CANADA' S FIRST NATIONS:
AN OVERVIEW OF SELECTED HISTORICAL AND CONTEMPORARY PERSPECTIVES

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August, 1989

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(a) The French and the Native Peoples.

Prior to European settlement and conquest the geographical territories that today belong to the Canadian state were occupied by many nations aboriginal to the northern reaches of the continent. In the sixteenth, seventeenth and eighteenth centuries two of the great powers of Europe -- France and the United Kingdom -- laid claim to this portion of the 'new world'. Each encouraged trade and settlement in North America. Each made alliances and the British concluded treaties with the native peoples who lived in the regions of initial contact. Each appropriated the 'newfound' lands, defeating, obliterating, containing, or pushing the native inhabitants of these lands westwards. Each fought the other for control of the continent with the British gaining final victory by the middle of the eighteenth century.

By comparison to what was to come, however, French-Indian relations were relatively peaceful and harmonious. In both Acadia and New France, the French were remarkably successful at cohabiting with the various peoples native to the land. France, no less than her western European neighbours, simply proceeded to appropriate the newly discovered territories by the act of 'laying claim' to them. This was done on the theory that they were largely uninhabited and almost wholly uncultivated and, therefore, in need of Christian development and dominion. Roberval was given a royal commission for the St. Lawrence region on the 15th of January 1541 and LaRoche for Sable Island in 1598.

Each of these documents enjoin acquisition by either voluntary cession or conquest.

The primary economic activity of the French colonies was the fur trade and this required the active co-operation of the native peoples. By the seventeenth century, with an expansion in the fur trade and concerted Catholic missionary activity, the Indian peoples in contact with the French settlements in Acadia and Quebec had attained a rather remarkable degree of integration within the socio-economic life of the colonies. This process of peaceful cohabitation was also greatly furthered by the fact that the French chose to settle in the marshlands of the Bay of Fundy and the valley of the St. Lawrence River. The former had never been inhabited and the latter had been abandoned by the Laurentian Iroquois before 1580. Thus, the French settlements did little to unsettle and displace the native peoples. Beyond the limited and well defined range of the Acadian farmlands and the seigneurial tracts of the St. Lawrence, the Indian peoples continued to live fully independent lives that had been economically enriched by access to European trade goods and technology.

As early as 1665, Governor Courcelles was in receipt of royal instructions from France ordering that "officers, soldiers and all His Majesty's adult subjects treat the Indians with kindness, justice and equity, without ever causing them any hurt or violence". It was also explicitly forbidden to expropriate lands upon which Native people were living "under the pretext

that it would be better and more suitable if they were French".

Royal instructions issued in 1716 not only ordered the maintenance of peaceful relations but went so far as to forbid French settlement and clearance of lands west of the seigneuries of the Montreal region. The French authorities generally acted with both care and tact in the so-called "pays d'en haut". Native permission was sought for any development of French interests in the traditional territories of the indigenous peoples.

In the autumn of 1748, the colonial authorities met with a delegation of some eighty Iroquois delegates at Quebec. Afterwards, Governor La Galissoniere and Intendant Bigot reaffirmed what had been the prevailing French attitude: "these Indians claim to be and in effect are independent of all nations, and their lands incontestably belong to them".

While this declaration came at a moment of supreme historical threat, and while the French government continued to speak of its sovereignty on the level of international politics, the record of French colonialism in North America remains the least oppressive and destructive of all the European powers of the day. With their own acute sense of patriotism and <u>patrie</u>, the French truly thought of the native peoples as allies and nations in their own right. Even their missionaries worked to introduce Christianity with the minimum degree of socio-cultural uprootedness consonant with the cardinal tenets of the faith. The Micmac and, later, the Abenaki, accepted Catholicism without any great missionary endeavours. They did so largely as a

voluntary affirmation of their friendship and solidarity with the French in resistance to Anglo-American aggression from the south.

(b) The British and the Native Peoples.

The pattern of English settlement in the southern colonies of the eastern seaboard was not nearly so compatible with the traditional lifestyles and occupation of the land by the indigenous peoples of the area. There, the emphasis lay upon the development of permanent agrarian settlements with very definite legal boundaries. The native peoples had little, if any, role to play within English colonial life and they were, accordingly, either annihilated or pushed off their native lands and away from the ever expanding pale of European settlement.

As the English colonies grew in size and population, Indian-European relations became an ever more important aspect of colonial policy. By 1670, Westminster had enacted legislation placing the conduct of Indian affairs in the hands of the colonial governors and their councils. In doing so, however, they laid out what were to be the continuing features of British policy. The Indians were to be protected from the exploitation of unscrupulous whites; the introduction of Christianity in its protestant form was to be encouraged; and, finally, the Crown was to be promoted in the active role of protector of the native peoples.

This general policy found its ultimate expression in the Royal Proclamation of 1763 which eventually became the cornerstone of future Canadian policy.

The Proclamation first articulated what were to become the four foundational principles of Canadian Indian policy. (1) The native peoples possessed occupancy rights to all lands not formally surrendered. (2) No Indian lands or lands claimed by the Indian peoples could be granted to non-Indians prior to formal surrender. (3) The government had the obligation to expel all persons illegally occupying native lands. (4) Indian lands could only be surrendered to the Crown and only then for a consideration to be determined through negotiation and treaty.

The Royal Proclamation was not, by any means, intended solely for the protection of native interests. It was essentially motivated by the desire of the British government to ensure the peaceful and orderly settlement of the North American continent by English speaking colonists. It intended to lay the groundwork of the process of legally and pacifically extinguishing the existent nations aboriginal to the new lands.

It was largely for the sake of peace and in the hope of orderly British settlement that the Royal Proclamation of 1763 recognized aboriginal land rights and established the government and Crown as essential parties in the process of surrender and land transference. This formal and legal recognition of the sovereignty of the native peoples, however, held within itself certain significant limitations.

In reality few, if any, of the native peoples were perceived as truly 'sovereign' political entities in the European sense. As nations, they were fragmented into more or less independent sub-groups with, by European standards, loosely defined, poorly

delineated and/or disputed territorial boundaries. For example, the British claimed the right to unilaterally admit both fur traders and missionaries to Indian territories. British forces could freely pursue fugitives from the law into Indian lands. The importation of alcohol into native territories was forbidden and, finally, non-Indian persons charged with civil or criminal offences committed within Indian territory could only be tried before British courts.

Throughout the eighteenth century British Indian policy was largely determined by the desire to maintain the native peoples as valuable military allies in the struggle with France for possession of the continent. In the treaties and documents of the era the native peoples are referred to explicitly as military allies and the whole of Indian policy was geared to securing either military assistance or, at least, neutrality in war and good will in times of peace. The first Indian Department was formed in 1755 as an arm of the military under the direct superintendence of the Commander-in-Chief of the British Forces in North America. This situation continued in effect until 1799 when civil authority was established in the post-revolutionary remainder of British North America.

Strangely, military control of Indian affairs was briefly reasserted in 1816 when the military threat and value of the native peoples as allies had largely disappeared in Canada. After the War of 1812 peace descended upon the European settlements of the continent and the stage was set for new directions in Indian policy.

By 1830 Indian affairs was once more a responsibility of the civilian authorities. The native peoples were no longer of any use to the British militarily. Their lands, however, were of increasing interest as British settlers and Loyalist refugees flooded into the remaining colonies of British North America. For the first time it was recognized that the simple displacement of the native peoples -- driving them back from the original pale of European settlement into what they assumed to be an uninhabited and unlimited interior wilderness -- could not continue as a viable policy. Slowly, it was seen that, sooner or later, the Indians would have to be, in some way, incorporated into the social structure and economic life of the colonies. Simple exclusion and exile were no longer workable solutions.

The development of Indian policy was largely determined by the climate of social reform and missionary zeal then prevalent in Britain. The current notion of 'progress' found a racist application in the arena of Indian policy, and a new paternalistic attitude was born. Lord Glenelg, British Colonial Secretary in 1838, saw the basic goal of British policy as "to protect and cherish this helpless Race . . . (and) raise them in the scale of humanity". Henceforth, civilization and protection were the watchwords of imperial policy. The native peoples were to be 'pulled up', protests to the contrary, unto the heights of humanity promised by the industrial revolution and the imperial triumph of the British way.

Nor was this imperial policy to be radically challenged and altered by the increasingly independent Dominion of Canada. It remained virtually intact until the 1960's. Policies were designed, on the one hand, to protect the native peoples from the corruption and evils attendant upon contact with the European community and, on the other hand, to encourage their assimilation into the ways and general civilization of their social superiors. Thus, native peoples were encouraged, and sometimes coerced into settling into European style villages, where the primary instruments of western civilization -- the church, the school and the farm -- could be employed to good effect. Theoretically, at least, the eventual and long term goal was the more or less complete assimilation of the native peoples into the progressive life of the modern North American community with all its reputed benefits and trappings.

(c) The Origins of Canadian Policy: The Colonial Era

The first Canadian acts relevant to Indian affairs were passed in 1850 by the legislature of the United Province of Canada. They were designed to protect Indian land from trespass. In a foretaste of things to come, all Indian land and property came under the control of a Commissioner of Indian lands. In the following year a further act indirectly excluded from Indian status all non-natives living among the Indians and non-native males married to Indian women. This is the origin of the troublesome distinction between 'status' and 'non-status' Indians that would later be incorporated into the Indian Act of 1876.

In 1856 London appointed a commission charged with the task of reporting on the objectives of future Indian policy in the colony. Specifically, the commissioners were directed to find "the best means of securing the future progress and civilization of the Indian tribes in Canada" and "the best mode of managing Indian property as to secure its full benefit to the Indians, without impeding the settlement of the country". In their report the commissioners were, in the light of history, unduly optimistic about the rapid and eventual assimilation of the native peoples into the mainstream of Canadian like and predicted the imminent demise of the Indian Department. To advance the crucial goal of assimilation, they recommended a series of measures designed to foster and support economic development in the native communities of the colony.

In 1857 the government of the United Province passed an act whose very title clearly expresses the assimilationist policy of the day, An Act for the Gradual Civilization of the Indian Tribes in the Canadas. The preamble to this act concisely states the tenor and direction of public policy: "Whereas it is desirable to encourage the progress of civilization among the Indian tribes in this Province, the gradual removal of all legal distinctions between them and Her Majesty's other Canadian subjects, and to facilitate the acquisition of property and of the rights accompanying it, by such individual members of the said Tribes as shall be found to desire such encouragement and to have deserved it". As an incentive (some might say as a bribe,) the Act offered money, property and enfranchisement rights to native

people who chose assimilation and demonstrated an ability to become contributing members of the dominant society. These inducements would remain a significant part of Canadian Indian policy over the course of the following century.

Not surprisingly, the main concern of Indian policy prior to Confederation was the legal disposition of Indian lands. The new country was in the rapid process of being settled by British immigrants and refugees from the new American republic to the South. The primary intent of this type of legislation was not, of course, the protection of Indian lands and interests but rather the establishment of orderly and legally appropriate procedures for the conveyance of the traditional Indian territories into non-native hands. The Management of Indian Lands and Property Act of 1860, for instance, dealt almost wholly with the procedures by which Indian lands could be surrendered to the Crown for the purposes of settlement.

In 1860 legislative responsibility for Indian affairs was formally transferred from London to the power of the government of the Province of Canada.

(d) <u>The Development of Canadian 'Indian" Policy After Confederation</u>.

With the Confederation of the Canadian and Maritime colonies in 1867, the British North America Act passed by Westminster (section 91, sub-section 24,) allotted to the newly created federal government the authority to legislate on matters relating to "Indians and Lands Reserved for Indians". As the new government set itself up in Ottawa, the Secretary of State for

the Provinces became the Superintendent-General of Indian Affairs. This designation of federal responsibility had its roots in an earlier concern of the Imperial government. It was felt in London that only a central (federal or imperial) authority could have any hope of protecting the native peoples from the exploitation of local, land hungry colonists.

These new constitutional arrangements attendant upon the birth of the nation had virtually no impact upon public policy regarding Indian affairs. The prevailing policies of the imperial and colonial administrations were simply taken up and carried on. The Enfranchisement Act of 1869, for instance, merely laid out once more a process for the legal assimilation of the native into the general society of the new country. The Act also took up the ever thorny and somewhat obsessive distinction of status and non-status persons. With sexist precision, clause six, for example, carefully stipulated that if an Indian woman married a non-Indian, she and her offspring would cease to enjoy Indian status with its privileges and restrictions. Interestingly, in 1872, the General Council of Ontario and Quebec Indians sought to have this clause amended so that "Indian women may have the privilege of marrying when and whom they please without subjecting themselves to exclusion or expulsion from the tribe". It was a cry that was to go unheeded until taken to the United Nations and forced upon public attention in Canada one hundred years later, and finally acted on in 1985 (Bill C-31).

In 1876 the federal government of Canada passed the Indian Act, one of the most draconian and intrusive pieces of

legislation ever passed in a Commonwealth nation (with the exception of the apartheid statues in South Africa). The Act itself was no radical departure from past public policies. It merely consolidated and extended existing legislation in the provinces and territories dealing with Indian affairs. It aimed and succeeded in more precisely defining and confining the native peoples of the country. It was a document that would dominate the lives of Canada's native peoples for the century to follow. It touched, often with the heaviest and most paternalistic of hands, virtually every aspect of Indian life and welfare. It was a lands act, a municipal act, and education act and a societies' act all rolled into one. Its scope could hardly have been broader: it detailed provisions regarding liquor, agriculture and mining; Indian lands, band membership; it defined who was and who was not to be considered an 'Indian' and it set down exact procedures and rules for the renunciation and loss of Indian status. It was an incredibly intrusive and comprehensive mechanism of social control.

Virtually no aspect of Indian life escaped the regulatory reach of the government through the Indian Act. Unlike other Canadians, Indians were faced with a single level of government and, indeed, a single department of government. While the act presented a veneer of self-government and Indian participation in the control of life on the reserves, this pretence was simply an illusion. The Act made certain that at any point of conflict between Indian wishes and government authority, the power to resolve the issue lay squarely with the latter.

On the local level of the reserves, The Indian Act was administered by the Indian Agent. This official of Ottawa was, in effect, a government imposed chief whose purpose was to bring local affairs into conformity with the provisions of the Act and whatever policies currently touted by the government. The Indian Agent had an extraordinary range of administrative and discretionary powers. He was, in relation to the native community he governed, an absolute and potentially tyrannical ruler. As Harold Cardinal bitterly but accurately expressed it, the Indian Act "enslaved and bound the Indian to a life under a tyranny often as cruel and harsh as that of any totalitarian state".

The central contradiction of British and, later, of Canadian Indian policy found its supreme embodiment in the Indian Act. On the one hand, the Act sought the assimilation of Canada's native peoples in the general life of the non-native community. At the same time, and on the other hand, it sought to protect our native people by restricting and controlling their contact and commerce with the larger society. These goals were simply and obviously incompatible. As one Canadian historian has noted: "By existing to regulate and systematize the relationship between the Indian and the majority society, the Act codifies and often exaggerates the distinctions which it is its function to eventually eliminate".

The Indian Act was not a static feature of Canadian native policy; successive amendments were made over the years and a new Act was passed in 1951. However, nothing essential was altered by either these amendments or the new Act and the legislation governing Indian affairs in the 1980's was substantially the same as that which had been consolidated into the original Act of 1876.

The first amendment came in 1880, only four years after the passage of the Act. It provided for the automatic and involuntary enfranchisement of any Indian in receipt of a university degree. No one could be a 'status Indian' under the terms of the act and a B.A. (for example) at the same time. In 1884 a further amendment transformed tribal regulations into municipal laws and attempted the introduction of a limited system of band government. In the same year, 1884, another, more sinister, amendment provided prison sentences for anyone convicted of participating in the Potlach or Tawanawa dance rituals of the Pacific west coast peoples. This was the first in a long running attempt by Ottawa not only to "protect" Indians from unscrupulous non-natives, but also from themselves and their traditional cultures. A final amendment in the eventual and busy year of 1884 (the Riel Rebellion was brewing in the west) made the inciting to riot of Indians, non-treaty Indians and/or "half-breeds" an offence under the Act.

By 1889 the government was ready to enact a series of amendments tightening Ottawa's control over education, morality, local government and land on the reserves. One example,

would suffice; the Act altered to provide the department with the power to override a band's reluctance to lease reserve lands.

The Act was amended in 1924 with the intention of placing Canada's Inuit population under the authority of the Superintendent-General of Indian Affairs. This, however, was not implemented. It was generally and wisely felt that the failure of the Act's intentions toward the Indians didn't warrant its extension.

The most substantial, although by no means revolutionary, changes occurred with the passage of the new consolidated Indian Act of 1951. After unprecedented consultations with native Canadians themselves, their leaders and organizations, this new version of the act was drawn up and passed into law. Like its predecessors, the new piece of legislation was framed with a view to the assimilation of Indians into the mainstream of Canadian society. The central features of the old legislation were unchanged, although the oppressive intrusion of the government into the cultural lives of native Canadians was reduced. In general, the powers of the Minister were trimmed although they remained formidable.

(e) The 1960's and 'The White Paper'.

A change of some symbolic significance came in 1960. The legislation prohibiting Indians living on reserves was repealed and political enfranchisement at last ceased to be held out as a bribe towards assimilation. No longer was citizenship dependent upon an acceptable level of assimilation. Now, one could be both an Indian (under the definition of the Act) and a fully

enfranchised Canadian citizen.

During the decade of the 1960's political turmoil gripped the North American continent on a variety of fronts and in Canada native issues suddenly began to receive a new level of public attention. In both Canada and the United States a new spirit of political activism swept the native community. Indirectly, the American civil rights movement brought the native status quo in Canada into question. For the first time, serious political questions arose regarding the legal separation of Canadian Indians through the Indian Act. Many felt that the newly instituted Canadian Bill of Rights should apply equally to native and non-native Canadians. Pierre Trudeau's election in 1968 on the promise of a "just society" meant that the entire question of Indian affairs policy in Canada was now open to debate and serious revision.

The predominant Canadian ideology of the 60's was imbued with a strong commitment to American liberalism, with its characteristic stress on individualism and personal rights. Trudeau's political philosophy belonged very much within this tradition and was, moreover, animated by a deeply felt antagonism to the ethnic nationalism then sweeping his native Quebec. Under this leadership, the federal government quickly adopted a new approach to Indian affairs that emphasized individual equality and de-emphasized collective ethnic rights. The native individual was now to be helped at whatever cost to the cultures of the nation's aboriginal peoples.

On the 25th of June 25, 1969, Jean Chretien, Minister of Indian Affairs and Northern Development, tabled in the House of Commons a document entitled: "A Statement of the Government of Canada on Indian Policy". The White Paper, as it quickly became known, proposed radical changes in the administration of federal Indian policy, coupled with equally fundamental reforms in the constitutional framework of native/non-native relations. "The government believes" read the preamble, "that its policies must lead to the full, free and non-discriminatory participation of the Indian people in Canadian society. Such a goal requires a break with the past. It requires that the Indian people's role of dependence be replaced by a role of equal status, opportunity and responsibility, a role they can share with all other Canadians".

As we have already seen, the anticipated "break with the past" was not as great as the liberal proponents of this view were wont to believe. What was being proposed was nothing more or less than the total and final assimilation of native people to the culture of the dominant Euro-Canadian society. All legislative and constitutional bases of discrimination were to be removed and the Indian Act repealed. The separation of the past was to be dismantled, and Indians were to receive the same services and enjoy the same rights and privileges as other Canadians. The responsibility of the federal government for native Canadians was to end. The Department of Indian Affairs would be dismantled and control of Indian lands simply transferred to the people themselves.

The White Paper also recognized that any lawful obligations incurred by the government of Canada with regard to the native peoples through the signing of treaties would have to be honoured. However, the paper made clear that the government held a very restricted interpretation of treaty rights. The document was nothing if not clear, to the point of bluntness, in this regard; "The terms and effects of the treaties between Indian people and the government are widely misunderstood. A plain reading of the words used in the treaties reveals the limited and minimal promises which were included in them ...the significance of the treaties in meeting the economic, educational, health and welfare needs of the Indian people has always been limited and will continue to decline. The services that have been provided go far beyond what could have been foreseen by those who signed the treaties".

Finally, by way of conclusion, the White Paper called for "a positive recognition by everyone of the unique contribution of Indian culture to Canadian life". This mythical, non-existent entity, "Indian culture," was clearly, in the view of the authors of the White Paper, something dead and presently in need of burial. The tone and recommendations of the document were far more reflective of the contemporary winds of social change in the dominant North American society than they were of the genuine aspirations of Canada's native people as perceived and understood by themselves.

The Prime Minister himself was, perhaps, the most articulate and eloquent defender of the assimilative approach set out in the

White Paper. In a speech he delivered in Vancouver in August, 1969, shortly after the release of the document, and the beginning of the first storm of controversy, he made a passionate plea in favour of its approach: "We can go on treating the Indians as having a special status. We can go on adding bricks of discrimination around the ghetto in which they live and at the same time perhaps helping them preserve certain cultural traits and certain ancestral rights. Or we can say you are at a crossroads -- the time is now to decide whether the Indians will be a race apart in Canada or whether it will be Canadians of full status. And this is a difficult choice ... It's inconceivable, I think, that in a given society one section of the society have a treaty with the other section of society. We must all be equal under the laws and we must not sign treaties amongst ourselves .... What can we do to redeem the past? I can only say what President Kennedy said when he was asked what he could do to compensate for the injustices that the Negroes had received in American society: 'We will be just in our time'. That is all that we can do. We must be just today".

The native community was quickly mobilized and galvanized into indignant reaction and response to the proposals of the White Paper. No previous statement of government policy ever received the native response provoked by this government document. It represents a turning point in the history of native involvement in and with the Canadian political process that so significantly and intimately affects their everyday lives. Indian hostility was crystallized in a number of eloquent

documents; amongst them, Harold Cardinal's The Unjust Society and a reaction paper entitled, "Citizens Plus," presented to the Prime Minister by the Indian chiefs of Alberta.

Cardinal lucidly and passionately argued that the White Paper constituted "a thinly disguised programme of extermination through assimilation" with its attitude of "the only good Indian is a non-Indian". He was especially incensed over the paper's proposal of turning over the federal responsibility of Indian affairs to the provincial governments. We can be certain, he wrote, "that the federal government is merely attempting to abandon its responsibilities. Provincial governments have no obligations to fulfil our treaties. They never signed treaties with the Indians. We could not expect them to be concerned with treaty rights. In our eyes, this new government policy merely represents a disguised move to abrogate all our treaty rights".

The central idea of the "Citizens Plus" document is expressed in its title: "Indians should be regarded as 'Citizens Plus'; in addition to the normal rights and duties of citizenship, Indians possess certain additional rights as charter members of the Canadian community".

In retrospect, the White Paper appears today as the culmination of the old assimilationist policy of Canadian Indian affairs. Its overwhelming rejection by the native community itself, and its eventual retraction by the government of Canada in 1973, represents a great turning point in Canadian native affairs. While assimilation certainly continues as a socio-economic and cultural process, it was at least officially

abandoned as an explicit and primary goal of government policy.

II. The Constitutional Entrenchment of Aboriginal Rights.

The rejection of the White Paper created a certain vacuum in native policy during the 1970's. Suddenly, the government was adrift from the moorings of the past and a multiplicity of new directions seemed possible. The process of defining these directions has been both complex and difficult. The authoritarian simplicities of the past were no longer viable in the formulation of native policies.

Since the shock and stimulus of the White Paper, Indian political activity has greatly increased awareness of Indian problems and aspirations among both the general public and native people themselves. An experienced native leadership has emerged in the decades since, capable of holding their own in negotiations with the government.

At the insistence of native organizations, a section was inserted in the Constitution Act of 1982 explicitly affirming the existence of aboriginal and treaty rights and which, significantly, includes in the definition of the phrase "aboriginal peoples of Canada" the Indians, Inuit and Metis. The meaning of the section still remains largely undefined and is an on-going matter of controversy to native leaders and first ministers.

In 1983 the House of Commons Special Committee on Indian Self Government released a report strongly recommending that native communities be given the opportunity to work out new forms

of band government, in replacement of the current restricted structures defined under the terms of the Indian Act. The report recognized that the native peoples were self governing before the period of dependency and paternalism initiated by the British and their Canadian heirs. It was the recommendation of the Committee that the Indian governments be constitutionally recognized as a new and separate level of administration distinct from the existing federal and provincial levels. As a consequence of the report, a self-government branch was established within the Department of Indian and Northern Affairs with the mandate of working on community based self-government initiatives. To date, a municipal model has been agreed upon and enacted for the Sechelt band of British Columbia. The innovative goals of the report are still far from having been achieved.

III. The Nature and Origins of the Land Claims Process.

Native people in Canada have struggled from the beginning to maintain their cultural identities. Except for a few bands in eastern Canada, an organized and effective political 'movement' for the formal recognition of aboriginal and treaty rights only dates back to the 1960's. The most dramatic and, perhaps, the most significant aspect of this struggle has been the birth of the native land claims process. Many factors have contributed to the origins of this struggle by native peoples in Canada.

The search for new sources of oil and gas, and the development of hydro-electric power projects, suddenly brought the native inhabitants of the north into close contact with the economic mainstream of the rest of the country. At the same

time, a new generation of native leaders emerged, well equipped and prepared to take on the political and legal systems of the larger society. Early in the 1970's the government set up a process of research funding for native political and cultural organizations to enable them to document and organize their land claims.

In 1972 the Indians of Old Crow in the Yukon Territory presented a petition to Parliament concerning oil and gas explorations on their traditional hunting grounds. In the following year, in a landmark decision, the Supreme Court of Canada split evenly (3 to 3) in the Calder Case, involving the recognition of the aboriginal land title of the Nishga Indians of British Columbia. Also in 1973 the Yukon Indian Brotherhood presented a formal claim to Ottawa, and Justice Morrow of the Northwest Territories recognized the aboriginal title of the Dene people of the Mackenzie River Valley. A similar recognition of title also occurred in Quebec with regard to the claims of the northern dwelling Cree and Inuit people's of the province. While these decisions were later appealed and overturned, they gave a new found legal weight to the native cause of land claims.

Wishing to clear the way for industrial development in the north and ensure the economic well being of the native inhabitants of the region, the government established a formal process for the settlement of aboriginal claims. The new policy began by reaffirming the responsibility of the federal government to meet its lawful obligations to fulfil the terms of past treaties, and to negotiate settlements with native groups where-

ever aboriginal title had not been extinguished by treaty or superseded by law. The policy was careful to emphasize that the co-operation of the provincial and territorial governments would be necessary.

For the implementation of the new policy, an Office of Native Claims was established in 1974. The Office considers two general types of claim: specific and comprehensive. Specific claims are claims based upon problems arising from the administration of the Indian treaties, the Indian Act, Indian funds and the disposition of native lands. While negotiation is the preferred course of action in the settlement of such claims, administrative remedy and court action are options. Specific claims ordinarily come from native groups living within the provinces (as opposed to the territories) and most settlements consist of land and/or financial compensation.

Comprehensive claims, by contrast, are based on the traditional use and occupancy of land by Indians, Metis or Inuit who did not sign treaties and who were not displaced from their traditional homelands by war or the pressures of European settlement. These claims must be settled through negotiation. They involve lands, for the most part, in the territories (Yukon, NWT) and the northern reaches of certain of the provinces. The areas of land and the numbers of people involved are almost always greater than in specific claims. The settlement of these claims is obviously far more difficult, and the negotiations far more complex, for they not only involve land and money but forms of local government, rights to wildlife, minerals, oil, gas and

other natural resources, as well as rights designed for the protection of indigenous languages and cultures.

Although cutbacks in the late 1980's have restricted the amounts involved, the government provides funding to native groups for the research and presentation of their claims. Once submitted, a claim is subjected to the scrutiny of lawyers from the Department of Justice and the Department of Indian Affairs and Northern Development, to determine if the claim meets the criteria of government policy. At this point, additional funding may be made in the form of a loan for further research and negotiation. These loans are reimbursed to the government from proceeds of the eventual settlement.

In 1980 Ottawa appointed the first chief government negotiator external to the civil service. This was done with the intention of bringing a fresh and more neutral perspective to the settlement process.

By 1988 well over five hundred specific claims had been submitted from every province except Newfoundland. Of these fewer than 10% have been settled, a quarter have been rejected, and approximately half are either under review or have been referred for administrative solution under existing programmes. Provincial participation is essential in the process of settling such claims and the Ontario Indian Claims Commission, for instance, has greatly facilitated the negotiations in that province.

At present, comprehensive land claims cover almost half of the total land area of Canada. A crucial problem lies in the

differing aims and objectives of the various provincial governments and that of Ottawa. Other formidable problems involved include the differing legal status and aims of the Indian, Metis and Inuit claimants; the conflicts between the native desire for independence and self-government and governmental unwillingness to renounce control; conflicts between industrial development and the traditional native ways of life upon the land and, finally, recent constitutional changes affecting the entire structure of the Canadian government.

By August, 1988, some thirty comprehensive claims had been submitted to the federal government. To date, three have been settled and the results legislated. These are the James Bay and Northern Quebec agreement of 1975; the Northeastern Quebec Agreement of January, 1978; and the Inuvialuit Final Agreement of June, 1984. Two claims have been rejected (one from Nova Scotia, the other from Newfoundland). Fifteen claims have been accepted for negotiation and negotiation is currently under way on seven agreements including claims in the Nass Valley of B.C., the Yukon Territory, the Mackenzie Valley of the N.W.T., the central and eastern N.W.T. and central and eastern Quebec and Labrador. Several claims from British Columbia are under review.

The James Bay Agreement might be characterized as a modern day treaty. As in earlier times, a move to open up a frontier to economic development led to negotiations with the native peoples of the region. Although the gigantic hydroelectric project was initiated in the early 1970's without their sanction, the Cree and Inuit inhabitants of the region forced their assertion of

unceded aboriginal title on both the provincial and federal governments through an aggressive use of the courts and a brilliant handling of the media. The eventual settlement is enormously complex and is still in the course of legal definition through litigation. Perhaps the most significant and innovative aspect of the deal lies in its provision of various native institutions of self-government such as school boards, health and social service agencies.

The 1978 agreement with Naskapi band of Schefferville in northeastern Quebec is essentially an extension of the James Bay Agreement.

The only other successfully completed comprehensive claim is the 1984 agreement between Ottawa and 2,500 Inuvialuit people of the Northwest Territories oil and gas rich Beaufort Sea area. While an agreement-in-principle was signed in 1978, it was not until 1983 that the precise details had been negotiated. The settlement reserves to the Inuvialuit 95,000 of the 430,000 square kms of territory that they traditionally used. Moreover, they were given an explicit agreement guaranteeing royalties on any oil or gas extraction that occurs on their land. And these royalties are to remain tax free until the year 2008. The Inuvialuit were also given limited self-government through the establishment of the Western Arctic Regional Municipality.

During the 1980's, after more than a decade of the formal treatment of comprehensive claims, the circumstances that initially gave rise to the claims have changed substantially. In the northern territories native people have at last gained

effective political influence. At the same time, economic conditions in southern Canada have reduced the scale and tempo of northern industrial development and the former native opposition to such development has, accordingly, diminished.

In administrative changes the Office of Native Claims was abolished in 1985 and its responsibilities re-divided within the Department of Indian and Northern Affairs. In December, 1986, Ottawa revised its comprehensive claims policy in light of its new policy on native self-government, and the experience gained during the twelve preceding years of negotiations. The new policy found expression in the departmental handbook entitled Comprehensive Land Claims Policy (1987).

Undoubtedly the most famous comprehensive claim currently in negotiation is that of the Lubicon band of Alberta. It, however, is largely being pursued outside the normal claim process. In frustration, after fifty years of futile effort to have the governments of Canada and Alberta recognize their right to their traditional territory in northwestern Alberta, the band took its claim to the United Nations in 1986, gaining international publicity when, in the following year, the Winter Olympic Games were held in the province.

In October, 1988, the band blocked off roads in the 95 square miles of territory around the town of Little Buffalo that they claim as their reserve lands. Four days later, the Royal Canadian Mounted Police arrived in force and tore the barricades down, arresting twenty-seven protesters.

Shortly after this police action, negotiations resumed between Albertas' Premier Don Getty and Lubicon chief Bernard Ominayak. After five decades of unsuccessful bargaining, a six hour meeting resulted in a tentative agreement. Unfortunately, however, Ottawa refused to accept its details and the dispute continues to drag on as the 1990's and yet another decade approach.

On a brighter note, in 1988, after thirteen years of negotiations, the Dene and Metis peoples of the Mackenzie Valley in the Northwest Territories reached an agreement-in-principle with Ottawa on the largest land claim in Canadian history. Ottawa has agreed to sign over 72,400 square miles of land, an area two and a half times the size of New Brunswick, to the thirteen thousand Dene and Metis of the Territory. This includes an unqualified surface and sub-surface right to 4,000 square miles and a share of mineral royalties and surface title to the remaining 68,000 square miles. In addition the new national homeland of Nunavut will receive 500 millions dollars in cash over the next twenty years.

The agreement-in-principle has been praised by many native leaders and experts. But, in spite of its ceremonial signing at Fort Rae on September 5, 1988, by Prime Minister Mulroney and William Erasmus, President of the Dene Nation, many serious issues still stand in the way of the final settlement that is hoped for in 1990. One point of enduring contention lies in the native insistence that guarantees of self-government be included in any final treaty, while Ottawa insists that self-government

must be negotiated separately.

Two other huge land claims are also in the process of being negotiated in the north. Agreements may be close to finalization in between Ottawa and the Council of Yukon Indians and with the Inuit of the central and eastern arctic in the Northwest Territories.

IV. Constitutional Developments in the 1980's.

Aboriginal and treaty rights were one of the most difficult and controversial issues in the struggle to patriate the Canadian constitution in the early 1980's. In 1980, when Ottawa was willing to push unilaterally for patriation without the sanction of the provinces, native peoples were briefly courted by a commitment guaranteeing that the new Charter of Rights and Freedoms would include an explicit affirmation of aboriginal and treaty rights. Later, when the Supreme Court had forced the federal government to seek provincial approval, nine provincial governments entered into the patriation plan, but certain of them insisted that their participation was conditional on the deletion of the section regarding aboriginal and treaty rights.

A compromise was eventually worked out and section 35 of the Constitution Act of 1982 recognizes and affirms "existing" aboriginal rights. In 1983 a First Ministers' Conference was convened to provide a more precise definition to section 35 through constitutional amendment. Representatives of four national native associations were invited to participate as consultants. The result was an accord agreeing to entrench in

the constitution the principle that section 35 refers to all existing treaty rights and any that would be acquired through land claims settlements. Furthermore, it was adopted that aboriginal and treaty rights are guaranteed equally to all male and female native persons.

As of June, 1989, no other accords have been adopted. However, the successive First Ministers' Conferences have been instrumental in drawing the issue of aboriginal rights into the forum of Canadian Political debate and attention. At the fourth and last of these Constitutional Conferences held in Ottawa of March, 1987, it became clear that there currently exists a wide divergence between what aboriginal Canadians and the federal and provincial levels of government want entrenched in the constitution. Native peoples are seeking the recognition of their "inherent" right to self-government, a right which they were naturally exercising before the arrival of Europeans on the continent. The federal government, backed by many of the provincial governments, on the other hand, were willing to entrench only a "contingent right", a right that would be defined through negotiated agreements.

Within a few months of this failed conference on aboriginal rights, the first ministers met at Meech Lake and astounded themselves and the nation at large by agreeing on amendments that would allow Quebec to finally support the Constitution Act of 1982. While the Accord contained a clause reaffirming section 35 of the Constitution Act, aboriginal organizations have vigorously attacked the document for failing to recognize aboriginal

societies as 'distinct', and for failing to include aboriginal peoples and their rights in future constitutional discussions. The timing of the Meech Lake Accord engendered feelings of great bitterness and frustration in the minds and hearts of native peoples across the country. Coming as it did so shortly after their own failure to enter a constitutional understanding they have never been party to, it seemed especially ironic and difficult to accept.