet attempted and was notable for the direct participation of several provincial court judges; indeed, the Western Judicial Education Centre (an organization of provincial court judges in western Canada) was a major sponsor.

The project sought to rely primarily on elders as project leaders and as counsellors for those in trouble with the law; it sought to avoid the direct influence of band councils, as the elders did not accept the legitimacy of these more modern institutions. For this reason it was subject to criticism from the chiefs and counsellors of some bands, and it became enmeshed in the internal politics of the federal bureaucracy, where the federally created Indian bands could muster more support than could the elders, who, unlike the chiefs and counsellors, had little experience in soliciting bureaucratic support. There were also public allegations by several Aboriginal women that the project was covering up cases of sexual abuse. Funding for the project was not renewed, and a full evaluation of the project was initiated in late 1993.

Stl'atl'imx Nation Tribal Policing Service: In November 1990, a Federal/Provincial/First Nations Committee on Aboriginal Policing was established for British Columbia. In June 1992 the provincial cabinet approved a two-phase policy initiative for First Nations policing in British Columbia, with Phase I providing for RCMP enhanced services in Aboriginal communities and the establishment of pilot projects in First Nations-administered policing. Phase II focuses on continuing consultation with First Nations and on the results of the pilot projects.

The first tribal policing project was implemented in July 1992 with the Stl'atl'imx Nation in the Lillooet area. Tribal police officers are appointed by the province, with the B.C. Police Commission providing an oversight role similar to that provided to independent municipal police forces in British Columbia. The cost of the policing service is shared by the federal and provincial governments.

Before the project was formally evaluated, it was praised by provincial court judge Anthony Sarich, who conducted the Cariboo-Chilcotin Justice Inquiry. In his report of September

1993, he recommended the model as suitable for other Aboriginal communities.

Education

The K-12 system: The ministry of education was apparently the first ministry in British Columbia to concern itself consistently and continuously with Aboriginal issues. Post-war changes in provincial legislation that permitted Indian children to enrol in provincial schools pre-dated most of the explosion in public provision of social services and programs that took place in the early to mid-1960s. As a result, since the 1950s the number of Aboriginal children attending regular provincial schools has increased steadily. Today the number is approximately 30,000 students; of these about 9,500 are status on-reserve children. There has also been an increasing number of schools operated by First Nations; today there are about 100 of these, all but a very few being elementary schools. While federal policy requires that these schools must meet provincial standards, they do not come under provincial jurisdiction.

In its 1988 report, *A Legacy for Learners*, the B.C. Royal Commission on Education stated that

> One of the most important and long-standing issues in education in British Columbia, indeed across Canada, has been the provision of suitable schooling for Native youngsters. Using any typical criteria, it is apparent the province has not achieved its enunciated goal of `parity for Native...children within the public schools'. (1988, p. 205)

The report went on to review the educational and broader socio-economic status of First Nations people in British Columbia. The data and analysis centred on registered Indians, although registered Indian children represent fewer than half of all Aboriginal students in the provincial school system.

The Royal Commission recommended that the federal and provincial governments accord to Indian bands and councils greater authority and resources "to enable them to engage effectively in the self-determination of, or shared responsibility for, the education of their children". (p. 208) The commission recommended further that bands and tribal councils and school authorities co-operate to improve services to Aboriginal learners and to assist them in bridging the gap between Aboriginal cultures and mainstream societal culture (the "home/school gap"). Finally, the commission recommended that bands and councils, school authorities and government agencies take steps to improve the pre-school and early school-years language

capabilities of Aboriginal children, to enhance the parenting skills of Aboriginal adults, to encourage Aboriginal adults to pursue advanced levels of basic education, and "improve the health, social and economic circumstances of First Nations people, as ends in themselves, and in terms of their potential positive impact upon the learning of Native children". (pp. 208-209)

The federal government assumes funding responsibility only for registered Indian students ordinarily resident on-reserve. Most of these students are funded through a master tuition agreement (MTA), the latest version of which was signed in 1988 between the federal and provincial governments. First Nations are not signatories to the MTA, a fact to which many object. Under the MTA, the federal government provides funding to the province, which allocates funds to local education authorities. First Nations are not directly involved in this process.

However, the MTA (and the revised provincial *School Act* of 1989) do allow the establishment of local agreements between band councils and local school districts. Bands electing the option of local agreements opt out of the MTA. As of mid-1993, about 50 bands were covered under some 35 local agreements, with more under negotiation. Although the 1988 MTA formally expired on 30 June 1992, the agreement was extended to permit the three parties to attempt to negotiate an acceptable alternative.

Under the MTA, the federal government calculates tuition costs for each Aboriginal student as being the same as the average cost for all students, Aboriginal and others, in a given school district. Actual costs for Aboriginal students, both the province and First Nations contend, are much higher, reflecting higher costs of intensive or special services. Under local education agreements, tuition fees are paid to the school district directly by the First Nation government involved, but the federal funding is still based on the average cost for all students.

Some First Nations groups object to tripartite approaches to education or other programs. A preferred arrangement is for double bilateral agreements, whereby funding would be provided directly to the First Nation by the federal government, and the First Nation would negotiate directly with school districts for services.

The ministry of education includes in its funding to school districts a total of about $25 million to support Aboriginal programming. These are not designated funds, however, but are provided as part of a school district's block grant, so there is no guarantee that the funds will actually be spent on Aboriginal programs.

As well as encouraging Aboriginal programming for Aboriginal students, the ministry is

working to increase Aboriginal content in the general provincial curriculum. There is to be a provincially accredited First Nations program for Grade 12 students, and cross-cultural awareness training for teachers and school administrators is under way. The ministry was a pioneer in supporting Aboriginal organizations and local school districts in the development of Aboriginal language programs; while intended primarily for Aboriginal students, they are open to other students as well.

British Columbia is alone in Canada in having an Indian-controlled school board established under provincial legislation. School District 92 (official name, the Nisga'a School District) was established in the mid-1970s as a regular provincial school district. It is not the product of special legislation; its significance comes from the fact that the Nisga'a compose the majority of the population in the district and so exercise political control through the selection of elected school trustees. One major Aboriginal goal in establishing the district was to ensure that a high school would be built in the Nass Valley, the more particular aim being to reduce the high drop-out rate among Nisga'a students boarding at distant high schools. The high school was quickly built, and the high school completion rate rose sharply. For some years, a Nisga'a who holds a master's degree in education has been the district's superintendent of schools, and a number of the district's fully qualified teachers are also Nisga'a.

No other Aboriginal school district has been established in the province, because nowhere else is there an Aboriginal majority. However, a regional Aboriginal school district model has been discussed. It would cover an extensive area and overlie existing school districts; it would operate schools for Aboriginal children whose parents chose to have them attend such schools. There is little prospect that such a model will be implemented, largely because there is little evident demand for it.

Post-secondary education: As noted earlier, the Aboriginal population of British Columbia is greatly under-represented in the provincial post-secondary system, especially in universities. In March 1990, the Provincial Advisory Committee on Post-Secondary Education for Native Learners submitted its report to the minister of Advanced Education, Technology and Training. The committee proposed that the province and First Nations adopt an overall goal of increasing the participation and completion rates of First Nations post-secondary learners to at least the national average by 1995 and that some $14 million be budgeted over a five-year period to accomplish this goal. The report contained three major recommendations:

1. that Aboriginal-controlled institutions be eligible for direct provincial funding, as opposed to funding through affiliation/accreditation agreements with public post-secondary institutions;
2. that a variety of programs be initiated or expanded to increase the First Nations cultural content of post-secondary programs or to provide support to Aboriginal learners; and
3. that issues related to funding for Aboriginal students be addressed and resolved between First Nations and federal and provincial governments.

In November 1992, the ministry of advanced education, training and technology released an "Interim Report on Follow-up Action" to the committee's report. The interim report detailed a number of developments in the post-secondary sector, including the provision of funding for Aboriginal advisers/co-ordinators in post-secondary institutions across the province as well as for transition programs for Aboriginal entrants to post-secondary institutions. The report noted, however, that provincial legislation does not permit direct funding of Aboriginal institutions.

As of mid-1993, the ministry was engaged in the development of an Aboriginal post-secondary education policy framework. Consultation with First Nations was expected to take place through the joint policy councils established between the province and First Nations (discussed earlier in this section). As of 1992-93, funding was being provided to six Aboriginal post-secondary institutions through affiliation/accreditation agreements with public institutions. Adult basic education, language retention, literacy and bridging programs are funded at a number of institutions, most of which have established Aboriginal advisory committees. Aboriginal post-secondary programming received approximately $4 million in fiscal year 1992-93, with $4.5 million budgeted for 1993-94, about double the 1990-91 funding level but some $6 million short of the level recommended by the provincial advisory committee. At the newly established University of Northern British Columbia, the theme of Aboriginal studies is to be established across all faculties.

Child and family services

The removal of Aboriginal children from their families and home communities ranks among the most bitter and painful of all issues in the relations between Aboriginal people and the larger society. Many First Nations adults remember the post-war application of provincial child welfare

legislation to Indian reserves as having been prompted and guided by the same mentality and intentions as governed the earlier creation and administration of the residential school system. The 1960s marked the extreme in rates of apprehension of Aboriginal children by provincial social welfare officials; the phrase the `sixties snatch' is still commonly used and is understood by virtually every Aboriginal adult. For more than 30 years, Aboriginal children have been disproportionately represented in the ranks of children in care of the province, and most of them have been placed in non-Aboriginal foster care, adoption homes or other non-Aboriginal settings.

A number of First Nations and tribal councils now have their own child welfare programs. The first was that of the Spallumcheen First Nation; it is based on a band council resolution passed in 1980 declaring Spallumcheen jurisdiction over child welfare. While the *Indian Act* does not provide for such jurisdiction, the provincial government has not challenged the by-law but has in practice accepted it as valid.

In 1985, the ministry of social services entered into an agreement that delegated to the Nuu-chah-nulth Tribal Council the authority to act under the provincial *Family and Child Services Act*. The tribal council (or more accurately, a society formed by the tribal council) thus gained day-to-day control over child apprehension and care of children who had been apprehended. Funding for the program is provided under a separate bipartite agreement between the tribal council and the federal government. The ministry has delegated partial authority (to provide non-statutory services such as prevention) to other Aboriginal groups, including the Carrier-Sekani Tribal Council and the MacLeod Lake Band.

In 1987, the federal government imposed a five-year moratorium on funding new child welfare programs. Subsequently, the federal government provided funding to several First Nations and tribal councils for planning and development of child and family services programs. The resulting programs have been established under `dual bipartite' arrangements in which provincial authority is delegated to the program delivery agency, while funding is provided by the federal government. The provincial government is also engaged in negotiations with urban Aboriginal organizations, such as the United Native Nations and the Louis Riel Metis Society, for the provision of child and family service programs. Since 1990, the ministry has operated a special Native child welfare unit in Vancouver, administered within the regular ministry structure.

In November 1991, the provincial government announced the appointment of a

community panel to undertake a comprehensive review of child protection issues in British Columbia. Aboriginal issues were reviewed by a separate committee of the panel, with both the panel and the Aboriginal committee submitting reports to the minister of Social Services in October 1992.

The recommendations of the Aboriginal committee were made in the context of `interim measures' only, pending full establishment of self-government and "recognition of the paramountcy of Aboriginal family law". (Aboriginal Committee 1992, p. 87) The major recommendations included

1. recognition of the right of each Aboriginal nation to extend responsibility for family and child services to its members, whether they are registered as Indians or not, and whether they live on- or off-reserve, and
2. the right of Aboriginal communities that are `enclaves' in non-Aboriginal society to assert responsibility for family and child services. This recognition would be achieved by vesting in an Aboriginal nation or community, at its option, all of the responsibilities vested in the superintendent of child and family services.

The committee also recommended provision of support services to children in the context of the child's family and support for a range of services to meet the "mental, physical and spiritual needs" of Aboriginal people, including daycare, homemaker and respite services, alcohol and drug treatment, suicide prevention, recreational facilities, and educational opportunities. Concerning placement of children away from their birth parents, the committee recommended that the preferred caregivers should be, first, members of the child's extended family and, second, other members of the child's Aboriginal community. The political body representing the child's nation or community was to have the right to be involved in all deliberations concerning the care and custody of an Aboriginal child.

In July 1993, the ministry of social services circulated a white paper entitled *Making Changes ─ The Next Step*, which proposes amendments to provincial legislation and seeks further discussion on some issues. A number of the recommendations of the Aboriginal committee are reflected in the white paper, including

- recognition that the `best interests' of an Aboriginal child require that, should the child be placed anywhere outside his or her parental home, the resources of choice be the extended family, the child's home community,

or another Aboriginal family, in that order;

- provision for agreements to be made with Aboriginal communities "based on the inherent right of Aboriginal people to make decisions and resolve problems concerning Aboriginal families and children";
- provision of support services to natural families and to extended families;
- support for collaborative and co-operative dispute methods, as opposed to adversarial court-based approaches. (B.C. Social Services 1993, p. 3)

In addition, the ministry is considering the option of introducing provincial legislation that would recognize Aboriginal family law, thus avoiding the need for delegation from provincial authorities. Federal legislation would likely be required for such an option to be fully effective.

Health

The ministry of health has recently made a significant departure from its previous practice of consulting with individual Aboriginal communities to identify service needs and then negotiating service delivery contracts with Aboriginal organizations. Based on the model of the Aboriginal advisory board established in 1991 to advise the ministry on alcohol and drug programs, the Aboriginal Health Council has now been created. Working through a network of six regional boards, the council determines funding allocations from a budget of $5 million (1992-93) for addictions and mental health programming and $2 million (1992-93) for family violence programs. The central board of the council is responsible for policy issues, including strategic planning and membership and mandate questions. Overall administration is carried out by the B.C. Association of Indian Friendship Centres, under contract with the Health Council. The host agency (which administers contracts for projects approved by the committees) is, for most of the regional committees, a friendship centre.

The council is also responsible for developing and recommending to government a broad range of Aboriginal health initiatives. Among the issues it is addressing are recommendations by the B.C. Royal Commission on Health Care and Costs, which reported in 1991. These recommendations include

1. development of an information system to measure the health determinants and health status of Aboriginal persons;
2. involvement of Aboriginal peoples in the design, development and implementation of programs, policies and services for Aboriginal persons; and

3. development of health services, including services to urban people, controlled by Aboriginal organizations.

The Health Council is considered by the minister and by other agencies in the provincial government to be in the vanguard of provincial efforts to move away from mere consultative and advisory mechanisms toward having Aboriginal entities delivering programs and services.

The ministry of health has one of the largest Aboriginal units in the provincial government ─ the Aboriginal health policy unit. It was formed in 1993 by the amalgamation of the Native health branch and the Aboriginal services unit in the alcohol and drug division.

Language, culture and recreation

The provincial government has supported Aboriginal cultural activities for many years, principally through the First Citizens' Fund. In May 1990, however, the government launched a five-year $10.7 million program directed to preserving and strengthening Aboriginal cultures and languages. The fund, which is administered by the First Peoples' Cultural Foundation, is intended to help support the creation of 27 Aboriginal cultural centres throughout the province and to provide the nucleus of an endowment fund. By early 1994, the program had approved five capital grants for cultural centres.

An evaluation of the foundation program, carried out in 1993, recommended that the foundation be given more flexibility and independence in administering the program and that in-kind contributions, including land and buildings, be eligible as the First Nation sponsor's share of project costs. (First Peoples' Cultural Foundation 1994)

Provincial recreation officials have also been involved for some decades in developing and supporting Aboriginal recreation programs. Aboriginal communities are eligible to form recreation commissions, which qualify for advice and support from the provincial government. Provincial funding is also provided to the Aboriginal Sport and Recreation Association, based in Victoria, which has assumed responsibility for a large share of the programming previously delivered by provincial officials.

Assessing the Relationship

The past five years have brought fundamental changes to the relationships between Aboriginal

peoples and the provincial government in British Columbia. Broadly speaking, the changing relationships can be summarized as follows.

First, within most of the provincial ministries and Crown corporations, including all those with substantial effects on Aboriginal peoples, there has been an opening of governmental decision making to Aboriginal influence and participation. Here the actual effects have not yet been pronounced, and there is much Aboriginal dissatisfaction with the representational process; on the other hand, foundations are being established, bureaucratic resistance is minimal, and the potential for growing Aboriginal influence is substantial.

Second, many First Nations and some urban Aboriginal organizations have gained increasing degrees of direct participation in delivery of what were formerly exclusively provincial programs. Some First Nations have gained full local control over programs that were formerly delivered entirely by the province. These developments have so far occurred mainly in social policy areas, such as welfare and education, where community needs can be clearly expressed and where competing non-Aboriginal interest groups are either absent or not well organized. In other areas, such as economic development and resource management, where community needs are less clearly defined and where non-Aboriginal groups are apt to have competing interests, there has been less Aboriginal participation. Even in these latter areas, however, the circumstances are changing to favour greater participation. In any event, the increasing array of activities being undertaken by Aboriginal groups in fields of traditional provincial jurisdiction serves to demonstrate both the rapidly changing relationship with the province and the practical exercise of self-government.

Third, individual First Nations and tribal groups have now acquired major bargaining influence relating to use of Crown lands and to resource development within their traditional territories. This influence has come in part from a series of court injunctions, commencing with that in the Meares Island dispute in 1985, in part from the province's general policy commitment to consult Aboriginal groups, and in major part from the specific rulings of the British Columbia courts in the *Delgamuukw* case, which now gives the province no choice but to continue its consultation policy. The treaty negotiation process and the resulting treaties will add new dimensions not only to the influence of First Nations over land and resources, but also to the pattern of relations with the provincial government, as well as with municipalities and other local governments.

The new influence of First Nations, as well as the implications of the treaty process, merit some further comment. For Aboriginal communities within their traditional territories, the province's commitment to negotiate treaties offers unprecedented opportunities for the re-creation of an economic base and for the revival, strengthening or creation of Aboriginal social, cultural, and political institutions.

How the new role for First Nations in the provincial resource planning process will play out in practice is not yet fully evident. In the immediate future the process will likely be marked by considerable negotiation about the extent of First Nations' influence on the decision-making process. First Nations will almost certainly press for veto power, which just as certainly will be resisted by the province. That the two sides will not always interpret the written documents in the same way was illustrated in press coverage of an interim measures agreement announced in December 1993 for northern Vancouver Island.

> Native Indian bands will have the right to veto aquatic land-use decisions under a precedent-setting agreement with three provincial ministries, a spokesman for 14 North Island bands said Friday. "This is a major government-to-government agreement with far-reaching implications, and will serve as a model for other tribes throughout B.C.," said Bob Duncan, president of the Kwakiutl Fisheries Commission based in Campbell River.
>
> However, government spokesmen said the agreement does not provide for a moratorium on resource use, or give a veto to native tribes. (Victoria *Times Colonist*, 18 December 1993)

Exactly the same type of terminological dispute arose between the province and the Nuu-chah-nulth in the case of the Clayoquot agreement.

The rhetorical disputes and exaggerations are unlikely to diminish until more experience and confidence are gained in the process and until some of the agreements have had time to be interpreted in practice. At the present stage the politicians on the two sides have contrary political incentives ─ the one side needs to inflate and the other to downplay the scope and significance of what the documents state. In the meantime, the seeming inability of the two sides to agree on what they agreed on serves to obscure the gains both sides have made and to open the way for hostility and scare tactics from those who oppose the very notion of interim measures. From a day-to-day operational perspective, ambiguities in interim measures agreements ─ concerning, for example, the exact nature and required duration of consultation on the issuance of provincial permits ─ have sometimes resulted in First Nations being burdened with provincial paperwork

and provincial officials (and non-Aboriginal clients) experiencing what they perceive as unwarranted delays.

It is now fully apparent that the provincial government will have great difficulty in proceeding with comprehensive land and resource planning in the various regions of British Columbia unless Aboriginal concerns are dealt with, either in the short run by interim measures agreements or in the long term by treaties. First Nations are naturally going to assert that the `without prejudice' principle associated with the CORE process means without further impairment of resources in their traditional territories.

Recent history has shown that First Nations have powerful tools in the form of political action and litigation; these tools will undoubtedly be used again if the province's land and resource planning processes appear to threaten Aboriginal interests. The almost total absence of blockades and other forms of protest since 1990 has been remarkable, but signs of Aboriginal impatience have always been evident, and now there is growing impatience and criticism from some non-Aboriginal quarters. There is thus much incentive for all parties to proceed quickly to negotiate and complete the treaties.

However, pressure to proceed quickly to start treaty negotiation and to conclude them as quickly is countered by other factors. If settlements are reached quickly, many of the adverse effects of the *Indian Act* regime could become entrenched in the treaties. Further arguments in favour of `slow-walking' the process include the need for communities to heal themselves before they commit to new political, economic and social arrangements. (RCAP 1993; *Times Colonist*, 4 December 1993) Aboriginal communities also undoubtedly need time to build their administrative, professional and entrepreneurial capacity.

Equally important, the treaty process must be looked upon as an opportunity to develop lasting relationships of mutual respect and understanding between Aboriginal groups and their non-Aboriginal neighbours in the various parts of the province. The relationships that the provincial government and Aboriginal peoples have been building in the last five years have not been such as to allow any great deal of participation by, or understanding on the part of, non-Aboriginal British Columbians.

The lack of knowledge and understanding on the part of those not directly involved, together with an active opposition to the treaty process itself, had become major political factors in the province by late 1994. With a provincial election required by the end of 1995, the public

debate was bound to intensify. However, with no possibility that even a single treaty could be completed before the election, the existing provincial government could offer little in the way of evidence or results to placate its critics or to reassure those generally in support of treaty negotiations.

In terms of the process itself, the premier had attempted to promise open, public negotiations, but such a promise could do little to respond to immediate misunderstanding and criticism. Quite a different response, one that would provide a significant and focused public forum for debate and inquiry into any aspect of provincial or Aboriginal actions or policy, will be proposed at the close of this paper.

Concerning off-reserve, urban Aboriginal people, including the Métis, provincial policy is less well defined, and future directions are less easy to chart. Paradoxically, while self-government in the absence of a land base is a much more challenging concept than territorially-based government, there may be greater scope in urban areas for provincial/Aboriginal co-operation in the design of institutions and delivery of programs that promote self-government. On the positive side, the province is not limited by federal jurisdiction in its involvement in most program areas that would be developed and applied to off-reserve populations. (Off-loading of federal responsibility for Indian people is, however, a perennial concern of provincial governments, for the federal government seeks to maintain little or no responsibility for off-reserve services to status Indians.) In British Columbia, there is already a considerable history of program and service relationships between urban Aboriginal organizations and provincial ministries. The fact that most of these arrangements are less overtly politicized than are discussions surrounding treaty negotiations provides an important degree of latitude and flexibility in the development of agreements and also enables a greater degree of operational stability than would otherwise be the case.

The development of self-governing institutions in urban areas is complicated, however, by several less positive factors. As mentioned earlier in this paper, a substantial number of urban Aboriginal service and advocacy organizations are competing with each other for scarce resources, especially in Greater Vancouver but also in the other major population areas. The absence of widely representative umbrella-type formations in any of the major urban centres is the major impediment to more substantial and effective Aboriginal participation. As a result, the province can obtain no consistent advice or participation from the Aboriginal side in order to

achieve major transfers of policy and program responsibility to urban organizations.

Representation and accountability of urban organizations have been persistent concerns and will not be resolved easily. The provincial government has taken the position that these issues must be resolved by Aboriginal people and their organizations, but the province has provided encouragement and financial support for efforts to develop co-ordinating structures and processes.

Conclusion

Government-to-government relationships between the Aboriginal peoples and the provincial government of British Columbia are still in their early, and critical, stage of development. The contemporary period, beginning in 1990, is the first time in the history of the province that such relationships can even be said to exist. To Aboriginal spokespersons, who are so intensely aware of the rights and needs of their peoples, five years is a very long time to wait for results. Not surprisingly, there is scepticism and frustration; results are less than expected, yet hope and confidence are still very much in evidence. On the other hand, five years is a very short period in the history of British Columbia's peoples. Granted there are as yet few substantial results from the government-to-government relationships, but there has been an enormous amount of consultation and discussion and of planning and program development. These processes, which show no signs of diminishing, are not only the essential precursors of major change in government, but also the foundation and beginning of major change.

In the introduction to this paper a fundamental question was posed: What have been the effects of provincial government policies and programs on the achievement of self-government by Aboriginal peoples in British Columbia? This general question divides into four more specific sub-questions.

First Nations Membership or Citizenship

> What has been the effect of provincial policy or action on the ability of First Nations to determine their own membership or citizenship?

Concerning the First Nations that will enter the treaty process, the provincial government has endorsed the recommendation of the British Columbia Claims Task Force that the organization of First Nations for the negotiating process be determined by First Nations themselves. Issues such as who will be represented at the bargaining table and who will eventually ratify treaties are

decisions to be made by First Nations, and such decisions may or may not reflect current membership and organizational configurations.

Issues of membership in self-governing *urban* bodies are more problematic and will involve debates about the role of urban individuals in their `home' nations as well as debates about which urban organizations represent which individuals and for what purposes. At present, Aboriginal individuals are not required to receive services from or otherwise participate in Aboriginal organizations. If policy, program and funding responsibilities were transferred in total to Aboriginal organizations, on the understanding that they would deal with a defined population, membership issues would become much more prominent and controversial. Such arrangements are certainly not unknown (as in the case of separate school boards to which homeowners elect to apply a share of property taxes) but would raise some very difficult issues, especially given the variety of, and often the rivalry between, urban Aboriginal organizations. As noted earlier, the provincial government has provided some support for the development of co-ordinating or unifying structures but is reluctant to be perceived to be designating `representative' structures.

First Nations Governance

> What has been the effect of the provincial government on the development of Aboriginal governing structures, processes, policies and programs?

Although a variety of provincial programs and services are provided on-reserve, the impact of the provincial government on Aboriginal government of and over *aboriginal lands* has been quite limited. The province is prevented from passing legislation that deals with Indians *as* Indians or that applies to Indian reserve lands as such.

The most fundamental issue relating to provincial legislation has been the degree to which provincial laws of general application, such as hunting and fishing regulations, are to apply to First Nations persons and groups. First Nations commonly demand that the province in effect withdraw from certain areas of jurisdiction or, in the interim, delegate responsibility to First Nations authorities. Movement in this direction has been seen in the case of child welfare legislation, health programs, justice initiatives and, in recent developments, the establishment of gaming operations on Indian reserves. In the Sechelt self-government initiative, the province vacated the field of taxing non-Indian leaseholds, thus providing this tax room to a First Nations government.

The negotiation of interim measures agreements gives First Nations more influence over matters generally within provincial jurisdiction. Such agreements are beginning to evolve as models of shared responsibility and as precursors of arrangements for the exercise of autonomous Aboriginal jurisdiction and shared provincial/Aboriginal management arrangements for lands and natural resources.

The province has also, of course, provided funding and other support to a wide array of programs and services both on-reserve and in urban areas. While often essential for the continued operation of Aboriginal service organizations, these funding arrangements generally fall short of Aboriginal aspirations for policy and program autonomy and long-term funding security.

Intergovernmental Structures and Processes

> How has the provincial government encouraged or discouraged the development of intergovernmental processes and structures pertaining to First Nations or tribal councils?

Recognition by the provincial government of a government-to-government relationship with First Nations has been key to the establishment of new arrangements and is being reflected in the memoranda of understanding creating policy forums between the province and major Aboriginal organizations and in interim measures agreements with individual First Nations and groups of First Nations. To the extent that these structures and processes replace government-appointed advisory bodies, task forces and committees, the intergovernmental nature of provincial/Aboriginal interactions will be emphasized.

First Nations Financial Ability

> How has the provincial government affected the ability of First Nations governments to finance their own activities?

In urban centres, increases in resources for Aboriginal institutions have been achieved through the progressive transfer of provincial program responsibilities and funding to Aboriginal organizations, and this process will continue. As is the case for other British Columbians, the major provincial expenditures for Aboriginal peoples lie in the areas of health, education and social services. Transfer of major responsibilities for programming and service delivery in these areas would give Aboriginal institutions substantial resources to address many issues of major concern to Aboriginal people.

With respect to First Nations within their traditional territories, the conclusion of treaties in British Columbia will result in major infusions of capital into First Nations communities. At the same time, Aboriginal governments and their citizens will re-establish control over a substantial economic base of land and resources. While cash and land and resources will provide the raw material of economic development and self-sufficiency for many First Nations, of equal importance will be the structures and processes of government that are established to direct the transformation of these raw materials for the well-being of communities and individuals.

Concluding Comment and Policy Recommendations

Had this report been prepared a decade ago, it would have found the provincial government neither prepared nor willing to deal with the Indian land question, to consider the assertions of Aboriginal rights of self-government, to include Aboriginal representatives in government policy processes, or to devolve provincial programs to First Nations and other Aboriginal groups. Writing a decade ago, the authors would have had a virtual free rein in recommending changes in the province's outlook, policies, programs, and institutions relating to Aboriginal peoples.

Today, at the close of 1994, the provincial government has made most of the changes that might have been recommended a decade ago. The changes began under the Social Credit government of Premier William Vander Zalm and accelerated and became more significant, under the current New Democratic government of Premier Michael Harcourt. The government has recognized both Aboriginal title and the inherent right of Aboriginal self-government, and it has participated fully in preparations for treaty negotiations. It has established a major new ministry devoted to Aboriginal affairs, giving it a high profile and substantial resources. In its other ministries with relevance to Aboriginal concerns, as almost all of them do, it has created new staff positions and new programs pertaining to Aboriginal peoples. Altogether, in a few years the province has accomplished a remarkable degree of institutional and program development.

The principle, the strategy of government-to-government relationships has come to characterize dealings between the province and Aboriginal groups. The principle implies a formal equality between the two sides. In reality the province will inevitably have greater resources than Aboriginal groups will, but the principle serves to acknowledge the unique position, and rights, of Aboriginal peoples. The government-to-government terminology is thus

from one perspective a symbol of good faith on the part of the province and of Aboriginal peoples; in practice it can be expected to reduce the number of irritants that might affect the relationship. The fact that the Union of British Columbia Indian Chiefs has been willing to enter into a government-to-government relationship is one obvious sign of the success of the province's strategy. Above all, however, the principle of government-to-government relationships acknowledges the actual historical reality: Aboriginal governments have existed for millennia in what is now British Columbia.

A report written a decade ago would have found the province's Aboriginal political leadership united as never before. Unity has since diminished somewhat, but the First Nations Summit speaks for a substantial majority of the First Nations population and has functioned consistently in terms of promoting and preparing for the treaty negotiation process. At the same time, the Summit has avoided becoming a bureaucratic organization; its structure ensures that it represents community-level concerns. And it is at the community level that treaties will be negotiated ─ by the communities or tribal groups themselves.

The need for province-wide political unity is an external challenge imposed on Aboriginal peoples by present-day political reality. Given the much greater diversity of Aboriginal peoples in British Columbia than in any other province or territory, their achievements in maintaining unity and consistency are at least as remarkable as any success of the province. However, these achievements, now reflected in the treaty process and in the province's acknowledgement of title and of self-government, have been largely those of the land-based First Nations. The Aboriginal populations of the province's main urban centres have not attained any comparable unity, and so have not attained any substantial control over their Aboriginal futures.

In the immediate future, government-to-government relations within British Columbia will likely continue to be dominated by concerns related to the treaty process. These concerns arise in two spheres. One sphere involves the details of the process and the funding of negotiations; here the difficulties and disputes will be between the parties, or the `principals', as they are now labelled in the language of the process. In this sphere, however, the Treaty Commission is already demonstrating the potential to resolve difficulties and to ease disputes. Moreover, at present, at least, the three principals share similar interests in maintaining the process and in seeing it succeed.

The other sphere is that of public information and partisan political debate. In close parallel with the setting up of the Treaty Commission in 1993 and the processing of the surge of statements of intent in 1994, an increasing pattern of opposition to Aboriginal rights and to the treaty process became evident in this other sphere. The opposition was based in part on majoritarian and individualistic values that are well established among members of the mainstream majority, but it was also based on misunderstandings and misinformation about Aboriginal assertions and the treaty process, on opposition to the New Democratic Party and, in more than a few cases, on straightforward prejudice and hostility concerning Aboriginal rights and interests. By the end of 1994 the opposition was already proving unnerving to the NDP provincial government, and there was at least the possibility that the 1995 provincial election would produce a government hostile to the treaty process. In contrast to the sphere involving the treaty process, which has the Commission to resolve disputes and difficulties in an impartial manner, the public sphere remains, as it must in a free and democratic society, an undisciplined free-for-all in which bigotry and distortion may outweigh fairness and balance.

What is lacking in British Columbia is a forum for focused public debate and inquiry on Aboriginal issues. The role of the legislature's standing committee on Aboriginal affairs could well be expanded to provide such a forum. The governing party would naturally have a majority of committee members, but the government might well see advantages in giving the committee a free hand, especially concerning no-win issues (that is, those where the government will face heavy criticism whatever option it chooses). The committee could be given a small staff and the authority to set its own agenda, to meet during and between legislative sessions, and to report at its discretion.

The committee could conduct its own investigations and hold public hearings; in so doing it would provide a platform for the major points of view. In its reports it would at least have to distil the major viewpoints into majority and minority reports. At times it might even achieve consensus among its own members, in which case the government would have little reason not to accept the committee's recommendations. The committee could have a major impact on the choice of issues receiving public attention, for reporters, columnists, radio talk show hosts, and writers of letters to the editor would be unlikely to ignore committee proceedings. Public information and public debate would be enhanced, for the major views and counter views would presumably be aired before the committee. Some of the committee's members, presumably from

both sides of the house, would become highly knowledgeable about Aboriginal issues, thus enhancing the quality of debate in the legislature and increasing the likelihood of informed debate in the political parties as they go about drafting their platforms.

Expanding the role of the standing committee on Aboriginal affairs would be only a modest step, one that the government would have to initiate. The effects of this step, however, would almost certainly be to increase the quality of public information and public debate. Aboriginal groups would have a major additional forum open to them, and the provincial government would acquire more options and more leeway.

Notes

Appendix 1
The Indian Land Question in British Columbia: A Chronology

1760	The future British Columbia is home to several hundred thousand people in some 30 tribal nations and many hundreds of communities.
1763	*Royal Proclamation of 1763* recognizes Indian "Nations or Tribes" as owning their lands under British sovereignty in North America, including "all the Lands and Territories lying to the Westward" of the Atlantic watershed.
1774	Spanish reach B.C., followed by James Cook in 1778. Fur trade and massive epidemics of European diseases begin.
1849	Vancouver Island made a colony, with Hudson's Bay Company, under James Douglas, in charge of settlement.
1850-54	Douglas, who becomes governor of colony, recognizes pre-existing Indian land ownership and purchases title from 14 Indian communities. Indian rights to fish "as formerly" and to hunt on unoccupied treaty lands are recognized.
1856-64	White public opinion accepts pre-existing Indian ownership and supports more purchases. Island Assembly urges Douglas to purchase remaining Indian lands and allocates money for the purpose.
1858	Mainland is made new colony under Douglas; his instructions from London assume that he will sign more treaties.
1860-64	Instead of treaties, Douglas implements his `system' which seeks Indian assimilation, but with dignity and equality. Indians granted equal pre-emption (homesteading) rights with whites, but get only small reserves, intended as way stations to assimilation.
1865	Indian population has declined to 40,000.
1864	Douglas retires. Joseph Trutch assumes control of Indian policy; in contrast to Douglas, he regards Indians as inferior savages.
1866	The two colonies are united as British Columbia. Trutch remains dominant. New legislation prohibits land pre-emption by Indians. Trutch reduces size of existing reserves; allows a maximum of 10 acres an Indian family in new reserves. Indians protest.
1870	Trutch becomes first official to deny existence of Aboriginal land title in B.C.; he revises B.C. history to have the Douglas treaties as mere friendship pacts. Whites now view Indians as having been primitive nomads and assume B.C. to have been

	an empty land until discovered by Whites. Official B.C. policy henceforward assumes that unencumbered Crown title was created with British sovereignty.
1871	Trutch is instrumental in arranging union with Canada. Federal officials assume Royal Proclamation has been followed in B.C., with extensive treaties signed and reserves as large as those in Ontario (80 acres per family). Terms make no mention of Indian title, but guarantee a reserve policy "as liberal as that hitherto pursued" by B.C., in effect entrenching the 10-acre formula. Trutch becomes the first lieutenant-governor and John A. Macdonald's main B.C. ally.
1872	Right to vote in B.C. elections is withdrawn from Indians.
1870s	Major Prairie treaties acknowledge original Indian title and provide reserves of 640 acres per Indian family.
1870s	Coast and Interior Salish chiefs hold large assemblies protesting small reserves and lack of treaties. `Indian land claims' are now a distinct element in BC politics; there are demands for recognition of original tribal land ownership and for treaties that transfer title and guarantee adequate reserves.
1874	Ottawa urges reserves of 80 acres a family; B.C. refuses.
1875	Opposition motion passes in B.C. legislature compelling publication of Papers Connected with the Indian Land Question, 1850-1875. Trutch prevents legislative debate on committee report proposing larger reserves.
1876	Governor General Dufferin urges B.C. to acknowledge Indian title.
1880s	Christian missions and Department of Indian Affairs (DIA) are now well established in B.C. Removal of Indian children from home and family for education and `civilization' begins.
1884	Parliament outlaws the potlatch, the major social, economic, and political institution of the coastal peoples.
1887	Nisga'a and Tsimshian chiefs travel to Victoria to demand recognition of title, negotiation of treaties, and provision for self-government within Canada. Premier Smithe rejects any notion of original Indian title, saying "When the whites first came among you, you were little better than the wild beasts of the field."
1887	Fearing rebellion on the land issue, the governments agree to an enquiry, which hears repeated Indian demands for treaties and self-government. Commissioners reject demands and depict Indians as disloyal and simple-minded tools of white agitators.
1890s	`Neo-traditional' Indian leaders emerge; they are committed to land claims but fluent in English and knowledgeable about government.
1899	Federal government unilaterally extends prairie Treaty No. 8 into Peace River

	area, using federally owned land for reserves at 640 acres per family.
1906	Salish chiefs hold large assembly at Cowichan and send three chiefs to London to request treaties.
1907	Nisga'a Land Committee is formed.
1909	Interior Salish form a political organization, the Interior Tribes of B.C. Coastal Indians form Indian Rights Association. Treaties and reserves are the issues.
1912	Premier McBride and new federal Conservative government sign McKenna-McBride agreement, under which a commission will settle the B.C. Indian question, but only by examining reserve size. Title and treaties are to be ignored.
1913-16	Commission hears repeated Indian demands for treaties and larger reserves. Indians fear that reserves will be reduced further. Officials patiently reaffirm the *Indian Act*'s guarantee that reserves cannot be reduced without Indian consent.
1913	The Nisga'a petition the British government for treaties and self-government, in accord with the *Royal Proclamation of 1763*. The petition is widely endorsed by B.C. Indians. The Proclamation is now basic to B.C. Indian political thought, as is faith in British justice.
1914	Federal government offers to support B.C. Indian land claims in court, provided that DIA selects, and pays, the Indians' lawyers. Indians refuse.
1916	Indians form Allied Tribes of B.C., their first province-wide organization, to seek treaties and adequate reserves. Peter Kelly and Andrew Paull are the main leaders.
1916	McKenna-McBride commission recommends adding 136 square miles (appraised at an average of $5.10 an acre) to B.C. reserves and cutting off 74 square miles (appraised at upward of $27.00 an acre). Arthur Meighen, minister of Indian affairs, reaffirms that Indian consent is required for any cut-offs.
1916-1920	Allied Tribes hold protest meetings; Indian unrest spreads; potlatches are held openly.
1920	Meighen introduces and Parliament passes a bill authorizing cut-offs without Indian consent. Simultaneously officials conduct a wave of potlatch arrests, and some chiefs are convicted and jailed.
1921	In London the Judicial Committee of the Privy Council, still the highest court for Canada, rules that Aboriginal title throughout the Empire is a pre-existing right that "must be presumed to have continued unless the contrary is established." Federal officials realize they must prevent B.C. Indians from getting their claims into the courts.
1924	Reserve cut-offs are carried out. Among Indians they become second only to

	denial of title as a symbol of white deceit and immorality.
1925	Allied Tribes petitions Parliament for an enquiry.
1927	Liberal federal government agrees to an inquiry, intending to use it as a means of keeping the land claims from the courts. Inquiry committee rejects the claims and the need for treaties. It blames Indian unrest on white advisers and recommends curbing them.
1927	Parliament amends the *Indian Act* to outlaw receipt of money by any person (including any Indian) from any Indian for any claim-related activity. Canada and B.C. are rendered safe from the Judicial Committee, as it is now illegal for Indians to take steps necessary to get claims to court.
1928	The Allied Tribes collapses. The Indian problem seems solved.
1931	The Native Brotherhood of B.C. resumes ideals of Allied Tribes.
1947	BC Indians get the provincial franchise ─ as a by-product of post-war enfranchisement of other racial minorities.
1949	Frank Calder is elected to the B.C. legislature.
1949	Appeals to Judicial Committee from Canada are abolished.
1951	With the Judicial Committee out of the way, and convinced that B.C. Indian political action is now a thing of the past (and also concerned about international human rights criticism) the federal government has the *Indian Act* amended to remove the claims prohibition as well as the anti-potlatch provision.
1952	Frank Calder and other north coast chiefs begin discussing ways to proceed on land claims. George Manuel begins political organizing in the southern interior.
1955	The Nisga'a chiefs form the Nisga'a Tribal Council. Settling their land claim is a major objective.
1958	The Nuu-chah-nulth form their tribal council.
1960	Manuel outlines the land claim of interior Indians to Parliament.
1960	Indians are granted the federal franchise and phasing out of Indian residential schools begins ─ to achieve faster assimilation.
1965	Nanaimo Indians are arrested for hunting on unoccupied treaty area. B.C. argues Douglas agreements were not treaties and devises new argument ─ that Royal Proclamation did not extend to then "undiscovered" B.C. Supreme Court of Canada upholds the treaty, triggering emergence of Aboriginal rights as serious issue in Canadian courts.

1969	Nisga'a take their land claim to court. Courts in B.C. rule that Indian title never existed. B.C. Chief Justice Davey states that the Nisga'a "were undoubtedly at the time of settlement a very primitive people with few of the institutions of civilized society, and none at all of our notions of private property."
1969	Federal White Paper on Indian Policy presents final assimilation plan. Union of B.C. Indian Chiefs is formed to proceed with land claims.
1972-75	NDP provincial government agrees to consider return of cut-off lands, but asserts that settling land claims is a federal matter.
1973	Supreme Court of Canada rules that Nisga'a did hold title to their land before B.C. was created. The Court splits evenly on whether Nisga'a still have title. Federal policy is changed to allow negotiation with claimant groups.
1974	Quebec signs the James Bay and Northern Quebec Agreement, a modern treaty recognizing Aboriginal title. Similar agreements are reached later in Yukon and N.W.T. All embody the principles demanded at this time by Indians in B.C.
1976	Federal government starts land claims negotiations with Nisga'a. B.C. declines to participate.
1976-81	Social Credit government proceeds on cut-off lands issue. Negotiations start in 1981. Cut-off lands are later returned or paid for at present value.
1976-83	Tribalism re-emerges as the dominant force among B.C. Indians, with separate tribal land claims. James Gosnell, Joe Mathias, Ed Newman, Sophie Pierre, George Watts, and Bill Wilson are major spokespersons.
1980s	Social Credit government denies Indian title ever existed, but has new back-up argument: the 1871 federal agreement to pay for B.C.'s liabilities existing at union requires federal payment for any subsequent surrender or transfer of title.
1984	In *Guerin*, Supreme Court of Canada reaffirms that Aboriginal interest in the land in B.C. is a "pre-existing legal right" derived from Aboriginal practice and not from any British or Canadian action.
1985	B.C. Court of Appeal halts logging on Meares Island pending court case on Nuu-chah-nulth land claim. Judges observe that claims have been ignored and that negotiations would be more appropriate than court proceedings.
1985	Provincial Attorney General Brian Smith states, "You start negotiating land claims and you're down the Neville Chamberlain route."
1985	Vancouver *Sun* public opinion poll indicates that 75 per cent of those with an opinion support negotiations.
1985	Federal task force (Coolican) report recommends federal government alter its policy of negotiating only one claim per province. Government ignores report.

1985-89	A recurrent pattern emerges: (1) After years of preparation, a tribal nation presents its formal land claim to the federal government, with a copy to B.C. (2) Ottawa and B.C. do nothing. (3) B.C. allows new or continuing resource development on the claimed land. (4) Tribal nation mounts a protest blockade. (5) Group seeks an injunction. (6) B.C. courts grant the injunction, suspending provincial authority over development on the land in question.
1988	B.C. First Nations Congress is formed as a co-ordinating forum representing the great majority of communities and tribal nations. Bill Wilson becomes chairman.
1989	At Wilson's initiative, the inaugural Industry/First Nations Conference is held at Whistler. Leaders of B.C.'s major forestry, mining and fishing companies discuss land claims privately and amicably with tribal leaders.
1989	In the Gitksan and Wet'suwet'en court case, government lawyers repeat the standard provincial arguments and assert that B.C. Indians have been treated fairly.
1989	B.C. forms Native Affairs Advisory Council. Premier Vander Zalm and minister of Native affairs Jack Weisgerber meet with tribal nations to discuss Indian demands.
1990	In *Sparrow* case, Supreme Court of Canada recognizes Aboriginal food fishing rights, subject only to conservation requirements.
1990	To demonstrate solidarity with Mohawks in Quebec, but also to pressure B.C. to recognize title and to negotiate, several B.C. bands mount road and rail blockades. Among the more prominent are the Lil'wat Indians; the Union of B.C. Indian Chiefs, its support now centring in the same area, proposes a draft framework treaty.
1990	Premier Vander Zalm announces that the province will negotiate land claims but will not acknowledge pre-existing title. The federal government agrees to drop its one-at-a-time negotiation policy.
1990	In October the First Nations Summit meets with Prime Minister Mulroney and, the next day, with the entire B.C. cabinet, to discuss preparations for negotiations.
1990	As proposed by First Nations Congress and Summit, tripartite B.C. Land Claims Task Force is established.
1991	In the Gitksan and Wet'suwet'en case (*Delgamuukw*), Chief Justice Allan McEachern rejects Aboriginal title and right of self-government. Endorsing traditional white views, he dismisses the claimants as descendants of primitive peoples who had neither law nor government.
1991	Claims Task Force unanimously recommends tripartite negotiations, on a

	claimant-by-claimant basis, co-ordinated by a tripartite claims commission as `keeper of the process'. First Nations Summit, provincial government, and federal government all endorse task force recommendations.
1991	New Democratic Party forms provincial government. Ministry of Native Affairs renamed Ministry of Aboriginal Affairs.
1992	In speech from the throne the British Columbia government finally and formally recognizes Aboriginal title and also the inherent right of Aboriginal peoples to self-government. In words at least, the provincial government is now for the first time ahead of the federal government in responding to Aboriginal demands.
1992	Prime Minister Mulroney, Premier Harcourt, and First Nations representatives sign agreement to establish five-member claims commission. B.C. treaties are to include Aboriginal self-government as well as land claims settlements.
1993	Claims commission membership appointed. Federal and provincial governments sign memorandum of understanding on sharing costs of negotiations and of settlements. It is now generally accepted that B.C. treaties will include Aboriginal self-government as well as land claims settlements.
1993	Union of B.C. Indian Chiefs continues to reject the treaty negotiation process as agreed to by the Summit, but signs an agreement to deal separately with the province on a government-to-government basis.
1993	B.C. Court of Appeal partially reverses the McEachern judgement in *Delgamuukw* by establishing that a limited form of Aboriginal title (that of non-exclusive use and occupancy) continues to exist in non-treaty areas. This is the first time that any court in Canada has recognized present-day Aboriginal title. The court denies any Aboriginal right of self-government.
1993	On December 15 the Treaty Commission opens for business. Some 40 tribal nations and Indian bands give notice of intent to negotiate.
1994	The new federal Liberal government of Jean Chrétien accepts section 35 of the Constitution as including the Aboriginal right of self-government
1994	The Gitksan and Wet'suwet'en chiefs agree to postpone their *Delgamuukw* appeal to the Supreme Court of Canada for 18 months and agree to enter the treaty process. If there is "substantial progress" in negotiations, they will drop the appeal entirely.

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[i] In June 1994, the province retreated from the term "political legitimacy" in negotiating an agreement signed with the hereditary chiefs of the Gitksan and Wet'suwet'en peoples. The preamble to this Accord of Recognition and Respect states:

> Whereas...the Province of British Columbia...has announced its recognition of Aboriginal title and the inherent right of Aboriginal Self-government... (Hereditary Chiefs of the Gitksan and Wet'suwet'en and Government of British Columbia 1994)

In negotiating the accord, the province wished to retain the term "political legitimacy" but eventually gave way.

[ii] It might be noted in passing that the B.C. Municipal Act was amended in the late 1960s to allow Indian bands to incorporate as "Indian Municipalities" without affecting the status of reserve lands. The Cape Mudge Band came close to incorporating under the act in 1972, with 71 per cent of members voting in favour, just short of the statutory requirement of 75 per cent. No other band has pursued this course of action.