ENVIRONMENTAL MANAGEMENT UNDER NATIVE SELF-GOVERNMENT

ANALYSIS OF OPTIONS

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Prepared for:
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March 31, 1989

SUMMARY

1. The environmental problems and management aspirations of Indian Bands and indeed all native groups vary greatly. Many solutions have been tried with varying degrees of success, and some have failed. What is needed in approaching the whole matter of native participation in environmental management is less a crafted and formulated approach than a thorough appreciation of how native people understand the environment in general and their own circumstances in particular.

How they understand the environment in general should now be well understood from public forums such as royal commissions, commissions of inquiry, numerous environmental reviews, land claims negotiations, and other sources.

How they understand the environment in particular can only be learned case by case. The Nishnawbe-Aski Nation (NAN) represents many bands pursuing a more or less traditional lifestyle in the vast, resource rich northern Ontario wilderness. The concerns of these bands differ greatly from those of bands which live in agricultural areas, like the Alexander Band near Edmonton, or those which live in a polluted industrial heartland, like the Akwasasne.

However, common to all groups is that the environment is undergoing change which they find inimical. What native people appear to want, in whatever local form makes sense, is the achievement of greater group security by means of greater control over the environment. In the pre-contact era, they had strong traditions of environmental management based on the need to sustain their resources. Modern versions of these traditions persist both at the level of aspiration and daily culture.

2. Given constitutional powers in Canada, the negotiation of native environmental management powers must involve the provinces. While some provinces have shown an awareness of the special circumstances of native people, they must balance the needs of native people against the interests of all their citizens. The powers of persuasion that the Federal Government can exercise with regard to the provinces are limited by the fact that, without appropriate trade-offs

or compensation, provincial governments could probably not extend treatment to native people that they could not make available to all other residents.

3. It would be difficult to presume the success of the self-government process if it is not to be supported by significant additional resourcing and funding. That a process which does not envisage major financial transactions may not yield results is suggested by the example of South Moresby, which indicates that even a province which has not shown much sympathy for native or environmental objectives can give ground if it is given adequate compensation for the losses it believes it is sustaining.

4. Since the First Ministers' Conferences did not produce agreement on native self-government in a constitutional context, two paths toward self-government now remain open, the process under consideration in this study and the courts. If they perceive the self-government process as worthwhile, native people will bring their concerns to the negotiating table instead of the courts. To make it worthwhile, the Federal Government must not only make suitable arrangements with the provinces, it should be prepared to entrench these arrangements in the manner of claims settlements or the Sechelt Indian Band Self-Government Act.

5. While there are no precise definitions of environmental management, this study suggests an understanding of the environment that is in keeping with views that have gained international acceptance following the publication of the Brundtland report. Such views are increasingly informing the policies of federal (and provincial) departments. They emphasize the holistic nature of the environment, and that environmental concerns cannot be separated from other human concerns.

6. A theme which pervades this study is that intergovernmental cooperation is essential if native self-government is to move forward. Of the variety of methods that have been used to accommodate the native interest in environmental management, only those falling under the Indian Act are unilaterally federal, though even in their case, consultation with the provinces may be necessary because environmental concerns rarely stop at the boundaries of reservations. All other methods have required the cooperative tri-partite involvement of the Federal

Government, the provinces and native people. (The territories, though creatures of the Federal Government, have also been involved in northern Canada.)

7. The federal self-government negotiator will have a variety of roles to play in the promotion of native environmental management. A primary role will be to bring differing points of view together and work out compromises. Where the environment in question lies within reservation boundaries, and is therefore under federal jurisdiction, the negotiator may be the principal federal bargainer working out trade-offs with native bands. However, part of the particular environment will lie off-reserve and come under provincial jurisdiction, and the negotiator, with native concurrence, will have to help create conditions that enable bands and provincial officials to bargain. In addition to opening doors for them, the negotiator's functions with respect to native people should include fostering the development of realistic proposals to bring to the negotiating table, particularly to the provincial table. With each band that is willing to use his services, he should assist in the development of self-government objectives which are realistic in terms of powers that a province might be willing to share, given affordable federal trade-offs.

8. Though alternative dispute resolution arrangements are not examined in detail in this study, it is important to note that several major environmental controversies involving native people have been resolved with the assistance of mediation services. As one example, "environmental mediation" has been used by the Energy Resources Conservation Board of Alberta as a voluntary process in which those involved in a dispute jointly explore and reconcile their differences. The strength of the environmental mediator lies in the ability to assist the parties in resolving their own differences. He has no power to impose solutions. The dispute is settled when the parties themselves reach what they consider to be a workable solution. Critical to the success of environmental mediation is a positive attitude and goodwill. Also critical is the provision of expert resources to bands which could not otherwise afford them. A third critical matter is the concept that mediation should be part of some broader process such as project approval, and that its outcome should be written into instruments such as terms and conditions to make it binding.

The environmental mediation process would seem most appropriate where a band is probably not in a position to

halt the further encroachment on traditional lands, such as the situation which recently confronted the Fort McKay Band of northern Alberta (the problem was the extension of oil sands mining). In other cases, bands may have a greater range of alternatives and be part of larger regional organizations, like the Nishnawbe-Aski or the Dene, and may be able influence the outcome of major development proposals to their advantage by political means or the courts.

9. The sections of this study which deal with environmental powers and practices in Alberta and Ontario are necessarily detailed and cannot easily be summarized. However a few general points can be made. The first is that, though both Alberta and Ontario have established "windows" which provide for native access to the provincial government, these are difficult for native people to use because there is no easy coincidence between native objectives and bureaucratic organization. While some programs available to municipalities may be open to native bands, little that coincides with longer-term native objectives may happen via the windows. The second point is that, while there is no absence of expressed goodwill toward native people, the provinces, responding to their needs and mainstream constituents, have their own agendas which are unlikely to coincide with the native agenda, as in the case of timber resources in northern Ontario. The third is that the provinces are wary of any proposals which suggest that the federal government may not be viewing its responsibilities toward native people with sufficient commitment. A fourth point is that one senior provincial official, the Attorney General of Ontario, has expressed the view that, since the constitutional process has not produced results, the path to the further definition of native rights and hence powers may lie through the courts. It is not known whether other provinces share this view, but it is possible that they would be skeptical of federal initiatives that are not grounded in the constitution or the common law.

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ANALYSIS OF OPTIONS

1. INTRODUCTION

This study is about the role native people, particularly Indians, might play in environmental management, given the existing distribution of constitutional powers between the federal government and the territories. The ability of native people to play a meaningful role depends on several things: precedents that have been established and are working; the willingness of existing institutions of government to share powers with native people; and the demands of native people themselves. These matters are dealt with extensively throughout this document.

The terms of reference for this study (Appendix 1) require the formulation of a working definition of environmental management for the purposes of self-government, and the provision of a basis for the assessment of environmental matters included in self-government proposals. It is taken that this is not a call for a formula or checklist, but for an elucidation of emerging views of how the environment must be managed if its essential features and productivity are to be sustained. Chapter 3 of this report therefore contains a discussion of environmental perceptions that are now increasingly informing government policy and practice.

The terms of reference give special attention to bands in Alberta and Ontario, in particular the Alexander, Sawridge, Akwasasne and Whitefish Bands and Nishnawbe-Aski Nation (NAN). While it has not been able to focus with equal thoroughness on each of these, Section 4.4 of this study contains extensive material on the NAN, an organization which covers 44 bands living in an area which comprises a large part of the province of Ontario. The member bands of NAN have, at one time or another, encountered virtually every environmental problem with which native people have had to deal, and their responses to such problems are both sophisticated and instructive. Other bands in Alberta and Ontario have been covered to the extent that budget and time constraints permitted.

The definition of the environment proposed, the description of existing powers of native communities, the powers and attitudes

of the provincial governments (Alberta and Ontario), all dealt with in some detail in this study, are in themselves suggestive of the scope and limitations of environmental management negotiations. What is possible in such negotiations depends on how realistic native people are about their objectives, what arrangements have already worked, and the willingness of the provinces to arrive at an accommodation with native people. (The territories, though federal creatures, also increasingly have a bearing on the powers native people may expect to attain.)

The terms of reference call for an analysis of the opportunities for native participation in public environmental decision-making processes. In recent decades there have been many such processes, and time and budgetary limitations did not permit reviewing more than a few of them. However, the record of native participation is well known from a wide variety of public processes and forums.

The terms of reference require an examination of alternative mechanisms for the resolution of disputes. While the review of such mechanisms undertaken in this study is not extensive, Section 5.3 discusses research underway in Canada and the recent application of environmental mediation in Alberta.

The terms of reference also require an identification of levers that could be used to convince provincial governments, and federal agencies of the relevance of Indian participation in environmental management. In light of the consideration that the self-government program is restricted to current resource levels, this requirement has raised difficult issues, particularly with regard to the provinces, which are discussed in Section 5.5. It is understood that the present study is only the first of several similar studies which DIAND is considering. Levers with the provinces which may not exist in the case of the environment may exist in more specific areas of federal and native concern, a matter which will likely be examined in studies of possible self-government arrangements concerning non-renewable resources, renewable resources, and waters.

While the focus of the present study is participation in environmental management within the self-government process, the need for such participation would depend on what other avenues are available or possible. There already are a variety of ways in which native people can take part in the management of the environment. If these can be accessed without much difficulty, and if they provide satisfactory results, there may be little need for special and distinctive additional means. If they are not being accessed or do not work, the self-government negotiator

is faced with the question of why. Is it because native people are not familiar with them? Or are there barriers that will require joint action by the Federal Government, the provinces and Indian bands?

This study has drawn on material from a variety of sources, including two earlier pieces of work undertaken for DIAND by the Rawson Academy, "Environmental Management under Native Self-government, Needs Identification Study" completed in May, 1988, and "Negotiating Framework" completed in March 1989. Where material from these earlier studies was used in the present one, it was carefully reviewed and revised to ensure that it was timely and appropriate.

2. OBJECTIVES OF ENVIRONMENTAL MANAGEMENT NEGOTIATIONS

The federal position with respect to self-government in general has been stated as follows:

> "For Canada's aboriginal peoples ... self-government answers two deeply felt needs: to regain control over the management of matters that directly affect them and to preserve their cultural identity. ... The federal government believes that aboriginal peoples should have institutions of self-government that meet their unique requirements." (Indian and Northern Affairs Canada, Aboriginal Self-government: What it Means, Ottawa, 1987)

While later sections of this report deal with the environmental objectives of specific native groups or bands at some length, the general environmental objectives native people want to attain include:

* greater community stability through being able to influence the pace of economic change and control access to the community (roads and other means of access).

* subsistence and commercial use of environmental resources (fish, fur, and game primarily, but also other resources, including non-renewable resources).

* preservation of sacred places and avoidance of flooding of burial grounds.

* security from environmental hazards and contaminants.

The nature and priority of such objectives will vary from group to group, depending on what particular native groups perceive as a threat. Indian Bands near major urban centers would place less emphasis on renewable resources than on the continuity of community experience and security of the local environment. Native people living in more remote communities might give more emphasis to subsistence harvesting, which remains the basis of their economy and culture.

Native people would generally not separate environmental management objectives from others having to do with self-government. Their concerns about attaining greater control over their lives are usually comprehensive, referring to their environment, their economies, their societies and their cultures. Though this may at times seem paradoxical, native people can simultaneously favor both conservation and development. On the one hand, they have lived with destruction

of habitat for a long time, and believe strongly in controls on industrial development. On the other, they want a share of the wealth they have seen mining, pulp and paper, and oil companies remove from lands which they regard as theirs. They need revenues from sources such as resource projects if they are to build and enhance their societies. Increasingly, they will raise resource revenue sharing and economic issues alongside environmental issues in self-government negotiations.

Among provinces, concerns around native management of the environment would vary. However, the provinces have not been supportive of native environmental aspirations historically, and are unlikely to be supportive in future unless they perceive the fulfillment of native aspirations as not undermining their own interests.

Other interests that could impede or promote the native interest in the environment include resource companies, municipalities, a variety of non-government organizations and the general public. The force with which these interests pursue their various objectives vary greatly. For example, major resource companies have organized themselves into powerful lobbies which put considerable pressure on government agencies, while municipalities typically work with provincial departments and agencies through legally established channels.

3. ENVIRONMENTAL MANAGEMENT CONCEPTS

There are a variety of concepts of environmental management. Government agencies do not generally use holistic concepts. They have specific responsibilities assigned to them by statute, and managing the environment means pursuing the specific actions which follow from these. In comparison, native people typically do not choose to have a particularized view of the environment. They resist defining environmental management in terms that fit neatly with the mandates of specific government institutions.

Both narrow and broad-ranging formulations of environmental management are valid and have their place. However, since the environment is a complex, value-laden issue, the most comprehensive formulation possible under any particular circumstance should be favored in the self-government process.

Comprehensive views of the environment have become widely accepted and have begun to inform and shape all government initiatives. Such views emphasize that the environment can not be abstracted from human habitation and activities. They stress that environmental management is about stewardship rather than exploitation. Such management concerns the use and husbandry, in perpetuity, of all of the resources that people customarily deal with, whether or not these are assigned an economic value. However, emerging views also recognize that resource use and husbandry occurs in a network of traditions, laws and institutions which limits the management powers of any particular group.

Moreover, since the publication of the Brundtland Report, it has become widely accepted that what is possible by way of environmental management cannot be abstracted from the prevailing human condition. (Our Common Future, Report of the World Commission on Environment and Development, 1987) North Africa and the Amazon Basin demonstrate that impoverished people, having no alternative, tend to consume rather than conserve the environment. Native management of the environment can not, therefore, be disassociated from the general issue of the economic and social well-being of native people nor really from that of all Canadians.

Nor is it now believed possible to separate environmental management from the issue of ownership and control of a particular environment. A people will practice stewardship and husbandry only if they feel they have a genuine stake in the lands and resources in question.

Though the design of specific institutions for environmental management is largely contextual in character, there is a body of principles and objectives which can probably apply to it across the board. For example:

* Environmental management is about safeguarding and enhancing people's natural and cultural heritage.

* It applies to all of the customary resources of the environment in question, and provides for responses to processes that affect that environment from regions external to it.

* It must take the interests of future generations into account in a manner that does not prejudice the interests of such generations.

* Optimally, it should be under the control of the people who inhabit the environment in question.

* It must be about maintaining the productivity, diversity and self-renewing capacity of natural resources and ecosystems.

Such principles are not philosophical abstractions. As standards to be maintained and as projects, they have been put into practice throughout society, and indeed by many indian bands. While one objective of native economic development is assisting communities to take advantage of developments nearby, in the manner that Fort Good Hope in the Northwest Territories has taken advantage of oil and gas exploration, another part is about fostering small, locally manageable projects which provide a basis for community coherence and environmental sustainability. One band in British Columbia has now operated a 48,000 ha. tree farm for seven years. This has meant $18 million in revenues and some 50 to 60 jobs to the band. Other west coast bands have operated fisheries related projects. Indeed, indian bands have now assumed a leading role in salmonid enhancement on the west coast.

To the extent that a definition of environmental management is useful, the following is proposed: Environmental management is action which influences human activities to further the goal of sustainable development and which overrides individual or group interests if these conflict with sustainability.

The inclusiveness of the environment should extend the purview of environmental management to all fields of endeavour that deal with, or impinge on, human surroundings. Thus environmental management should be inclusive of the atmosphere, lands, waters, renewable and non-renewable resources including wildlife, and the aesthetics of the landscape. It may not always be the place of the environmental manager to determine whether a particular body of water should be used for recreational purposes or a particular mine should go into production, but it is his place to assist in the formulation of, and to administer, the environmental terms and conditions under which these economic events can take place.

Environmental management can, and does, occur in a large variety of ways. Where they believe they could influence matters, native people have demonstrated a willingness to participate in environmental management via regional and local elected governments, game management and advisory councils, environmental impact assessment panels, special purpose committees, administrative boards, native corporations, and so forth.

Recognition of the link which exists between control and security is essential, and indeed central, to the success of self-government negotiations. Environmental management in the absence of environmental threat is a meaningless concept. People always have reasons, based on fears that the environment will undergo some inimical change, for seeking to extend their control over their environment through increased management powers. Most essentially, what native people are trying to achieve is a restoration of some of the control and security they once had. In the pre-contact era, they had strong traditions of environmental management based on the need to sustain their resources. Modern versions of these traditions persist both at the level of aspiration and daily culture.

Nor should it be considered that environmental management is exclusively a western science based concept and that native people cannot practice it until they have come to see the world as non-native people do. Many cultures which do not generally operate out of the scientific method have had a very thorough understanding of the use and management of the environment. David Suzuki has frequently emphasized the important contribution of indigenous environmental knowledge to an improved understanding of environmental science:

> "...there exists a vast source of information that is every bit a profound and far more useful than what is learned form basic science - it is the body of knowledge accumulated by indigenous people around the world and preserved by those

> who cling to traditional ways and relationship to the land. The knowledge accumulated by aboriginal inhabitants about their wilderness environments represents thousands of years of keen observation." (Suzuki, "Resource Managers can learn from ways of native people" Globe and Mail, 11 March 1989)

He has also addressed the invalidity of insisting that indigenous people present their concerns about the environment in the form of scientific evidence or proof:

> "It is completely unfair to demand that the victims of technology provide scientific proof' of the technology's adverse effects. For one thing, it takes expertise, money and years of work to accumulate the kind of basic information that could prove whether there are any detrimental effects..." (Ibid.)

4. THE NATIVE POSITION ON ENVIRONMENTAL MANAGEMENT

That there are persisting native interests in the environment is not open to question. These interests have existed since long before Europeans came to what is now Canada. Out of them come rights which, though recognized in treaties and land claims and subsequently entrenched in the Constitution Act, 1982, have not yet been conclusively defined. Coexisting with the native interests in an evolving relationship are the interests of all other Canadians. These latter interests have more force in practice (though not necessarily in law) than those of native people because it is non-native Canadians who occupy positions of power in Canadian society. In the absence of definitions of the rights which follow from the native interests by constitutional means or through the courts, the essence of self-government is the sharing of powers which are currently held by the Federal Government and the provinces in a way that permits native interests to be accommodated without injuring the interests of other Canadians.

4.1 POWERS POSSIBLE TO NATIVE PEOPLE

Given the non-constitutional nature of the self-government process and the complex scientific and inter-jurisdictional aspects of environmental issues today, native people cannot in general expect their interests in the environment to be imbedded in arrangements which give them exclusive powers of management. However, there are now a considerable number of precedents for arrangements which give native people shared and limited powers. These fall into three general categories:

* Decision-making: In which native people themselves give direction concerning the allocation and use of environmental resources, including allocation between native and non-native uses and present and future uses.

* Administration: In which native people deliver and oversee, without modification, environmentally or conservationally oriented programs.

* Advice: In which native people exercise influence with respect to specific matters by direct access to decision making authorities.

Two general principles would seem to underlie the geographic scope, span of interests, and authority of the native environmental bodies which have been created to date. One is

that the more the purview of these bodies is tied to specific, relatively small parcels of land, the greater the powers that governments are typically willing to allow them. The second is that, if the purview of such bodies involves matters under federal, provincial or territorial statute, their powers will usually be of an advisory rather than a decision-making or even administrative nature, and are usually jointly held with government representatives.

It should also not be overlooked that native people already have substantial powers with regard to the environment apart from the context of self-government. Like all citizens, they can use the courts, make their case before public inquiries, and mobilize political support and public opinion.

4.2 GEOGRAPHICAL COVERAGE

A basic issue is whether environmental management under self-government should be restricted to the particular tract of land identified with the native group, or whether it should transcend the boundaries of this tract. The larger the tract, the less important this question becomes. Native people in northern Quebec and the western Arctic have limited powers with respect to tracts of land which may be sufficiently large to encompass most of their interests.

However, for most native groups, this would not be the case. Compelling arguments can therefore be made for considering environmental management regimes which give such groups some powers over areas well beyond the reserve. One such argument is that the economy and culture of native people is based on extensive land use which does not readily recognize boundaries as currently drawn. Resource areas harvested traditionally, and to which native people still have a strong economic and cultural relationship, may not lie within the reserve or near the community (for example, the case of the Bear Island Band of Lake Temagami). Even though they do not have titular interest in such lands, many native people still regard them as theirs to husband, harvest and manage.

A second argument is that tracts of land under native title can be damaged by events and processes originating beyond their boundaries -- and often far beyond their boundaries. Native people have witnessed forests which they regarded as theirs cleared on the basis of timber permits issued by distant bureaucracies, fish stocks which they harvested killed by

sulphur-dioxide emissions originating hundreds, perhaps thousands, of miles away, and wildlife on which they depended contaminated by poisonous substances. Nor have problems always been of distant origin: some native groups, such as the Akwasasne of St. Regis, have lived for generations in the shadow of dangerous polluters located just outside the reservation.

As a third argument, actions by native people on their reserves can affect the interests of the non-resident general population. The Shoal Lake cottage development issue in northwestern Ontario is an example. Legal counsel representing the Band embarked on negotiations with the City of Winnipeg which draws its water from the lake on whose shores the Indian community proposes to build and lease cottages as part of an economic development program.

As a fourth issue, Penner notes that in some instances, Band lands were substantially reduced through involuntary surrenders for purposes such as railways, highways, dams and army bases. In addition, arguing that by treaty they only intended to share the land, not relinquish it, Indian witnesses appearing before the Special Committee on Indian Self-Government (Penner Committee) emphasized consistently that their rights did not end at the boundaries of reserves. Stressing the need to develop mechanisms whereby Indian people could participate in the control and management of lands and resources they once held, Indians advocated a system of coexistence and not the exclusion of other interests. (Special Committee on Indian Self-Government, Indian Self Government in Canada, House of Commons, 1983, pp.107-110)

4.3 LEGAL ASPECTS OF NATIVE ENVIRONMENTAL AND RESOURCE MANAGEMENT

4.3.1 Indian Act

Indians living on a reserve have few powers of substance. Under the Indian Act, the Minister of Indian Affairs has widespread powers of supervisance and disallowance which may be used to negate initiatives of Band members. Section 60 of the Act underlines the denial of self management and self government by the Act:

> "60 (1) The Governor in Council may at the request of a band grant to the band the right to exercise such control and management over lands in the reserve occupied by that band as the Governor in Council considers desirable.

(2) The Governor in Council may at any time withdraw from a band a right conferred upon the band under subsection (1)." (R.S., c. 149, s60.)

Section 88 of the Indian Act, introduced in 1951, applies provincial legislation to all matters not covered by the Indian Act:

"88. Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extend that such laws make provision for any matter for which provision is made by or under this Act." (R.S., c. 149, s.88.)

For Indians to manage the lands and waters of a reserve and the resource base, they need to have security of tenure. The fact of federal jurisdiction or ownership of the land and the requirement for a surrender by the band before disposition by the Minister appears to offer security but this is impaired by the ability of the Governor in Council to allow expropriation by a province, municipality, local authority or corporation for the greater public interest.

The greatest power of a band to control land uses is for its members to veto a surrender of land. This only works if the land in question is held by the band in common. If an individual band member has been allotted the land and holds a Certificate of Possession, the Minister may issue a lease without band council consent or surrender. It is reasonable, therefore, for bands to hold land in common to preserve their ability to refuse surrenders.

To exasperate limited security of tenure, the Minister may issue permits for the use of reserve lands for up to one year without band council consent or surrender. Successive one year permits may be issued. Without full control over land disposition, bands are hampered in their long range planning of uses for their land. It is conceivable that bands may wish to leave some lands vacant for the short term. If this view is not shared by the Minister or a body capable of expropriating the land, there could be interference which exemplifies subjugation under the Indian Act.

The surrender mechanism purports to allow bands to issue conditions and thus control the use to which lands are put when the Minster manages, sells, leases or otherwise disposes of the surrender lands. Although the band may specify such conditions, there is no assurance that the Minister will comply.

The control and management of resource development on Indian reserve "is firmly vested in the Department of Indian Affairs. Historically, the requirement of a surrender, which conferred the ability to veto development upon the band, has been sought to be circumvented or undermined" (Bartlett, R. Subjugation, Self - Management and Self-Government of Aboriginal Lands and Resources. Institute of Intergovernmental RElations, Queen's University, Kingston, 1986, p.16). Timber, mineral and oil and gas dispositions require surrenders. The Indian Mining Regulations provide disposition of sand, gravel and other unconsolidated minerals by the Minister without a surrender but with band consent. "Such consent may be dispensed with, however, where 'such consent cannot be obtained without undue difficulty or delay'." (Bartlett, p.112).

Subject to disallowance by the Minister, a band council is authorized under the Indian Act (81.o) to make by-laws for "the preservation, protection and management of fur-bearing animals, fish and other game on the reserve." Given the mobility of wildlife and the importance of habitat inside and outside the reserve, the power conferred may be largely ineffective.

Section 81(1) of the act allows councils to make by-laws for "the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies." As Provincial standards are not enforceable on a reserve, this provision allows the band council to be autonomous subject, again, to disallowance by the Minister.

Without changes to the Indian Act which remove some of the supervisance and disallowance powers of the Federal Government and which provide better security of tenure, the atmosphere in which Indians exercise environmental management powers on their reserves is not encouraging.

4.3.2 Case Law

Legal decisions relating to native use of renewable resources and control over non-renewable resource developments affecting

native lands may be considered to deal -- at least indirectly -- with issues of environmental management. We discuss some of these decisions here although it is understood that renewable and non-renewable resource issues, and water are the subjects of separate self-government studies.

Although the case law and the body of legal commentary is of considerable value, it would be incorrect to assume from the extent of the literature that the position is clear from a legal perspective or that the existing legal regime satisfies native aspirations for involvement in environmental and resource management. Three important qualifications might be noted:

- There is a great deal of complexity involving situations on and off reserves (applicability of Indian Act provisions, for example), involving the differing nature of reserve lands in different parts of the country (lands granted by the crown for reserves in contrast to reserve lands retained by virtue of their exclusion from treaties, for example), involving a wide variety arrangements which may be applicable in particular circumstances (commercial versus own use fish and game harvesting) and involving on occasion international considerations. (See, for example, Brun, La possession et la reglementation des droits forestiers et de reversion dans les reserves indiennes du Quebec, 30 Revue de droit de McGill, 1985, p415; Bartlett, "Provincial Jurisdiction and Resource Development on Indian Reserve Lands", in Owen Saunders ed. Managing Natural Resources in a Federal State, p.189)

- The legal situation may be regarded as highly uncertain in light of the number of aboriginal claims now proceeding through the courts and the many unresolved issues surrounding the constitutional recognition and affirmation of aboriginal and treaty rights in section 35(1) of the Constitution Act,1982. (See McNeil, The Constitutional Rights of the Aboriginal Peoples of Canada, 4 Supreme Court Law Review, p255; Slattery, Understanding Aboriginal Rights, 66 Canadian Bar Review, 1987, p727 at pp781-782.)

- As illustrated by the assessments which have been made in the wake of the Supreme Court of Canada's 1984 decision in Guerin v The Queen (13 Dominion Law Reports (4th) p 321), there is a great deal of room for flexibility in terms of appropriate responses to what is recognized as a significant development in doctrine which emphasizes the existence of a trust or fiduciary relationship between native peoples and government. (See McMurty and Pratt, Indians and the Fiduciary Concept, Self-Government and the Constitution: Guerin in Perspective, [1986] 3 Canadian Native Law Reports, p19)

Each of these factors has implications for the process and substance of native self-government negotiations. Uncertainty associated with unresolved constitutional questions suggests that caution will frequently be desirable while the potential flexibility which commentators suggest is indicated by Guerin implies that a dynamic attitude to negotiations is likely to be attractive.

A highly selective review of a few recent legal cases will provide a flavour of some current litigation questions which have implications for environmental management.

- In R v Cooper, [1979] 4 CNLR at p 81 it was observed that "There is no single Act in the whole of Canada that raises more problems between authorities and the Indian people than the Fisheries Act."

- In Re Shoal Lake Band of Indians No. 39, (25 Ontario Reports (2d) p334) one of the native communities which has already expressed interest in increased resource management powers through self-government unsuccessfully challenged quotas which affected their commercial fishery in Northwestern Ontario. The court upheld the constitutionality of the arrangements established by the federal and provincial governments to deal with overlapping powers in the fisheries field.

- More recently, however, the BC Court of Appeal in Sparrow v R., (9 British Columbia Law Reports (2d) p300) indicated that aboriginal rights in a food fishery were protected by Section 35(1) of the Constitution Act, 1982, even while reasonably necessary regulations for management and conservation of the resource might remain valid. The Supreme Court of Canada heard arguments in the Sparrow case in late 1988, but the Court's decision is not yet available.

- In Simon v The Queen, (24 Dominion Law Reports (4th) p390) a member of the Shubenacadie Indian Brook Band (no 2) of the Micmac people relied upon provisions of a Treaty of 1752 as a defense to charges under s. 150 (1) of the Lands and Forests Act of the Province of Nova Scotia of unlawful possession of a shot gun cartridge and of a rifle during the closed season. The Treaty provided that the Indians should continue to enjoy "free liberty of hunting and fishing as usual." The Supreme Court of Canada concluded that this provision, being part of an unterminated and unextinguished treaty of the type referred to in s.88 of the Indian Act had the effect of exempting Simon -- a Micmac covered by the

Treaty -- from prosecution for conduct contravening the Lands and Forests Act's restriction of his hunting rights.

- In the case of R.v Flett, ([1987] 5 Western Weekly Reports p115) the Manitoba Provincial Court applied the Sparrow decision to support the conclusion that to the extent that the Migratory Birds Convention Act purports to extinguish the rights of treaty Indians to hunt migratory birds year round for food it is inconsistent with s 35(1) of the Constitution Act, 1982 and of no force or effect. The decision was appealed.

- The Kwakiutl Indian Band obtained an interim injunction from the British Columbia Supreme Court to prohibit logging on certain lands owned by Halcan Logging Services on the grounds that the area was subject to the Indians' claim of aboriginal and treaty rights to hunt, fish, and harvest fruits and berries. (Hunt v Halcan Log Services Ltd. 34 Dominion Law Reports (4th) p504)

- The Alkali Lake Indian Band appealed successfully to the British Columbia Court of Appeal in a claim for intervenor costs for participation in proceedings before the British Columbia Utilities Board in which the Indians objected to an application by Westcoast Transmission Co. Ltd. to construct a pipeline through hunting and fishing lands. The court determined that in following a cabinet directive to eliminate funding for participants in the hearing process, the board had unlawfully fettered its discretion to award intervenor costs. (8 Dominion Law Reports (4th) p610)

These cases illustrate how in certain circumstances it may be possible for native people to rely upon treaty provisions, the constitution, outstanding aboriginal claims and other common law doctrine for the purpose of asserting their freedom from aspects of legislation governing renewable resource use, to assert their entitlement to utilize natural resources or to support their participation in environmental decision-making where native resource interests are involved.

Developments in the non-renewable sector are also subject to the environmental as well as economic interests of native communities affected by them. In the aftermath of Guerin, for example, it has been suggested that the federal government should involve bands much more extensively in decisions affecting resource development on Indian reserves. (See Webb, "Indian Oil and Gas: Control, Regulations and Responsibilities" 26 Alberta Law Review, 1987, p77) Such an approach could well influence the nature of environmental impacts in resource development, rates of extraction and revenue sharing arrangements.

Where native communities undertake legal action to control environmental impacts directly by way of injunction or to obtain compensation for environmental damage, the basic common law tort claims are available. Depending on the circumstances, these include claims in negligence, strict liability, trespass, riparian rights or nuisance. With regard to flooding, for example, the Northern Flood Agreement in Manitoba was negotiated in the shadow of a writ served in 1977 to initiate legal proceedings against the threat of flooding for hydro development. Legal counsel for the Northern Flood Committee of Cree communities has expressed the view that "the possibility of litigation ... was an important motivating factor in the negotiations." (Sigurdson, Bridging Uncertainty: Dispute Resolution Processes as a Means to Settlement, unpublished) Legal claims arising from damage caused by unauthorized disruption of native environmental interests are also employed for the purpose of obtaining compensation. The Mattagami band in Northeastern Ontario has recently filed a claim of this nature arising from flood damage which began about the time of World War I. Three Manitoba Bands eligible for compensation under the Northern Flood Agreement recently accepted $2.35 million in settlement of their claims.

4.3.3 Continuing the Process of Defining Native Rights

Given that the constitutional process has thus far been unable to define and extend native rights, it is probable that use of the judicial process to establish native powers with respect to the environment will increase. In the view of the Attorney General of Ontario, the proper path to follow is the step by step, case by case path of the courts. Moreover, the Attorney General believes that provinces must be vigilant that the outcome of the judicial process is not one which alters the respective responsibilities of the Federal Government and the provinces toward native people.

The Ontario Attorney General's views were recently stated in a jointly authored paper. (Ian G. Scott and J.T.S. McCabe, "The Role of the Provinces in the Elucidation of Aboriginal Rights in Canada", in J. Anthony Long and Menno Boldt, eds., Governments in Conflict? Provinces and Indian Nations in Canada, University of Toronto Press, 1988, pp.57-71) They are presented here at some length not only because of their clarity and their importance to the situation in Ontario, but because they may well be prescient of what governments and native people now have to do, the possibility of arrangements made outside of judicial and constitutional forums notwithstanding.

The Attorney General believes in the appropriateness of defining aboriginal rights:

> "We are convinced that the course we are embarked upon - the definition of aboriginal rights in our law - is for all of us a liberating and fulfilling one. It will in some measure make amends for regrettable events and circumstances in our past. And it will signal the commitment of our nation to justice." (Scott and McCabe, p.60)

With respect to the nature of aboriginal rights, the Attorney General makes the following point:

> "The recognition and affirmation of aboriginal rights in the Constitution Act, 1982, made it essential that the nature and content of those rights be elucidated. It also brought about the inevitability of that elucidation. In the absence of a political definition of the definition of aboriginal rights, the courts will, in the incremental manner so familiar to lawyers in the common-law tradition, define the character of aboriginal rights in the course of deciding specific cases." (Scott and McCabe, pp.60-1)

He then goes on to set out the following tasks for the provinces:

> "1. to co-operate with the other participants to ensure that the process results in a legal definition of aboriginal rights that, as far as it is possible to do, vindicates the aspirations of the aboriginal peoples; 2. to ensure that the government of Canada fulfills its constitutional duty; and 3. to ensure that the rights of all Canadians are taken into account in the process of defining aboriginal rights." (Scott and McCabe, 61)

He argues that in light of the constitutional powers it has, Ontario and the other provinces

> "bear a major share of the duty of advocating the rights and interests, both individual and communal, of persons other than the aboriginal peoples." (Scott and McCabe, 66)

With respect to the effect of self-government on the general responsibilities of governments, he observes:

> "Although it will entail a devolution of particular matters from Canada or the provinces to aboriginal communities, it will not alter the positions of Canada or the provinces in the matter of jurisdiction (and hence responsibility) between themselves." (Scott and McCabe, 68)

4.4 ENVIRONMENTAL MANAGEMENT INTERESTS ASSERTED BY NATIVE PEOPLE

If the environmental interests of native people are still not well understood, it is not the fault of the native people. These interests have been expressed repeatedly in a wide variety of forums since the earliest days of European settlement. In recent years, they have been widely publicized via the Mackenzie Valley Pipeline Inquiry, the Alaska Highway Pipeline Inquiry, hearings held by the Northern Pipeline Agency in northern British Columbia, the Ontario Royal Commission on the Northern Environment, numerous Environmental Assessment Review Panels, land claims negotiations and a multitude of other forums.

While recognizing its vastness and complexity, this report has little to add about this interest in general. Self-government negotiations will need to deal with how the general interest is articulated as the specific interests of particular native groups. This section therefore discusses the environmental management interests which particular groups have demonstrated or expressed, focussing on bands in Alberta and Ontario.

It will be noted that these face very different kinds of problems. For example, the Alexander Band of Alberta lives close to Edmonton and is surrounded by agricultural land. Its problems tend to be localized and are essentially similar to those of municipalities which are similarly located. In contrast, the Nishnawbe-Aski Nation (NAN) is a collection of many bands which are scattered across Ontario's vast northern wilderness. Its multi-faceted concerns arise largely out of the present or potential industrial use of the environment. This study gives major attention to the environmental concerns of NAN because the issues which underlay these concerns are deep and enduring, going to the very heart of native - government relations. While they can be made reasonably specific, they cannot be solved simply by providing more housing, a better water system and more jobs on the reservation.

4.4.1 Alberta Bands

4.4.1.1 Alexander Band

The Alexander Band occupies the Alexander Reserve #134 located adjacent to Sandy Lake in the Municipal District of Sturgeon, 25 km. northwest of Edmonton. It covers 7,280 ha. (17,990 acres) in a predominately agricultural area interspersed with forests, woodlands and stream valley lands.

According to the band administrator, about 600 members live on the reserve in about 160 widely scattered homes. The Band holds the land in common and provides housing for member who pay $25.00 per month and their own utilities. Since the 1985 amendments to the Indian Act restoring status to four categories of people, band membership has increased rapidly. One year there were 1,300 members, the next, 1,400. This is worrisome because there could be more people moving back to the reserve for the band to look after and more housing would be needed.

One of the principal problems on the reserve today is an environmental problem -- water supply. Over the last ten years water quality has diminished although quantity is not a problem. About twenty homes have bad water. The band has identified a number of options for solving the problem ranging from installing cisterns, hooking up to the Town of Morinville's water distribution (from the City of Edmonton) to drawing water out of Sandy Lake and subsequently treating and storing it. However, the Band does not have financing in place to proceed. The federal government has denied jurisdictional responsibility and has basically told the band that it is on its own. This topic will be in the negotiating framework brought forward by the band.

The Band relies on agriculture for its economic base and had a good crop of oats, barley and wheat last year. It experimented with a pea crop for the first time and was successful. There is very little business on the reserve because entrepreneurship is somewhat contrary to the view of community property. The Band employs about 200 people full time and another 100 on a seasonal basis, drawing on about 70% of the labor force. What is important is that people have something to do and that the band, not individuals, benefits. To support this system, the band needs to keep thinking of jobs and new work opportunities. It has considered game farming, building a ski hill on the reserve and constructing a golf course. In order to qualify for provincial funding, the band is working on its Community Tourism Action Plan, a program of the Department of Tourism.

The band has a buffalo heard and created some controversy recently when they allowed American hunters to come and cull some extra bulls. The buffalo hunt resulted in good income for the band.

Few people hunt, trap or fish. Game is scarce nearby so hunters have to drive to the north or west of the reserve. A few people fish with nets in Sandy Lake but the quality of the fish is questionable, because much agricultural runoff drains into the lake. Perhaps six people have traplines, occasionally taking coyote or lynx.

Aircraft noise was identified as an environmental problem. Many small planes overfly the reserve at low altitudes. With the number of airports around the City of Edmonton, it seems that many people do training flights over the reserve.

The Band does not want to be a municipality under the jurisdiction of the Municipal Government Act and all other provincial Acts. It hopes that the self-government negotiators will understand that their basic principles are different. What is important is that the Band is reputed to be easily approachable, communicative and cooperative.

4.4.1.2 Sawridge Band

The Sawridge Band occupies a very small, discontinuous reserve abutting the Town of Slave Lake on the southeast side of Lesser Slave Lake, 251 km. by road from Edmonton.

The band is reputed for its entrepreneurship, the wealth it has generated through numerous business dealings and its acumen. The Band owns the Sawridge Hotel, a number of apartment buildings, a highway commercial service center with cafe and truck stop, a golf course, and land destined to be the last of the Slave Lake annexation expansion area in the local vicinity. The Band's assets are not confined to the vicinity of Slave Lake: It owns the Sawridge Hotel in Jasper National Park and a hotel in Fort McMurray.

The Band is currently negotiating with Alberta Energy Company Ltd., which announced a 320 tonne per day pulp mill on the east end of Lesser Slave Lake on December 20, 1988, for jobs and is

participating in the development and review of the Environmental Impact Assessment for this project. The mill will draw its water supply from the Lesser Slave River, into which it will also discharge its effluent.

A Fish and Wildlife Officer had approached the Chief about doing a native harvesting study so that he could account for the native harvest in wildlife management programs but was told that Band members have given up on fishing because it is not worth their while commercially. However, the Regional Wildlife Officer was of the opinion that there were still a large number of Band members who pursued a hunting lifestyle. It is thought that there are about 60 members living on the reserve. A number of others live in the Town of Slave Lake.

4.4.2 Nishnawbe-Aski Nation of Ontario

4.4.2.1 Organization

The Nishawbe-Aski Nation (NAN) is a non-profit corporation which represents the interests of 44 communities in the Treaty 9 and Treaty 5 areas of northern Ontario. Each of the communities is a Band within the meaning of the Indian Act and the total population of all of the communities is estimated to be 25,000. At the time of its formation in 1973, the Grand Council Treaty 9, the predecessor organization to NAN, set out a series of principles for economic development which remain of central importance to today's negotiations of self-government and other issues:

> "the economic base of communities must be built on natural resources of the area;
>
> the economic activities must include traditional land use patterns;
>
> plans must be developed by the communities themselves; economic development in the north must be planned and implemented in a slow and comprehensive fashion."

NAN has no responsibilities for direct program delivery; rather the organization, which is based in Toronto, represents the political interests of the communities and the regional tribal council of northern Ontario. The six Tribal Councils (Central, Shibogama Area, Mushkegowuk Cree, Pahtabun [or Pehtabun Chiefs], Waabun and Windigo) represent the interests of member bands at the regional level.

Several distinctive features of the NAN organization are of significance to the negotiations process in general and in relation to environmental issues in particular. Firstly, the size of the territory in question is extensive enough that (subject to what is said below) a coherent and comprehensive environmental management program might be encouraged. The population, though not large, currently supports a sophisticated administrative structure. Some of the personnel necessary for effective environmental operations might be drawn from the ranks of the existing administration.

Some commentators have noted internal diversity within the area covered by Treaties 9 and 5. "Differences of opinion exist between leaders. Clearly, there is no reason to expect more unanimity among the Indians of northern Ontario than there would be among any group of comparable size. Equally clear is the widespread determination that a new start should be made to define the relationship between NAN and the wider society." (Royal Commission on the Northern Environment, Issues, Chapter 1, p.27) The authors of the present study are not in a position to assess what differences may exist today among NAN members on issues of environmental management. On the one hand, there have been significant initiatives toward autonomy by individual tribal councils in the past few years. On the other, the sharing of many environmental concerns among NAN members across northern Ontario makes NAN as a whole an attractive unit in which to encourage a common approach to environmental management under self-government.

4.4.2.2 Historic Concerns with Environmental Management

The communities of NAN have had considerable experience with environmental concerns and would bring a good deal of accumulated wisdom to self-government negotiations. The RCNE reported that "the building of power dams began north of 50 at Ear Falls in 1929, in some cases leading to the displacement of Indian communities, flooding of traplines, and disruption of fishing". (Issues, chapter 1, "The Land and the People North of 50", p.14)

Whether or not 1929 represents a suitable point of origin for "modern" environmental concerns, there have been many recent examples of environmental issues where NAN members have had significant involvement and experience.

(a) Reed Paper

The 1974 announcement that the Ontario Government and the Reed Paper company had reached an understanding for licensing 26,000 square miles of first growth timber in the northwestern part of the province was a formative experience for the newly-established Treaty #9 organization, which had not been consulted during the early discussions between industry and the province. It is clear that the experience impressed firmly in the minds of the leadership the importance of taking well-researched initiatives in support of the communities' long-term interests. The Reed Paper case saw the Treaty #9 organization deal effectively with the media, co-ordinate a campaign with sympathetic public interest groups, and make use of relevant scientific and forestry experts to advance its case. There is considerable merit in Grand Council Treaty #9's assertion that the organization's efforts were extremely influential in the formation of the RCNE in 1977.

(b) The Royal Commission of the Northern Environment

NAN or its constituent elements were actively involved throughout the research and deliberations of the RCNE. On the basis of information in the appendices of the RCNE Final Report, it appears that NAN communities and the grand councils received well over half a million dollars to finance research and participation in the proceedings. (Comments received by the RCNE during the course of its hearings are set out in Appendix 2.)

(c) Grassy Narrows and White Dog Mercury Contamination

Mercury contamination and environmental health injuries to the native population of the English-Wabigoon river systems were of most direct concern to Treaty #3, but the long term impact and significance of the mercury hazard certainly became well known throughout the native organizations in the province. The most important analysis and description of the mercury contamination story is probably Shkilnyk, A Poison Stronger than Love: the Destruction of an Ojibwa Community, (1985).

(d) Ontario Royal Commission on Electric Power Planning

Treaty #9 representatives were actively involved in the proceedings of the Ontario Royal Commission on Electric Power Planning in the mid-1970's. The Porter Commission visited

northern native communities in order to learn at first hand about the "nature of the environment and terrain and to become acquainted with the life-styles of the native peoples and, in particular to hear from the people about how their life-styles might be affected if certain river systems of northern Ontario were used for the generation of electric power." (Ontario, Royal Commission on Electric Power Planning, the Meetings in the North, 1977, p.5)

(e) Environmental Assessment - Timber Management Class EA

NAN is presently a funded participant in the class environmental assessment of Ontario's timber management system. The hearing process is expected to last as long as two years.

4.4.2.3 Principal Environmental Concerns and Objectives of NAN

The environment has profound cultural significance for NAN member communities, but the resources of northern Ontario are central to their economic aspirations. There will therefore likely be strong linkages between environmental and economic sectors of responsibility in any negotiations concerning self-government.

Although there are differences in emphasis throughout the NAN territory (wild rice is more important for Indian communities in the southern districts, and goose camps more common around James Bay), environmental use is extensive and diverse rather than localized. Accordingly, environmental concerns extend well beyond the reserve boundaries. Beyond this, however, there has long been a recognition on the part of NAN leadership that the region is vulnerable to environmental disruption from large-scale development proposals, some of which originated outside the territory of NAN's direct concern. The most important of the longstanding environmental concerns include the following:

(a) Polar Gas Pipeline

In the 1970s, Polar Gas proposed to transport natural gas from the Arctic Islands through northern Ontario to meet with existing transmission facilities in the vicinity of Geraldton.(RCNE, Issues, Chapter 1, p.20) The anticipated environmental costs included:

- threats to the integrity of the United Nations Biological Program of Ecological Reserves;
- the possibility of major pipeline ruptures through frost heave in the discontinuous permafrost zone;
- river siltation and the destruction of spawning beds;
- threats to aquatic animals by gas and chemical spills and by increased sewage into river systems;
- threats to all animals by destruction of habitat and increased hunting pressure.

(b) Water Diversion

Southward diversion of rivers flowing into James Bay has been proposed repeatedly by Canadian and American interests, and represents a major threat to the northern Ontario environment. The Albany, Moose, Attawapiskat, Severn and Winisk Rivers were considered to be prime candidates for such diversion with environmental costs including the following:

- fundamental changes in drainage patterns will cause destruction of the region's ecosystem;
- wildlife will be destroyed or else shifted into unknown or inhospitable territory;
- flora and fauna will be submerged by flooding or parched in the former waterways;
- climatic conditions will be altered drastically.

(c) Onakawana

The Onakawana lignite mine and power plant proposal for strip mining of soft coal in the James Bay region is another perennial development prospect. Environmental costs include:

- the headwaters of a small river, Medicine Cree, and the lower ten miles of the Onakawana River will be lost through diversion. The eventual re-establishment of the original channel would be impossible because the spoil material through which it would flow would be subject to constant erosion. Fly ash or dust and other waste will be

continuously emitted by the power plant out of the power stack.

(d) Hazardous Waste Transport and Disposal

Nuclear waste deposit proposals for parts of northern Ontario have been under consideration for several years. The PCB spill on the Trans Canada Highway near Kenora a few years ago signalled the vulnerability of comparatively remote territory to contamination resulting from shipping accidents. Long-term risks remaining from past activity may also be of concern. The Serpent River Band west of Sudbury recently received compensation from CIL whose toxic waste from a plant that was abandoned in the early 1960s rendered much of the band's reserve uninhabitable.

(e) Timber Management and Mining

Forest management arrangements in northern Ontario have been a concern since the time of the Reed Paper proposal. Native communities are concerned about environmental destruction from clear cutting and roads. They are also users of the forest resources. Various recommendations from the RCNE on forests and mining are attached as Appendix 3.

(f) Renewable Resource Conservation

On the assumption that renewable resource issues will be the subject of a separate report, they are not reviewed extensively here. It is noteworthy, though, that concerns with migratory bird populations and fish are longstanding. Serious efforts involving the province of Ontario and the federal government as well as native representatives to resolve the fishing controversies have been more or less ongoing for the past ten years. (The early phases of this process are described in F. Berkes and D. Pocock "The Ontario Native Fishing Agreement", Environment, Vol.15 No.3, p.18, (1983)) Discussion of renewable resource issues by the RCNE (pp4/21-27) is attached as Appendix 4.

(g) Concluding Observations: Environmental Concerns of NAN

On the basis of its experience, it is obvious that NAN has a sophisticated view of the environmental issues facing its members: water diversions; pipelines; forest exploitation;

mineral exploration and development; hazardous wastes and renewable have all been of concern at one time or another. Local issues surrounding disruption from road and airstrip development have also been considered.

Community press releases and similar documentation over the years have emphasized the migratory nature of native life: winter, spring, summer and fall see residents in different locations for hunting, fishing, trapping or wild rice harvesting and other renewable resource-based activities.

> "Native people in Northern Ontario typically have a multitude of places they call home: winter trapping camps (at least two or three); spring trapping camps' spring and summer fishing camps; goose camps; wild rice camps; hunting camps and - the reserve." (The People and the Land Are One, Grand Council Treaty #9, mimeo, n.d.)

This has resulted in an extensive body of awareness of the potential threats to the environment from a variety of sources. It also ensures that the legitimate interest of the residents in environmental issues extends well beyond the areas encompassed within reserves.

4.4.2.4 Attitude Towards Existing Opportunities for Environmental Management

The NAN interest in the environment is both cultural and economic. Accordingly, the specific environmental concerns of NAN and its members are closely integrated with aspirations for economic development in the region.

Ontario's Northern Development Council process, the Environmental Impact Assessment process and the provincial Ministry of Natural Resources land use planning process are mentioned elsewhere in this report. NAN reaction to these activities has been expressed on a number of occasions and was explicitly reported to provincial legislators in October 1987. Addressing the Ontario Ministers of Natural Resources and Northern Development, NAN spokesmen stated:

> "In many instances it will result in an infringement of our Treaty and Aboriginal Rights. You have put draft policy documents before the Northern Development Council process. You selectively excluded us from the process. Today we demand that these discussions cease until Nishawbe-Aski Nation and Ontario reach an agreement on how to proceed on

> this matter.... your Northern Development Council process must place a moratorium on these discussions and allow us access to all documents in this regard. Further to that, we want to bring your attention to the problems of development control on Nishnawbe-Aski Nation lands. Existing processes such as the Environmental Assessment Act or the Ministry of Natural Resources land use planning process, are totally inadequate and unacceptable. They represent poor planning tools that do not allow for effective input and participation by Indian people in resource development decisions. We must jointly work on the development of a process that will address the needs for planning northern development while protecting and respecting the Aboriginal and Treaty Rights of the Nishnawbe-Aski Nation". (Matters of Vital Importance, 8)

NAN has been involved in negotiations and discussion with Ontario and the federal government in the mid-1980s leading to the completion of significant framework documentation, specifically a 1985 Declaration of Political Intent and a Memorandum of Understanding signed in February 1986. These document are attached as Appendices 5 and 6.

Subsequent to the MOU and the tripartite Declaration of Political Intent, there have been ongoing discussions between NAN and the province concerning self-government and economic development issues. In October 1987, NAN made a presentation to the province on "Matters of Vital Importance to the Nishnawbe-Aski Nation" and in March 1988 NAN met with the Ontario Cabinet Committee on Native Affairs. The issues that appear most relevant to environmental management are set out in detail below. The relationship between environmental and economic concerns should be noted.

(a) Joint Development Board

NAN's generic concern is with the inadequacy of Native involvement in the process of government planning for sustainable northern economic development objectives. NAN has specific concerns with the intent and operation of Northern Development Councils and feels it needs a NAN-specific joint development board to adequately represent its interests in northern Ontario.

(b) Community Hunting of Migratory Birds in James and Hudson Bay Lowlands

There are several initiatives stemming from the renewable resource use of the environment:

- NAN requested that the Government of Ontario press the Federal government to drop the charges laid under the Migratory Birds Convention Act which were laid against nine NAN citizens while they were participating in the 1987 traditional fall goose hunt.

- The Mushkeogowuk Council requested participation with the Federal and Ontario Governments to jointly formulate an Accord which would set out the continuing right of Native people to harvest migratory birds in the James and Hudson Bay lowlands. Discussions which include the Council are now underway.

- Mushkegowuk Council's request to work with MNR so that yearly aerial surveys of nesting and staging birds would be conducted in a manner less disruptive to the harvest.

- Mushkegowuk council's concern with the sale, transfer or conveyance of land leases for Native tourist camps to non-Native ownership.

(c) Comprehensive Land Regime Proposal Under the MOU

NAN is concerned that the MOU process not be used to impede the desire of specific Bands to enter into negotiations with the Province. NAN would also like to see the Ontario (and federal) financial commitments to support the MOU process strengthened to more realistic levels.

(d) Crown Land as a Development Tool

NAN has demanded a moratorium on discussions between Ontario and the Northern Development Council respecting the "Crown Land as a Development Tool" draft policy document until NAN has secured access to all documents "in this regard" and until Ontario and NAN reach an agreement on how to proceed on this matter.

(e) Northern Development Planning

The Windigo Tribal Council feels that negotiations on the Dona Lake Sub-Agreements are hampered by the fractured approach of the Ontario Government, given that too many Ministries are involved, each with "their own agendas and turf problems", with the result being that Native people are "never clear what is on the table".

> "While designation of both projects under the Environmental Assessment Act was requested by the Council, the provincial proposal for an agreement between the company, the native people and both federal and provincial governments is being pursued as an alternative. The Windigo council wants the right to affect the planning process since it believes that MNR can not presently "plan and execute activities without our knowledge, input and benefit."

The Windigo Council expressed its frustration in dealing with MNR citing the Cedar Channels dam reconstruction as an example of a "useless exercise" where "there are no rules to the game".

Windigo believes that the Lac Seul Forest Management Agreement was prepared without any effective consultation, review or discussion of alternatives with the Council and allows cutting "up to an possibly over the Slate Falls community."

Windigo is concerned about MNR proposals "to change the use of northern lakes from a commercial base to a sports fishing base" and that the "natives will lose their commercial fishing base".

Windigo points out the need for a comprehensive planning vehicle, thus reducing discretionary changes in designation of resource use and allowing for the development of local, community and regional input which respected its peoples' interest and aboriginal rights. Windigo also suggests that the Province lacks the commitment, ability or interest to establish a long-term planning framework for northern Ontario, where the issues to be addressed go far beyond MNR's mandate.

(f) Provincial Parks in Northern Ontario

NAN has expressed opposition to the formal establishment of any additional provincial northern waterway parks by Regulation unless each Band to be affected by the park supports its

creation. NAN claims there is no need to establish these parks since there are no restrictions on canoeists and nothing will restrict them in the future "if NAN's rights are recognized". NAN also refuse to legitimize provincial planning or management processes by participating in discussion after decisions have already been made.

(g) Access to Timber Resources

Addressing the difficulties its Bands have in gaining access to timber resources, NAN points to the current allocation system as the source of these problems, claiming that older established companies with historic or traditional relationships to MNR are given preference. NAN therefore requests every assistance from MNR for Bands attempting to use the current timber allocation system. NAN has also requested MNR to establish a timber allocation system which gives preferential consideration for NAN needs.

(h) Tree Planting

Because of the privatization of much of Ontario's tree planting program, NAN is concerned that its communities have been excluded from the economic benefits they have come to count on from this stable source of seasonal income.

(i) Concluding Observations on NAN's views of Existing Environmental Management Processes

NAN has repeatedly emphasized it view that provincial decision-making regarding resource use and development in northern Ontario is inadequate. NAN has been concerned that notice of forthcoming decisions is late, that necessary information is often unavailable and that opportunities for participation are too limited. No information was obtained on NAN's views of federal environmental management decision-making processes.

4.4.3 Other Ontario Bands

Owing to time and budget limitations, sketchy material which the authors of this study received from DIAND (Appendix 7) and some other material was relied upon to develop an impression of what powers other bands might seek.

Both the Akwasasne and Whitefish Bay Bands illustrate the close links between general band concerns and environmental concerns. Both want control over community infrastructure and public works, meaning, among other things, roads, sanitation, and land use planning. Other bands have expressed similar concerns.

With respect to the environment per se, the Whitefish Band proposes the right to enact by-laws which would supercede federal and provincial laws, and which would give it exclusive occupational use and jurisdiction over the reserve environment. The Band proposes to own and manage all renewable and non-renewable resources on its reserve, including oil and gas, precious and base metals, sand, gravel and water. Off-reserve, the band proposes that natural resources in its traditional land use area be co-managed, although hunting and gathering rights would remain largely unrestricted. Akwasasne Band wants similar powers, including absolute authority over its land, water and air space.

Given the limited negotiating powers of bands, such proposals seem neither immodest nor realistic. However, several points might be made. First, in research on the Alexander Band and NAN for this study, it was not surprising to discover that the native peoples' knowledge of their environmental problems was indeed far more rounded and sophisticated than the material received from DIAND seemed to indicate. Second, initial bargaining positions are usually stated in the extreme in the knowledge that the bargainer may be driven back to somewhere near the position he hoped to attain in the first place. The question is, therefore: What is the real objective of the band and how can this best be attained? Third, the positions presented in the material from DIAND are of the most general level. One may well ask: What is the detail behind such positions? What concerns have led the band to make the particular statement? Negotiations for environmental management and other powers will have real meaning only if there is an appreciation of where the band is coming from and what body of experiences have brought it there.

5. EMPOWERING NATIVE ENVIRONMENTAL MANAGEMENT ASPIRATIONS

5.1 INTRODUCTION

A variety of methods have been used to accommodate the native interest in environmental management. Only those falling under the Indian Act are unilaterally federal, but even in their case, consultation with the provinces may be necessary because environmental concerns rarely stop at the boundaries of reservations. All other methods have required the cooperative tri-partite involvement of the Federal Government, the provinces and native people. Given this inter-jurisdictional complexity, the headings and language used in this section cannot be unequivocal. It would be very difficult to isolate what the federal government or the provinces (or territories) can do by themselves, since there is probably little they can do without thorough consultation and agreement by the other parties. Depending on its mandate, one federal or provincial agency or another may, however, be persuaded to take the lead in fostering a particular arrangement.

The time and budget for this study have not permitted a detailed agency by agency exploration of receptivity to potential native proposals, although as much work as possible along these lines was undertaken. Such an exploration will become one of the main jobs of the federal negotiator. What this study does is provide a road map or guide designed to make it easier for the negotiator to identify those agencies which are most critical to the matter of sharing powers with native bands or organizations.

In the case of provincial institutions, there are no certain methods of extending management powers or of bringing native people into existing arrangements. Provinces, responding to pressures from their own electorates, may be willing to consider some arrangements, but not others. They would probably respond least favorably to proposals which would give native people powers that other citizens do not have or which would diminish the powers of other citizens, and yet extraordinary powers are what many native groups would feel to be essential if their cultures are to be preserved and protected. The objective of self-government negotiations involving the provinces would be to help native people get the best deal possible under the particular circumstances.

5.2 ROLE OF THE NEGOTIATOR

Many differing, and often opposing points of view will be brought to bear on the process of negotiating environmental management under native self-government. It is assumed that, as manager and coordinator of this process, the negotiator will want to help native people acquire and extend their environmental management powers. At the same time, however, the federal government must maintain a substantive interest in the quality of the environmental management regime that is established.

The negotiator's primary role will be to bring opposing points of view together and work out compromises. Where the environment native people seek to manage lies within reservation boundaries, and therefore falls under federal jurisdiction, the negotiator will have to play the role of a federal bargainer working out trade-offs directly with native bands. This should not present major obstacles, given the federal commitment to native self-government and the transfer of functions to bands. There is a concern, though, that the federal government will be seen by native people as attempting to use the self-government process to relieve itself of certain constitutional responsibilities and of the costs of these. Some of the provinces, and Ontario in particular, may also see matters in this way.

Federal goodwill notwithstanding, part of the environment that native bands will want to manage lies off-reserve and comes under provincial jurisdiction. The negotiator will have to meet with provincial officials and create conditions that will enable native bands and provincial officials to bargain. If the provinces are expected to relinquish some powers to native people, they will likely insist on quid pro quos, though not from native bands, which have few to give them. They will likely insist on concessions from the federal government. The negotiator had therefore better have a clear idea of his support and bargaining powers.

In addition to opening doors for them, the negotiator's functions with respect to native people should include fostering the development of realistic proposals to bring to the negotiating table, particularly to the provincial table. At the beginning of this report, a broad and comprehensive view of the environment was suggested. While such a view is needed as a philosophical backdrop, it would probably not fare particularly well at the bargaining table. Bureaucracies are required by their legislation to think in specific, incremental terms, which is probably how they would approach negotiations about environmental management. With each province, therefore, the

negotiator should explore what powers provincial departments might consider relinquishing, either totally or in the sense of joint management, and what quid pro quos they would insist on from the federal government. With each band, he should prioritize a realistic set of self-government objectives: realistic in terms of sole or joint powers that might be gained from the province, given affordable federal trade-offs. In this way, over a period of time, persevering native bands could attain a measure of managerial power over the environment beyond their reservations.

The negotiator should bear in mind that the negotiating table is not the only mechanism native people can use. In addition to litigation, there exist in each province a variety of processes, both formal and informal, that native people could use (and have in the past used) to put their case forward and advance their interests in the environment. Part of the job of the negotiator would be to ensure that native people are aware of these other routes, and that they have the resources to use them.

The foregoing assigns the negotiator with arduous tasks that may take a long time to fulfill. He is not only to assist native people in putting their house in order, he must also move provincial governments and the federal bureaucracy to commit themselves to particular measures. However, though we have referred to him as an individual, the negotiator is indeed a collective. A federal official, perhaps titled "the negotiator", will actually have to sit down with Indian bands and provincial officials, but he should only be the vanguard of a federal bureaucracy which must be dedicated to moving the cause of native self-government forward -- a bureaucracy given strong backing by its Minister and indeed by Cabinet. If it turns out that the negotiator does not have strong backing, and is indeed just a single individual with uncertain and wavering support, the self-government process will not likely move matters forward.

5.3 ALTERNATIVE DISPUTE RESOLUTION

Alternative dispute resolution arrangements are not examined in detail in this study. It is important to note however that several major environmental controversies involving native people have been resolved through negotiations or with the assistance of mediation services. Literature is now emerging on Northern Flood, Islington and Grassy Narrows and the Queen Charlotte Islands controversies which suggests that valuable comparative case studies might be undertaken. Several legal academics have begun to analyze possibilities for alternative dispute resolution

in relation to native interests in Canada. In addition, the Law Reform Commission of Canada has undertaken work on alternative dispute resolution in several contexts, including environmental conflicts.

In the United States, the use of alternative methods of resolving disputes with native people has gained important ground, particularly in the northwest, where state governments have established a recent record of litigating less and negotiating more with Indian tribes. From the fishing-rights cases of the early 1970's to recent water-rights disputes, much of the recent history of Indian - government relations has involved the courts. A non-litigous approach now appears to have paid-off for Idaho, which is completing negotiations with tribes along the Snake River to divide water rights on the State's major source irrigation water, hydro power, and fish habitat. By contrast, Wyoming is reported to have taken the Shoshone and Arapahoe tribes to court over water rights on the Big Horn and Wind River basins and to have lost badly. (Dean Miller, States, Indians Learn to Negotiate, Christian Science Monitor, March 23-29, 1989)

As a Canadian example of alternative dispute resolution, a process known as "environmental mediation", has been used with some success by the Energy Resources Conservation Board (ERCB) of Alberta. This is a voluntary process in which those involved in a dispute jointly explore and reconcile their differences. The strength of the mediator lies in the ability to assist the parties in resolving their own differences. He has no power to impose solutions. The mediated dispute is settled when the parties themselves reach what they consider to be a workable solution. (Christof Haussmann, Environmental Mediation: What, When and How?, Canadian Environmental Mediation Newsletter, Vol.1.No.3, 1986)

The ERCB applied the environmental management process to disputes between the Fort McKay Band and Syncrude Canada Ltd. in an effort to reconcile differences without the need for a public hearing following a 1985 application from Syncrude for new mining areas in support of new facilities at the Syncrude Mildred Lake Plant.

In the years prior to 1985, the native community of Fort McKay had experienced over 20 years of environmental and socio-economic impacts from the Suncor and Syncrude oil sands plants. For many years the relationship between the community and the plants was one of mistrust and suspicion as the community struggled to maintain its lifestyle in the face of what appeared to be an

indifferent government and corporate response. While billions of dollars worth of oil were extracted by the plants within 40 km. of the community, the community itself remained mired in poverty, inadequate housing, social problems, low education and high unemployment. Residents of the community expressed concern about the deteriorating quality of the atmosphere and perceived losses of wildlife. (Jerome Slavik, Ron Wallace and Jim Boucher, Environmental Mediation in Major Oil Sands Development: an alternative Model to Resolution of Native, Corporate and Government Interests in Resource Development Approvals Processes, Energy Processing Canada, September-October, 1988)

According to Wallace and Slavik, who were involved in the process as technical experts appointed to the Fort McKay Band, the environmental mediation process consisted of the following key elements: Syncrude made available all relevant environmental data and would review this data with all relevant parties; the ERCB made available environmental, engineering and legal resources to the Band so that it could carry out an assessment; each side then met in a series of consultations chaired by the Board to review the comments or concerns identified by the Band and its consultants; each party had the right to withdraw from the process at any time, at which time the Board would initiate more traditional public hearings; and, the conclusions reached by the mediation process were submitted to the ERCB which was to incorporate them into the licensing process, thus making them binding to both parties. (Ron R. Wallace and Jerome Slavik, Environmental Mediation Between Industry and Native Peoples in Defined Energy Approval Processes, Canadian Environmental Mediation Newsletter, Vol.1.No.3, 1986)

Slavik, Wallace and Boucher (op. cit.) believe that what was most important was that the process allowed the Band to be on an equal footing with industry and government in terms of their scientific and technical capacity to effectively question and examine material contained in socio-economic and environmental impact assessments. The Band therefore had a means of independent verification. The Band soon established itself as credible and relevant participants in highly technical discussions concerning existing and proposed plant operations. In addition, it benefitted both in terms of environmental quality and materially: A Regional Air Quality Task Force was established; new community infrastructure was developed including a new fire hall and fire truck; new water and sewer systems with outlets to each household; a new retail complex and community hall; improved housing and roads; planning of community gasification; and a major community environmental beautification program. Slavik, Wallace and Boucher note:

> "Governments also more fully recognized and realized their obligation to install community services (roads, water and sewer, electrification, gasification) comparable to that provided at Fort McMurray or in other non-Native communities in the region. This enhancement of local services was achieved in the face of an inadequate tax base in Fort McKay to finance such essential services." (op. cit., p.26)

Several things are suggested by the example of Fort McKay. One is that a positive attitude and goodwill, which would seem essential if alternative dispute resolution is going to work, can go a long way toward solving major environmental problems of a bilateral nature. To be sure, the goodwill was not strictly voluntary but imposed by the ERCB, but nevertheless, once there, it seems to have worked. Another is the value of providing expert resources to bands which could not otherwise afford them: a process such as the one described simply could not work without such resources. A third is the concept that mediation and its outcome should be part of the approvals process and should be written into the license to proceed. What is mediated is then binding.

It is not certain whether the Fort McKay process would apply to other bands. It should be noted that the Fort McKay Band was probably not in a position to halt the further encroachment of its traditional lands by oil sands development nor could it hope to restore its environment to its former state. In entering mediation, it recognized the inevitability and permanence of the changed situation. Many bands are in this position with respect to initiatives from the industrial world; their best strategy may well be to get the best deal they can, given their deteriorated circumstances. Mediation rather than confrontation might indeed be the best solution. In other cases the situation might be quite different. Bands may be regionally organized, like the Nishnawbe-Aski or the Dene, and can by political action exert enough power to put major development in question. Or they may feel that their chances are better in the adversarial process of the courts.

5.4 ARRANGEMENTS IN WHICH THE FEDERAL GOVERNMENT HAS THE LEAD

There are federal environmental management agencies and procedures where native involvement might be encouraged in a systematic way through appointments and consultation. Two bodies where native input might be considered are the Canadian Environmental Advisory Council and the Round Table on Environment and Economy. Encouraging greater native participation in the

federal environmental assessment process would also be a positive step. Native people have already made important contributions as members of EARP panels in northern Canada.

As such initiatives are unlikely to bear directly on self-government negotiations at the band and regional levels, the present study does not develop this suggestion other than to say that the Federal Government does have these and other mechanisms available to facilitate native involvement in environmental management at a national level if it chooses to do so. Recent federal actions in the United States to recognize the role of tribal governments in several major pieces of environmental legislation will no doubt be cited in Canada as examples of directions the Government of Canada should follow. (See Du Bey, Tano and Parker, "Protection of the Reservation Environment: Hazardous Waste Management on Indian Lands" (1988)18 Environmental Law, pp.448 and 452-453)

Possible avenues such as the foregoing aside, the Federal Government has a variety of options in initiating, and participated in the development of, specific measures to accommodate the native interest in environmental management. Measures which are possible and which have in many cases already been implemented are summarized briefly here but are described more fully in Appendix 8.

Under the Indian Act a band may enact bylaws concerning fur bearing animals, fish and game. Water rights on reserve can only be determined case by case, as there is no valid framework applicable across Canada. Use and management of forests on the reserve may be controlled by the Band. The Indian Oil and Gas Act is the basis for regulation concerning exploration and development of oil and gas resources on reserve. In the case of mining, arrangements differ from province to province and depend on the type of the resource. However, on reserves, mining is subject to regulation under the Indian Act. With regard to planning and zoning, the Indian Act allows for appropriate by-laws applying to the reserve. There is no mention of impact assessment in the Indian Act, although if a project on or off reserve is funded by the federal government, or includes a significant federal interest, it may be submitted to the Environmental Assessment Review Process.

Insofar as the comprehensive claims process is concerned, three claims have been concluded to date: The James Bay and Northern Quebec Agreement, the Northeastern Quebec Agreement, and the Inuvialuit Final Agreement. Recently, Agreements in Principle were negotiated with the Dene/Metis and the Council of Yukon

Indians. Claims settlements have resulted in a variety of committees and other bodies by which native people exercise management powers over various aspects of the environment. For example, Section 22 of the James Bay and Northern Quebec Agreement establishes a body, appointed by the Cree, Canada and Quebec, which has advisory powers on the administration and management of the environmental and social protection regime established under the Agreement. Section 24 of the Agreement establishes a committee to oversee the hunting, trapping and fishing regime. While the claims which have already been settled may provide models for future settlements which will involve extensive lands, the applicability of such models to more geographically confined reservations is questionable.

A variety of special arrangements coming under neither the Indian Act nor falling within the comprehensive claims process have also been possible. One such arrangement is the Sechelt Indian Band Self-Government Act, which authorizes the Band Council to make laws in relation to a wide variety of matters, including the preservation and management of natural resources on Sechelt lands, and the preservation, protection and management of fur-bearing animals, fish and game on Sechelt lands.

Another arrangement, the Northern Flood Agreement was initiated to deal with issues arising out of the construction of large scale hydro electric projects in northern Manitoba. It was signed in December, 1977, by the Province of Manitoba, Manitoba Hydro, the Government of Canada, and the Northern Flood Committee, which represented the various northern indian bands. The Agreement uses existing statutory powers of Canada and Manitoba, and provides a method of involving indian people in the management of the environment of northern Manitoba.

As yet another arrangement, two caribou management agreements have been signed: The Porcupine Caribou Management Agreement and the Beverly - Kaminuriak Management Agreement have now been signed by the Federal Government, the Territorial Governments and native organizations, as well as by provincial governments in the case of the Beverly - Kaminuriak Agreement. Their purpose is to cooperatively manage caribou herds and to provide for the participation of native people in such management.

Arrangements described in the foregoing paragraphs cover perhaps half of the Canadian land mass and involve many thousands of native people. Nevertheless, it would seem legitimate to raise the question of how much more powerful native people have become because of the arrangements. To what extent do the arrangements represent real powers as opposed to greatly circumscribed or

illusory powers? In attempting to deal with such issues, the discussion will focus mainly on the claims process since the actual powers of native people under the Indian Act was dealt with earlier.

It has been noted in previous sections that the powers native people seek fall into three general categories: Decision powers, administrative powers and advisory powers. It is rarely possible to make sharp distinctions among these categories. Whatever its primary mandate, a single body may have some functions at all three levels. However, whether the powers of particular native groups exist only in relation to particular tracts of land or are geographically broader is not always clear. For the most part, powers would appear to be restricted to the boundaries of the particular lands of interest -- the reservation, Sechelt lands, the lands defined by the Quebec and western Arctic claims settlements. In the claims settlement regions, this question of boundaries might not be of great importance in many instances since territories defined by claims settlements may be large enough to encompass most environmental issues of consequence to the native group. In some cases, where territories for which special and exclusive rights have been defined are not large, powers may transcend boundaries. Provision for "extra-territorial" powers is included in the Sechelt Indian Band Self-Government Act, although arranging to exercise such powers may prove difficult. In the case of the James Bay and Northern Quebec Agreement, while native people have exclusive rights in the case of Category I and II lands and do not generally have such rights on Category III lands, the environmental management powers which they exercise via participation on the Hunting, Trapping and Fishing Coordinating Committee apply to much of northern Quebec, including Category III lands.

Other matters affecting what native people could actually do as environmental managers would hinge on whether the scope of powers is broad or narrow. For example, it would appear that the various bodies under the James Bay and Northern Quebec Agreement and the Inuvialuit Final Agreement have powers which encompass the entire span of native environmental interests, whereas mechanisms established under the Northern Flood Agreement may have a more restricted purview deriving mainly from the impact of water diversions for hydro-electric schemes. Yet categorical statements are impossible to make on such matters since the Wildlife Advisory and Planning Board under the Northern Flood Agreement appears to have broad powers with respect to wildlife resources.

A matter on which virtually no judgments can be made is the degree of authority with which power can be exercised. Do the

various committees, boards, municipal corporations, or other bodies on which native people sit really allow them to carry the day on crucial environmental matters, or are they easily over-ridden by the government authority? Are native powers merely token powers for the sake of imagery, rather than powers in reality? Are the various boards and committees properly resourced and do they have access to appropriate expertise so that they can in fact exercise their powers effectively? Such questions cannot be answered without a much more thorough study of the institutions and arrangements which have been established.

It must also be considered that what a body is called does not always reflect what it can do. The title of "Management Board" may suggest a higher order of powers than that of "Advisory Committee", but much depends on the level of issues with which a particular body deals, to whom the body reports, the body's continuity, the body's funding, the personalities of leaders and members, and the public concern which the issues under consideration generate. Nor do bodies have to have powers conferred upon them by governments in order to move large issues, as has been demonstrated by the whole of the native claims movement and the success of particular issue lobbying groups like the Alaska Eskimo Whaling Commission.

There are relatively few examples to date of native self-governing bodies established primarily with decision-making powers in mind. One is the Hunting, Fishing and Trapping Coordinating Committee established under Section 24 of the James Bay and Northern Quebec Agreement. This is "an expert body made up of Native and government members...to review, manage, and in certain cases, supervise and regulate the Hunting, Fishing and Trapping Regime...". It has powers beyond the Category I lands owned by the native people, having been established for much of northern Quebec under the Agreement. Native people have equal representation with government -- there are sixteen members, three each from the Inuit and the Cree, two from the Naskapi, and four each from Canada and Quebec. However, equal representation is not necessarily equal power. The government members would presumably have a better understanding of how to access and move federal and provincial bureaucracies, which could give them an advantage over native members in the event of disputes.

Under the Inuvialuit Final Agreement, several bodies have limited decision-making as well as advisory functions. The Wildlife Management Advisory Council (NWT) determines the total allowable harvest of game for communities, subject to the approval of the GNWT. Of the six members of this council, two are Inuvialuit. The Inuvialuit Game Council assigns community game quotas within the Inuvialuit Settlement Region. Under the

provisions of the Sechelt Indian Band Self-Government Act, the Sechelt Band has limited powers with respect to environmental matters on Sechelt lands.

Examples of bodies established to administer a direct native interest in the environment are provided by the two hunter income security programs of northern Quebec. The Inuit program is operated by the Kativik Regional Government, a native dominated public government, while the Cree program is operated by a six member board consisting equally of Cree and Province of Quebec representatives.

As a municipal government for all lands in the Inuit region of northern Quebec, the Kativik Regional Government has significant administrative powers bearing on the environment, as do the community based municipal governments throughout northern Quebec.

The administrative arrangements developed for northern Quebec, with separate village or reservation based municipalities, but with an additional overarching authority, could perhaps serve as a model for self-government in other regions in which there are combinations of local and regional (on and off-reserve) concerns. Some aspects of this model could apply to the Nishnawbe-Aski Nation, for example, though how a super-municipality based on NAN would interact with existing municipalities in northern Ontario is unclear.

The majority of the bodies dealt with in foregoing sections are advisory in character, although they may have some limited management and administrative functions.

As a final point, while the value of defining and empowering the particular native interest in the environment cannot be denied, it must be observed that native people already have substantial powers with regard to the environment apart from those dealt with in the context of self-government in this report. Like all citizens, they can use the courts, make their case before public inquiries, and mobilize political support and public opinion.

5.5 ARRANGEMENTS IN WHICH THE PROVINCES MAY HAVE TO LEAD

The Provinces, based on their powers over public lands, have asserted jurisdiction over lands and resources beyond reserve boundaries in which indians have claimed a prior interest. The

assertion of provincial interest and denial of the native interest has been historically most evident in British Columbia, which does not recognize the existence of aboriginal title. Quebec has to some extent challenged the ambit of the Indian Reserve system. In Ontario and the Prairie Provinces, the need to treat with respect to aboriginal title was better recognized, but the provinces nevertheless asserted the limits of the Indian interest. In the Maritimes, reserves had been set aside at Confederation, and the need to secure provincial agreement to establish reserve lands was absent.

In light of this background, the most difficult part of the terms of reference for this study is the identification of "levers that could be used to convince provincial governments ... of the relevance of Indian participation..." in environmental management. In response, it might be observed that the federal government holds few levers unless it is willing to risk action that could damage federal-provincial relations. Opportunities for moral suasion are also likely to be limited, not because the provinces do not care about the circumstances of native people or because they have not already considered the "relevance of Indian participation", but because they are looking after their own responsibilities as they see them, a thing they can hardly be faulted for.

The absence of levers notwithstanding, the federal government can make deals with the provinces that advance the cause of native people if it is willing to give something up in return. This makes a "Note" appended to the terms of reference difficult to accept:

> "Given that the policy on self-government negotiations is clear on parameters such as no new program and funding to be limited to existing resources, options contemplated shall not rely on hypothetical decision relating to financial environment."

How then should the provinces be brought around? It is surely one of the lessons of South Moresby that some form of compensation may have to be given to the provinces if the interests of native people are to be protected and extended. Only time will tell whether South Moresby has set a precedent for federal-provincial transactions on behalf of the environment and the native interest.

Where costs have been minimal in terms of their standing with their constituents, the provinces have shown a willingness to take steps to include native people in the development of

provincial environmental resources. Encouragement in forestry and the fishery in British Columbia have already been mentioned. Saskatchewan has encouraged the inclusion of native people in agriculture. However, because provincial governments must respond to varied publics, many of which are not especially concerned with or sympathetic to the priorities of native people, they are usually able to give native objectives only limited support in such endeavors.

5.5.1 Environmental Management and Planning in Alberta

5.5.1.1 Overview

The Alberta government is not yet structured to deal with self government applications nor has a written document been produced to guide discussions. Departments likely to be involved are Federal and Intergovernmental Affairs, Attorney General, Social Services, Treasury and Alberta Municipal Affairs.

The Alexander Band met with the Native Services Unit of Alberta Municipal Affairs on March 22, 1989 to formally present their negotiating framework to the Province. Given their role as the coordinator of provincial agencies on native matters, the Native Affairs Unit is most likely to be the designated provincial contact on self-government matters.

It is known that the Alexander Band and, probably, most other Alberta bands wish to have double bilateral discussions with the provincial and federal governments. It is unclear whether discussions will be double bilateral or tripartite or if it will be necessary to develop a process that allows both kinds of discussion. Certainly, the federal and provincial parties will need to negotiate, and the bands would probably be in a better position to know what was going on if all negotiations were tripartite. One provincial official remarked that he feared the bands could hurt themselves by insisting on a double bilateral system.

The Province currently offers to Indian bands a limited number of programs available to municipalities. These include the Community Tourism Action Program, Community Recreation/Cultural Grant Program, Family and Community Support Services, Museum Assistance Program and numerous programs under Career Development and Employment. Assistance is not provided for community infrastructure, policing, roads, senior citizens' housing, water or waste management.

Bands entering self-government negotiations who want access to a wider range of programs may find the province more amenable if they are willing to arrive at cost sharing arrangements similar to those made between the Province and its local municipalities. How the band funds its own share would depend on its wealth and the generosity of the Federal Government.

5.5.1.2 Context of Environmental Management In Alberta

In Alberta, matters relating to the state of the environment, environmental protection, land use planning and management and environmental impacts of new or incremental development are controlled by the Province through enacted legislation; policies of the government; ongoing decision-making by Cabinet, Ministers of the Crown or delegated authorities; and the administration. Crown land is administered and managed under the Public Lands Act and Forests Act under the responsibility of the Minister of Forestry, Lands and Wildlife. Private land is the responsibility of the Minister of Municipal Affairs who may, through the Planning Act, delegate decision-making on subdivision and land use planning and development to the Alberta Planning Board, Regional Planning Commissions, or local elected councils of Alberta's incorporated municipalities.

Special lands of national significance, notably the National Parks, Department of National Defence lands and Indian Reserves are subject to Federal Government control. It may be noted, particularly, that under the Municipal Government Act (Sec 5), "An Indian Reserve is not a part of a municipality for any purpose whatsoever" (1980, p.14). Because the environmental issues brought to the negotiating table by Indian Bands cannot be viewed in isolation and apart from a more global ecological land base, it is important to understand how lands surrounding reserves are managed. Perspectives gained should be helpful in understanding opportunities available for native participation in and responsibility for environmental management under self government.

When considering specific band positions on environmental management and protection, it will be important to note whether adjacent lands or lands they wish to include are, in fact, public or private lands or both. Stakeholders having an interest in the deliberations could include Provincial Government departments, regional planning commissions, and municipalities ranging from the large, rural Municipal Districts and Counties to small, urban villages and summer villages.

5.5.1.2.1 Crown Land

When the ownership of natural resources was transferred from the federal government to the province in 1930 and demand escalated for key resources during the Second World War, the province's approach to resources changed from one of administration to single use management. Two major initiatives undertaken in 1948 marked the early stages of a multiple use approach to resource management. By Order-in-Council, the public lands of Alberta were zoned into "green", "yellow" or "white" areas as a broad designation of lands for forest management, agricultural expansion, or settlement. This represented the first major policy for land allocation and management. Also in 1948, a joint federal-provincial agency, the Eastern Rockies Forest Conservation Board, was established to protect the critical headwaters region known as the Eastern Slopes. Priorities and guidelines for the management of resources in the Eastern Slopes developed by the Board pioneered the multiple use approach to public land management. Increasing pressures on the land base for timber, wildlife, petroleum and natural gas, coal, recreation and wilderness caused provincial agencies to recognize the need for better communication and coordination and the need to undertake joint studies. In 1977, the Policy for Resource Management of the Eastern Slopes identified integrated management planning conducted under a comprehensive interagency approach as the key to effective management of the resources of that region. The system and program for integrated planning of all public lands and resources in Alberta today are founded on that philosophy.

The preparation of integrated resource plans is coordinated by the Resource Planning Branch of the Department of Forestry, Lands and Wildlife. When the decision is made to proceed with a plan, the team coordinator issues an open invitation to all provincial agencies to participate. Depending on the area and a department's interest and commitment, different agencies will volunteer to come into the core planning group. Each planning team member may be assigned client groups to be offered formal access to the system. Informal access is available to special interest groups and the general public during the process of establishing the terms of reference for the plan and through the preparation of draft plans leading to a final plan. Verbal submissions may be made by the general public at open houses, public meetings or specially arranged meetings. Written submissions may be sent directly to the Resource Planning Branch. Resulting plans reflect an attitude of shared decision-making and endeavour to optimize uses of the resource base mosaic while minimizing conflicts arising from incompatible uses.

"Integrated resource planning is systematically applied to three levels in the Province. Plan content is dependent on the scale of the exercise. Regional integrated resource plans generally focus on broad resource objectives and guidelines. Sub-regional plans expand on regional guidance and provide a land allocation system that reflects land and resource capabilities. Local plans serve a range of purposes and may be employed to provide a land allocation system that reflects land and resource capabilities. Local plans serve a range of purposes and may be employed to provide detailed allocations and management guidance." (Alberta Municipal Affairs, 1987, A Directory of Planning Agencies in Alberta, p.11).

5.5.1.2.2 Private Land

The senior piece of legislation governing planning and land development for private land is the Planning Act. The purpose of the act and it's attendant regulations is to

"(a) achieve the orderly, economical and beneficial development and use of land and patterns of human settlement, and
(b) maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,
without infringing on the rights of individuals except to the extent that is necessary for the greater public interest" (Planning Act, Sec 2, R.S.A. 1980, p.9).

The Act does not address comprehensive planning for environmental management and protection, but does provide for subdivision approving authorities to set aside lands as environmental reserves to be used as a public park or left in its natural state if the land is undevelopable, hazardous, or abutting a water body.

Policies governing environmental management and protection may be established in lower level statutory plans such as the Regional Plans required of each of the ten Regional Planning Commissions in the Province and in General Municipal Plans, Area Redevelopment Plans, Area Structure Plans and Land Use By-laws adopted by Municipal Councils. Guidelines issued to Regional Planning Commissions by the Alberta Planning Board for the preparation of their respective Regional Plans (And the Minister of Municipal Affairs) prescribed that the subject of environment

be addressed (Alberta Planning Board, 1982, Framework for Application of Regional Plan Guidelines, pp 8-9):

"ENVIRONMENT

GENERAL POLICIES

1. Regional Plans shall address regionally-significant areas of environmental sensitivity, such as:

   - water courses and aquifers
   - lakes
   - flood plains
   - unstable slopes
   - wildlife and fish habitat
   - recreational places through a general statement which seeks to prevent encroachment from incompatible development.

2. Regional Plans shall provide direction to municipalities as to how the general policy is to be implemented in General Municipal Plans and Land Use By-laws.

3. Regional Plans shall provide for General Municipal Plans and Land Use By-laws to identify and protect locally-significant areas of environmental sensitivity."

The Planning Act makes it mandatory that any action or thing done by any local authority should conform to the regional plan. Consequently, every statutory plan, replotting scheme, or land use by-law of a municipality must conform with the regional plan that affects the municipality. Provincial control is paramount. It should be remembered that a regional planning commission "adopts", the Alberta Planning board "approves", and the Minister of Municipal Affairs "ratifies" a regional plan.

Implications of the foregoing to self government applications by native Bands must be understood by negotiators. For example, the Alexander Reserve in Alberta is bounded on the west by the Countie of Lac Ste. Anne, a member of the Yellowhead Regional Planning Commission; and on all other sides by the Municipal District of Sturgeon, a member of the Edmonton Metropolitan Regional Planning Commission. The Town of Morinville is 15 km to the east. A provision of the Edmonton Metropolitan Regional Planning Commission's Regional Plan (1984, p. 30) states:

"7.3 Municipalities should, in their General Municipal Plans and Land Use By-laws, identify and provide adequate environmental safeguards for the following significant wildlife habitat areas:

(a) habitat for unique or endangered species;
(b) significant waterfowl staging areas;
(c) critical wintering range and summer foraging areas; and
(d) lands adjacent to significant fish spawning areas"

Positions taken by the M.D. of Sturgeon and the Town of Morinville would have to conform with this Regional Plan policy so their evaluation of any initiatives of the Alexander Band with regard to wildlife harvesting or management off-reserve would be in line with their requirements to uphold their statutory plans. Provincial negotiators entering self government discussions with regard to wildlife habitat management should pay due regard to the positions of the municipalities and the regional planning commissions. The Minister of Municipal Affairs would not expect Provincial negotiators to compromise decisions made by these authorities for private land under their jurisdiction.

5.5.1.3 General Policy on Environment and Resources: Department of the Environment

The Province of Alberta's commitment to sound environmental management, planning and protection is demonstrated by the formulation of the Department of the Environment which administers the following legislation:

Clean Air Act
Clean Water Act
Department of the Environment Act
Groundwater Control Act
Land Surface Conservation and Reclamation Act
Surface Reclamation Act, and
Water Resources Act.

The Department's perspective may be illustrated by a fact sheet released in February, 1989 regarding the development of pulp mills in Alberta (Alberta Environment, February, 1989, Pulp Mills in Alberta The Environmental View).

"PULP MILLS IN ALBERTA..THE ENVIRONMENTAL VIEW..FROM ALBERTA ENVIRONMENT

ALBERTA ENVIRONMENT'S MANDATE IS TO ACHIEVE THE PROTECTION, IMPROVEMENT AND WISE USE OF OUR ENVIRONMENT, NOW AND IN THE FUTURE.

Our goal with respect to the development of pulp mills is to ensure that the environment is protected. To achieve this goal, the Alberta Environment requires very thorough environmental evaluations prior to allowing a project to be built. We also insist on stringent standards for environmental protection that reflect the best available technology for this type of development. The Hon. Ian C. Reid, Minister of Environment, announced new standards for pulp mill developments on December 2, 1988 that will put Alberta mills amongst world leaders in controlling the production of dioxins and other organic compounds and in minimizing their release into the environment.

A proposed pulp mill is required to prepare an Environmental Impact Assessment (EIA) report and submit it to the government and members of public for review. Proponents are required to consult with the public in the preparation and review of the EIA to ensure that the public's concerns are addressed. We will not issue any environmental approvals until the review of the EIA is completed, and every step has been taken to determine and understand the environmental effects of the proposed project. The proponent must then meet the standards announced by the Hon. Ian C. Reid.

Albertans' concern for their communities, lifestyles and the environment in which the live is part and parcel of Alberta Environment's mandate. This incudes protecting the air and waterways for all users, improving existing conditions by controlling impacts and wisely using our existing environment to build environmentally sound projects that will benefit Alberta's communities, now and in the future."

The delivery of services by the Department of the Environment to meet it's mandate may be viewed through it's approach to new development and through it's ongoing management programs.

5.5.1.3.1 Approach to New Development

(a) Referrals to the Land Use Branch: Environmental Assessment Division

The Environmental Assessment Division of the Department of the Environment is the entry point to the system of environmental management for proponents of new developments. Applications for subdivision received at the municipal level are forwarded by regional planning commissions and the Department of Municipal Affairs, and other subdivision approving authorities to the Land Use Branch of the Environmental Assessment Division for review of the environmental hazards associated with the proposed developments. "The Branch assesses and evaluates major land use allocations including public land use assignments, subdivisions, developments, and industrial site locations. It objective is to prevent the irreversible allocation to incompatible uses of high-quality agricultural, recreational, and high water-yield lands and quality waterbodies" (A Directory of Planning Agencies in Alberta, Alberta Municipal Affairs, 1987, p.9). The subdivision approving authority renders its decision on the application giving due regard to the position of Alberta Environment.

(b) Referrals to the Environmental Impact Assessment Review Branch: Environmental Assessment Division

The Land Surface Conservation and Reclamation Act authorizes the Minister of Environment to order the preparation and submission of reports assessing the environmental impacts of proposed developments.

Proponents of major resource developments affected by this Act and proponents of developments likely to create significant environmental impacts are required to contact Alberta Environment for a determination of the need for an environmental impact assessment (EIA). If an EIA is ordered, the EIA Review Branch decides on the scope and content of the assessment required, coordinates interdepartmental review of the EIA and manages the review process which calls for public participation at the planning, preparation and review stages.

EIA's on energy projects requiring the approval of the Energy Resources Conservation Board (ERCB) must be filed with both agencies. This offers the public additional opportunity to make submissions on environmental concerns before the ERCB at required public hearings.

When an EIA is concluded, the proponent may receive Ministerial and Executive Council Approval. This does not constitute permission to proceed but does enable Alberta Environment to establish terms and conditions for permits and licenses that will be needed. Proponents may then seek other resource use approvals such as are required under the Coal Conservation Act, the Forest Act and the Water Resources Act; surface rights approval from private landowners or the government under the Public Lands Acts; Planning approval under the Planning Act; and environmental approvals under the Clean Air, Clean Water, and Land Surface Conservation and Reclamation Acts. When requisite permits and Licenses are issued, the proposed development is considered to be environmentally acceptable.

In July, 1987 a Review Panel on Environmental Law Enforcement in Alberta was established. It is noted in the panel's completed report now under review, An Action Plan for Environmental Law Enforcement in Alberta, (1988, p.6) that "The licensing system is the heart of Alberta's pollution control system which focuses on a preventative, rather than reactive, response to pollution control. Alberta's licensing and permit system is the most comprehensive in Canada and provides a strong base for enforcement of environmental protection legislation."

5.5.1.3.2 Ongoing Management Programs

Services are delivered to Alberta Environment's major client groups -- municipalities, industry and the general public -- under the administration of Environmental Protection Services, Environmental Evaluation Services and Water Resources Management Services. A comprehensive description will not be undertaken for the purposes of this report. Rather, mention will be made of services that could be relevant to self government negotiations as Indian bands may wish to be beneficiaries of programs yet reluctant to be subjugated under the provincial regime. Indian bands may desire parallel systems which may or may not be feasible owing to financial and administrative constraints or tenable if standards are widely discrepant.

(a) Environmental Protection Services

Waterworks

To ensure Albertans have safe drinking water, the Standards and Approval Division reviews and issues approvals for waterworks systems including water supply systems, water treatment facilities and water distribution systems, and administers an inspection and sampling service. The Municipal Engineering Branch provides engineers and technicians to advise and assist operators and councils with the operation and maintenance of their waterworks and provides an emergency response service if there is a mishap. A certification program is administered and courses are offered annually by the Department to assist operators of water systems in upgrading their knowledge and qualifications. The Hydrogeology Branch provides water well expertise and operates the Groundwater Resource Information Service.

Sewerage and Storm Water Works

To protect the Province's surface and ground water and land resources from municipal waste water pollution, the Standards and Approvals Division reviews and issues approvals for sewerage projects including sewer and storm water systems and waste water treatment facilities. As with waterworks, an inspection and sampling service is provided, engineers and technicians are available, a certification program and training courses are offered and an emergency response system is in place.

Regional and Modified Landfill Evaluations

To ensure that landfills are developed at sites where the risk of groundwater contamination from the landfill is minimal, hydro-geological investigations and evaluations are done to assist municipalities in site selection.

Storage, Treatment and Disposal of Hazardous Wastes

To protect water and land resources from improper hazardous waste practices, the Standards and Approvals Division reviews and issues approvals for the construction and operation of landfills that receive hazardous waste, storage facilities, and incinerators where any waste is incinerated.

Pesticide Management

To provide and promote a high standard of pesticide management practices and awareness, the Pesticides Chemicals Branch controls use, application, handling, monitoring, assignment of responsibilities, and classification of pesticide chemicals. Control measures include permits, licenses, examinations, classification, monitoring and inspections. Training courses have been developed to provide instruction in the safe and effective application and handling of pesticide chemicals for applicators and retail dispensers.

(b) Environmental Evaluation Services

To protect the environment by minimizing surface disturbance and reclaiming disturbed land, the Land Reclamation Division reviews development and reclamation plans and specifies operating terms and conditions for such activities. The Land Conservation and reclamation Council issues reclamation certificates to operators who have returned the land satisfactorily and reclamation orders to operators who need help in qualifying for a certificate.

(c) Water Resources Management Services

To allocate water in an orderly manner and for beneficial purposes while at the same time protecting the source of supply, individual rights and the environment, the Water Resources Administration Division issues licenses for the diversion and use of surface waters and ground waters. Licenses are issued for the impoundment of surface waters and diversion for drainage or flood control without impoundment. Permits are issued for the placement of structures or materials in, over or next to water and for the alteration of shorelines, banks or the bed of a waterbody in a way which might affect water management.

5.5.1.4 Evolving Directions on Environment and Resource Use

In September, 1987, the Canadian Council of Resource and Environment Ministers (CCREM) unanimously endorsed the report of the National Task Force on Environment and Economy. Forty recommendations were made with particular emphasis on bringing about a greater integration of economic and environmental decision-making. Three recommendations called for immediate

action to set the foundation for progress. These called for the creation of multi-sectoral Round Tables on Environment and Economy in each of the provinces and territories, the preparation of government action plans, and the development of conservation strategies.

Alberta's position in the development of a policy on sustainable development should be noted for it may be a keystone to the province's position in negotiations with Indian bands regarding environmental management and protection.

When the legislature opened on February 17, 1989, the Premier of Alberta made the following commitment:

> "Sustainable economic development in harmony with our environment requires that we strengthen our ability to consolidate the views of all sectors. Therefore, my government will establish a multisectoral environmental round table. The round table will build consensus and develop proposals to co-ordinate and integrate environmental and economic decisions" (Alberta Hansard, February 17, 1989, p.6).

Alberta will be developing an action plan but the expected completion date has not been announced. The Province's conservation strategy is being produced in draft from by the Alberta Conservation Strategy Steering Committee under the auspices of the Environment Council of Alberta.

5.5.1.5 Existing Powers and Opportunities for Indians in Environmental and Wildlife Management

The ensuing discussion of the powers of Indians and the opportunities for them to exert their individual and collective influences will be focused in the context of government systems on-reserves and off-reserves.

Notwithstanding the paramountcy of the Indian Act, Federal and Provincial laws of general application also apply to Indians. Native rights to hunt and fish conferred in the Royal Proclamation of 1763 and the treaties have been tested in the courts with the conclusion that today, in Alberta, Indians are exempt from Provincial legislation governing wildlife subject to the provision that the Indian is hunting "for food" on "unoccupied Crown lands" or "lands to which the said Indian has the right of access" or the Indian is on a reserve.

5.5.1.5.1 On Reserve Powers and Opportunities

The powers native people hold on reserves have already been dealt with previously. Since they derive from the Indian Act, they are no different for Alberta than for other parts of Canada.

5.5.1.5.2 Off Reserve Powers and Opportunities

(a) Crown Lands

Owing to the recognition, in Alberta, of the importance of soliciting public participation in planning, Indian bands have ample opportunities to share their perspectives and concerns with administrators and decision-makers in environmental planning and management processes. Although their role is advisory, their views can have a bearing on the evolution of land and resource development.

The integrated resource planning process for public land is an ongoing program rather than one spurred by necessity owing to the presence of a specific development proposal. When the decisions made to proceed with a plan at the regional, subregional or local level, the Resource Planning Branch of the Department of Forestry, Lands and Wildlife puts a core planning team in place. Indian bands may have formal access to the planning process through the Native Services Unit of the Department of Municipal Affairs. This Unit is meant to have a coordinating role between bands and all provincial agencies.

According to the Resource Planning Branch, this link is weak for undetermined reasons. Bands have informal access as members of the general public and special interest groups. Whereas in the distant past native participation was dismal, it is improving. Groups have been attending public meetings but, for the most part, they do not offer input. Cultural differences may be key as the planning forums seek alternative ways of looking at the land base and entertain conflicting views from different resource users. Native people tend to not want to participate in that kind of forum. Responses have been forthcoming when communications have been more personal so the Resource Planning Branch has started to travel to native communities for meetings.

Staff perceive that even though the chief speaks, mechanisms are in place to consult with elders, members and people "with an important view" to achieve a consensus. The public participation process is beginning to work with native participants and could be continuously refined to foster their input.

(b) Private Land

Subdivision and development applications are heard by regional planning commissions and municipal councils or municipal planning commissions for private lands surrounding Indian reserves. As adjacent landowners or affected persons, bands may appeal decisions to the Alberta Planning board or local Development Appeal Boards to protect their own interest or forward concerns on environmental management. Such participation is rare and could be fostered for the benefit of comprehensive land use and environmental planning.

Indian reserves are not municipalities under the Municipal Government Act so it is not possible for the Minister of Municipal Affairs to designate the council of an Indian band to be a member of a regional planning commission. Representatives of Indian bands have attended regional planning commission meetings as observers rather than participants for the benefit of information sharing. Opportunities for participation should be investigated as many Indian Reserves are located within regional planning commission boundaries and all members can benefit by understanding each others' motivations and development goals and constraints.

(c) General

Development proposals that require Environmental Impact Assessments surface throughout the Province on public and/or private land. Indian bands are welcome to appear before EIA Review Panels or before the Energy Resources Conservation board on energy proposals. Opportunities exist for Indian bands to be active participants in change but they are to no avail if unused.

From time to time, staff of the fish and Wildlife Division of Alberta Forestry, Lands and Wildlife have approached Indian bands for assistance with wildlife harvesting studies for management purposes. They would like Indian people to be more involved in monitoring wildlife populations and in identifying

habitat issues that impact wildlife resources. Indians are suspicious that there are regulatory motives behind the initiatives and refrain from being involved even though their input could be beneficial for the cause of wildlife management. Communications need to be nurtured so that a system can be developed for the sharing of insights. A regional wildlife officer remarked that he would like to see natives involved in the manner of fish and game clubs which examine issues and express their concerns on the impacts of agricultural expansion and oil and gas activities on wildlife in their area. They could come forward to the department or protest to the media in their region. What was important was that indicators of problems would be brought out into the open.

Opportunities exist for Indians to have a more pronounced role in wildlife and environmental management. They can help wildlife officers at the local level, participate in planning studies and development assessments at the regional level, and assist with the development of the conservation strategy at the provincial level. Increased involvement will not come about overnight nor will self government magically unlock the door.

The Fish and Wildlife Division is waiting for budget approval to launch a Resource Management Assistant Program geared to introducing interested people to management principles and practices while providing employment and qualifying them for entrance to Lethbridge College. Educational initiatives accessible to native people are a good means to stimulate their involvement.

5.5.2 Ontario

5.5.2.1 Changes in the Provincial Position

There has been some movement at the level of the official provincial position with respect to recognizing the interest of native people in the environment. This may be seen in the evolution of formal opportunities for native participation in existing provincial decision-making structures and in a comparison of the performance of the Minister of Natural Resources in the early 1970s with the views of the current Minister Responsible for Native Affairs.

However, these changes in outlook or philosophy may not yet be incorporated in institutional practice or decision-making. MNR remains reluctant to share its traditional authority over lands

and resources with other departments of government, let alone native people. Attempts to promote native involvement in fisheries planning and in timber management have not gone smoothly, although discussions are still underway. While the Minister Responsible for Native Affairs repeated the offer of a role for the Bear Island Band in land management in the Temagami area after the Indians' aboriginal claim was rejected in the Ontario Court of Appeal, that role has not been seen as a very extensive one. It certainly does not amount to joint decision-making and is more like interest group representation alongside a variety of other organizations with concerns in the area.

MNR has never been sympathetic to native claims concerning decision-making authority and the department now appears intent to proceed rapidly with further resource development in the wake of the province's success in the Ontario Court of Appeal decision on the Bear Island Band's land claim. While Temagami is not within the Nishnawbe-Aski Nation region, it has often been regarded as a "model" land management district. Ontario's willingness to involve Indian communities in resource management and environmental decision making clearly remains subject to important limitations, as the Temagami situation illustrates.

5.5.2.2 The Environmental Management Regime in Ontario

5.5.2.2.1 Environmental Decision-Makers in Ontario

Decisions affecting land, water, wildlife,resources and the environment are made by a wide variety of institutions. This section of the memorandum identifies provincial-level decision-makers in the province of Ontario and indicates in general terms the nature of the responsibilities exercised by each.

(a) The Legislature

Ontario legislation of particular significance for native involvement in environmental management regarding land, water and wildlife probably includes the following (responsible ministry in brackets):

- The Conservation Authorities Act (MNR)
- The Crown Timber Act (MNR)

- The Endangered Species Act (MNR)
- The Environmental Assessment Act (Environment)
- The Environmental Enforcement Statute Law Amendment Act (MOE)
- The Environmental Protection Act (including the "Spills Bill") (MOE)
- Game and Fish Act (MNR)
- The Lakes and Rivers Improvement Act (MNR)
- The Mining Act (Northern Development and Mines and MNR)
- The Ontario Water Resources Act (MOE)
- The Pesticides Act (MOE)
- The Public Lands Act (MNR)
- The Indian Lands Act,1924 (MNR)
- Tourism Act (Tourism and Recreation)
- Wild Rice Harvesting Act (MNR)

In addition to these statutes, Ontario is involved in administrative arrangements associated with a number of pieces of federal legislation of particular significance for the environmental interests of native people in the province. These include the Migratory Birds Convention Act, the Fisheries Act and the Freshwater Fish Marketing Act.

(b) The Cabinet, Individual Ministers, Departments

Decisions of the government of Ontario may directly affect the environmental interests of native people in the province. For example, the government's indemnification of pulp and paper operators whose activities contributed to mercury contamination in the English-Wabigoon River system in northwestern Ontario necessitated direct provincial involvement in settlement negotiations leading to the Mercury Pollution Settlement and the creation of a board to administer compensation awards.

In the formulation of policy or in the initiation of specific projects and programs, several Ministries of the Ontario

government are regularly involved in actions with significant actual or potential environmental consequences. The key government departments for purposes of understanding environmental and resource use decision-making relevant to self-government negotiations would appear to be the following:

- Ministry of the Environment

  Through its Operations Division (see Appendix 9) MOE is responsible for the implementation and enforcement of standards and guidelines set out in or formulated under the legislation which it administers. The Ministry's Environmental Assessment Branch, for example, encourages consideration of environmental, social and economic alternatives in the planning and development of undertakings and it co-ordinates the review and evaluation of environmental assessments of proposed undertakings.

- Ministry of Natural Resources

  MNR activities are associated with the development and conservation of natural resources in Ontario including lands, water, wildlife and forests. Major Divisions within the Ministry deal with Forest Resources (harvesting and regeneration), Lands and Waters (watershed conservation and the management of resources other than gas, oil, coal or minerals), and Outdoor Recreation (fisheries, parks and wildlife, including fur management and habitat). An Office of Indian Resource Policy located within the Lands and Waters Division is responsible for negotiations concerning Indian land claims and other natural resource questions and for co- ordination of all facets of MNR's involvement in matters relating to native people within the province. Appendix 10 outlines the responsibility of various divisions within MNR for particular pieces of provincial legislation.

- Northern Development and Mines

  Alongside responsibilities for a wide range of service delivery functions in the north, the Mines and Minerals Division encourages the development of mineral resources throughout the province. Through its Mines and Minerals Program the ministry is responsible for licensing, and for the formulation of standards for management and protection of public lands used for mining.

- Ontario Native Affairs Directorate

  This small central agency has responsibilities including co-ordination of communication, negotiation and mediation processes with native organizations and Indian bands in the province. The Minister, who is also the Attorney General,

deals through the office of native affairs with land claims, aboriginal constitutional issues and self-government agreements. Direct program responsibilities remain under the direction of line ministries.

(c) Administrative Agencies, Boards and Commissions

Ontario has established an exceptionally wide range of agencies, boards and tribunals to advise, regulate, operate or administer different activities within the province. Many of these, directly or indirectly, have responsibilities in the realms of environmental or resource management or are responsible for activities with important environmental implications which may, depending on circumstances, affect the interests of particular native communities. The following list is illustrative only. For convenience the organization follows a departmental format:

- Energy
  - Ontario Energy Board
- Environment
  - Environmental Appeal Board
  - Environmental Assessment Advisory Committee
  - Environmental Assessment Board
  - Environmental Compensation Corporation
  - Ontario Waste Management Corporation
- Natural Resources
  - Game and Fish Hearing Board
  - Lake of the Woods Control Board
  - Ontario Renewable Resources Research Review Board
  - Indian Wild Rice Development Agency

    (Appendix 11 describes several of the administrative commissions associated with Ontario MNR.)
- Northern Development and Mines
  - Northern Development Councils

- Native Affairs Directorate
    - Ontario Tripartite Council
    - Indian Commission of Ontario
    - Interministerial Committee on Native Affairs

(d) Royal Commissions and Task Forces

Task forces, royal commissions and public inquiries are frequently used in an investigative or advisory capacity to provide information and recommendations to government on matters or public concern. Although the results of these undertakings are not in themselves decisions as such, their potential influence on subsequent government action may be considerable. Recent examples of Ontario Royal Commissions with important environmental implications for native people include The Royal Commission on the Northern Environment (Hartt/Fahlgren) and the Royal Commission on Electric Power Planning (Porter). Recommendations of the RCNE dealt with almost all aspects of resource use and land management in Ontario north of 50.

Somewhat less prominent investigations have also been utilized by the provincial government to examine environmental matters. The Temagami Working Group is an important example of such a "citizens committee" formed to report to the Minister of Natural Resources on a particularly controversial forest resource use and access proposal in Northeastern Ontario. The native community declined to be represented on the committee as participation would appear to have been inconsistent with ongoing litigation regarding an outstanding land claim. (See Attorney General for Ontario v Bear Island Foundation, 49 Ontario Reports (2d) 353 and the unreported decision of the Ontario Court of Appeal, 27 February 1989.)

(e) Crown Agencies

Several crown agencies, while not directly charged with environmental management, engage in activities with significant environmental implications for resources use and the environment. The Northern Ontario Development Corporation and Ontario Hydro are obvious examples. The latter is of particular interest because of the extent of its activities across the province and because of the history of disruption which hydro diversions and flooding have had on native communities and the native economy.

(f) Interjurisdictional Authorities

The potential for environmental management issues to involve neighboring provinces or to have international dimensions is responsible for the existence of a small number of public authorities whose attention is directed towards matters of interjurisdictional significance. Of these, the Canada-US International Joint Commission with responsibilities related to transboundary water management is the most widely known.

(g) The Private Sector Decision-Makers

The Environmental Assessment Act has infrequently been applied to privately-initiated projects. However, a proposed Reed paper mill at Ear Falls and the Onakawana development are examples of private undertakings in the area of concern to NAN which were designated for environmental assessment.

5.5.2.2.2 Forms of Environmental Decisions

(a) Quotas and Allocations

In Ontario, quotas and allocations respecting fish and wildlife use, forest extraction and the granting of water power rights and privileges are conducted through the Ministry of Natural Resources. A series of attempts has been made over the years to accommodate native interests in these renewable resource-use decisions and new arrangements are again under discussion, especially with regard to fishing, trapping and hunting in the Treaty No. 9 area of northern Ontario where NAN has particular concerns. (Spiegel, "Ontario Provincial Native Policy and Directions", in Long and Boldt eds. Governments in Conflict? Provinces and Indian Nations in Canada, 1988, p102) Although quota arrangements will be subject to detailed inquiry in relation to a study of renewable resources, the observations of the RCNE illustrate the basic native attitude.

> "Quotas set by the Ministry of Natural Resources for commercial fishing and trapping refer to, not only a maximum but a minimum allowable annual harvest. The minimum must be met for an operation to continue to be licensed. Some native people told me they feel compelled to over-fish the lakes each year to satisfy a minimum government quota to retain their licence, thereby causing a

> negative impact on long-term harvesting potential....In rejecting the idea of a quota system, the native people also emphasized to me both the spiritual ties of living off the land and the essential cultural traditions which enhance their way of life and preserve a symbiotic relationship to the northern environment." (Ontario, RCNE, Final Report and Recommendations, 1985, 4-22)

(b) Project Approvals and Impact Assessments

Depending upon the applicable legislation, any one of several decision- makers (including the Minister of the Environment and the Environmental Assessment Board) are authorized to grant approval for specified activities. Such approvals may be subject to terms and conditions regarding the staging of development, monitoring, or remedial measures required and so on. (Jeffrey, Consideration and analysis of conditions of approval likely to be imposed by the Environmental Assessment Board in granting project approval, (1987/88) 1 Canadian Journal of Administrative Law and Policy, 21-42.)

It is important to note that exemptions from the operation of the Environmental Assessment Act limit the applicability of this legislation. Some projects in which native environmental management interests might be involved are thus not covered by environmental assessment. An important example of this exclusion was the extensive district and strategic land use planning exercise carried out by the Ministry of Natural Resources in the 1970s and 1980s. NAN's criticisms of this process have been noted elsewhere in this report.

(c) Regulations

The regulation-making process permits the development or refinement of standards and categories under existing legislation affecting environmental matters in a variety of settings. In relation to environmental assessment, for example, regulation by the Lieutenant Governor in Council has been the procedure for exempting certain persons or undertakings from the application of the act or, despite an exemption, for designating a public sector activity as subject to the province's environmental assessment legislation.

Another area where regulation making may be of concern to native communities interested in environmental management is in relation to waste management. Producers, carriers and recipients of

industrial and hazardous waste are governed by regulations. It would be of interest to native communities to know what substances have been classified as hazardous and whether the applicable controls are sufficiently sensitive to particular native interests.

(d) Recommendations from Inquiries

Although the recommendations of public inquiries to the provincial government have an essentially advisory status and are without formal effect until implemented or acted upon by provincial authorities, such recommendations may have significant influence on the decision-making process. The work of the Royal Commission on the Northern Environment, for example, deals extensively with native interests in environmental management and resource use.

(e) Guidelines / Plans

The Ministry of Natural Resources land use planning process of the 1970s and 1980s was not subject to Environmental Assessment although the results of planning arguably have important environmental implications. The Royal Commission on the Northern Environment examined the exemption and its significance in considerable detail and concluded as follows:

> "The government has never stated its reasons for its about-face on the status of the land use plans under the Environmental Assessment Act....
>
> Whatever the rationale was that led the government to place the land use plans beyond the reach of the Act, the consequences of that action are clearly unacceptable....
>
> While a land use plan may not legally commit natural resources to 'project-specific end-uses', the Minister's endorsement of the plans - which he did not give - would surely have signified that they could be accepted as an authentic, consistent and potent statement of his and his Ministry's priorities and general intents for allocating, using, and protecting natural resources and for resolving sectoral trade-off issues arising from conflicting demands on a finite resource base. Such endorsement would have signified that the integrity of the plans was to be safeguarded - to the extent that changeable circumstances and political realities permit - from frequent non-conforming changes to their

> fundamental objectives, thrust and balance. Moreover, his endorsement of the plans would have established them as a coherent basis for major policy decisions on projects and resource allocations, for later resource management planning, and for operational activities by administrators as well as a very strong signal of government's intentions to interest groups and potential private investors. By not endorsing the plans and hence these functions, the Minister has assigned to the plans an ambiguous and equivocal status that would enable them to be either adhered to or ignored as a basis for reaching decisions, whichever is expedient." (Report, Appendix 14, p. 57)

In addition to the specific problems that have been associated with the exemption of MNR planning from environmental assessment, it is important to not that the land use planning process of MNR has undergone frequent design changes over the past fifteen years. (See Douglas, Larry A., "The land Use Planning Program of the Ontario Ministry of Natural Resources") Appendices 12 and 13 contain the "Ministry of Natural Resources' Statement of Philosophy on Integrated Resource Management" and "Summary of Conclusions from a Review of Integrated Resource Management Paper, Spring 1984".

(f) Compensation for Environmental Injury

Provincial legislation was passed to implement the settlement of compensation claims arising from the mercury contamination of the English and Wabigoon Rivers. The legislation created an administrative tribunal, the Grassy Narrow and Islington Bands Mercury Disability Board, to adjudicate and supervise the distribution of awards to victims of mercury disability. In addition to physicians and members of the public, this board contains representative of each of the two bands.

A more general compensation program associated with Ontario's "Spills Bill" is administered by the newly created Environmental Compensation Corporation.

(g) General Observations

This brief discussion of environmental decision makers in Ontario and the nature of their decisions indicates the complexity of this field of government activity and the wide potential for different types of native involvement. It is also

noteworthy that decisions may assume a variety of forms and that there is significant room for substitution by government of one form of decision for another. This is particularly true within the area of environmental regulation where standard setting for pollution control and effluent charges or effluent discharge rights can be used to accomplish the same ends although they differ significantly in terms of political visibility, efficiency and so on. (Trebilcock et. al., The Choice of Governing Instrument, Economic Council of Canada, 1982.)

5.5.2.2.3 Mechanisms for Native Involvement in Environmental Resource Management

This study has identified the principal type of decision-makers in Ontario whose actions may have such consequences for environmental and resource management and protection that native people may wish to have some involvement in their deliberations. Several issues arise in considering the opportunities for participation:

(a) Source of Entitlement

What is the source of the entitlement to participate and is the participation guaranteed in some way? To answer this question in any particular situation it would be necessary to review each of the range of decisions and decision-makers identified above and to consider their characteristics in relation to the interests and status of the relevant native community or individual.

As illustrated elsewhere in this report, the entitlement of native people to participate in environmental management processes may be found in many sources. Possible sources of an entitlement to participate in some form include the constitution, the common law of aboriginal rights, legislation (including the Indian Act) and regulations. These offer opportunities for native involvement related to the distinctive status of native people in Canada. Legislative and administrative procedures providing for citizen participation offer to native peoples opportunities for involvement similar to those available to other members of the public. Common law doctrines respecting the right to a hearing in certain circumstances may also be applicable. Again, legal claims arising from an actual or threatened interference by development with certain personal, economic or property interests will also support litigation seeking remedies such as damages or an injunction. All of these contribute in some way to native involvement in environmental and resource management

decision-making. There are also negotiated arrangements which provide by agreement for certain forms of native participation in decisions affecting their environmental and resource interests.

(b) The Form of Participation

The form of participation is also of obvious concern to native people who are seeking effective involvement in any decision-making process. Are the proceedings of the decision-maker legalistic in nature, involving counsel and cross-examination for example? Are there provisions, or is it customary for the particular decision-maker to visit interested parties, or is their involvement to take place at some central location? Are notices of proceedings provided in native languages and are facilities for translation available at meetings?

(c) Resources to Support Participation

Financial resources and research or scientific facilities are often required to support participants in the proceedings. Does the decision-maker, for example, contribute to the costs of participation by interested parties or interveners? Is the necessary information available to permit an interested party to participate in an informed manner? (See Michael I. Jeffrey and David Estrin, The Role of Intervenor Funding in Project Approval, International Business Lawyer, Vol 14, 1986,pp. 371) The question of financing and other means of supporting the case native people are trying to make (expert advice for example) may very well become an important element of self-government negotiations concerning environmental management.

(d) Level of Participation

With regard to environmental and resource use matters, native participation now takes place at several levels. At the international level the Inuit Circumpolar Conference deals on occasion with environmental matters and the Grand Council of Cree Indians in Northern Quebec has NGO status in certain UN organizations. Several native organizations made presentations to the Brundtland Commission on the environment and economic development. The AFN and the NCC have participated at the national level in Canada in decision-making relating to forest management and renewal and free trade including its implications for renewable resources and the environment. Participation at the regional level is not uncommon within Ontario as major

initiatives regarding renewable resource management have been undertaken with representatives of the Treaty 3 and Treaty 9 areas. However, local issues will also frequently arise to be dealt with at a band level and problems of co-ordination will need to be addressed.

(e) Notice Provisions

As several native representatives have observed, an important pre-condition of involvement in environmental arrangements is adequate notice of forthcoming decisions. Some typical public notices are attached as Appendix 14. Whether native communities should receive specific notice of upcoming environmental management decisions on the basis of geographic remoteness or linguistic differences may also be a matter for negotiation.

6. CONCLUSIONS

The negotiation of environmental management under self-government will occur in a complex, changing setting. Bearing on its success or failure are events such as the success or failure to negotiate other aspects of native self-government, the inability of the First Ministers' Conferences to define self-government in the Constitution, the success of some native groups in greatly extending the control they can in fact exercise over their environment via the claims process, and tightening fiscal and other relations between the federal and provincial governments.

Until the First Ministers' Conference in 1987, there was an expectation among native people that they might become a third level of government under the Canadian constitution. While, as a constitutionally entrenched third level, their bargaining powers might not have been greatly increased with respect to matters which for generations had belonged to other governments, they would at least have been operating out of their own bargaining position, and not the federal government's.

Unless there is a renewal of the constitutional process, native people have only two choices open to them: the courts and the non-constitutional self-government process dealt with in this study. In either case, there is a danger that empowering native people will be a time-consuming, piecemeal process, dealing issue by issue with small increments of the total bundle of native concerns. The process may prove so drawn out that many native groups may simply not find it worth pursing. It will not likely result in a comprehensive approach to environmental problems or planning.

But native people will themselves determine their future strategy. If the self-government process does not yield results, they may be inclined to bring little to the negotiating table and take much to the courts.

To emphasize a point made earlier in this study, it must be clearly understood that the success of the self-government process does not depend as much on negotiations between the native people and the federal and provincial governments as it does on intergovernmental negotiations. The failure of the First Ministers' Conferences to produce tangible results was not a failure of the native people to give ground, it was a failure of intergovernmental negotiations. From this, one is forced to the conclusion that federal and provincial trade-offs had not been

worked out with sufficient care or that quid pro qous were not large enough. The provinces were asked to share powers with native people but were uncertain about what they were to get in return.

Since, 1987, there has been no indication that provincial governments have become any less reluctant to give up powers without what they regard as sufficient compensation. Given this situation, there may be some reason for concern about the chances of achieving self-government arrangements which fulfill native aspirations, including aspirations about managing the environment. Yet the need for such arrangements remains real and compelling. The native interest in the environment is undeniable.

This interest has been asserted repeatedly. It is not so much a matter of native people not having spoken, but of Canadian governments not being clear about what to do with what they have heard. If the self-government process is to offer hope of improved relations between native people and the larger Canadian society, a strong commitment must be made to it, one which recognizes that real sacrifices may well be required of both the Federal Government and the provinces.

APPENDICES

Appendix 1

Terms of Reference

Terms of Reference

Taken from "S.W.3 SCOPE OF WORK of "APPENDIX "D", STATEMENT OF WORK, CONSULTING AND PROFESSIONAL SERVICES"

The Contractor shall:

1. review existing and potential opportunities leading to self-government options starting from the present possibilities of Indian participation in environmental management as permitted by the Indian Act and provincial legislation and jurisdictions. Results need to go beyond a theoretical presentation. These shall take the form of suggestions for practical arrangements that could actually take place;

2. Provide specific recommendations and suggestions on the following self-government proposals: Alexander and Sawridge (Alberta) and Akwasasne and Whitefish (Ontario). Nishnawbe-Aski Nation (Ontario) discussions on land and resources shall also be taken into consideration. On-reserve and off-reserve potential shall be distinguished, and negotiation tools and parameters identified for both;

3. provide a working definition of environmental management for purposes of self-government;

4. identify existing environmental and wildlife powers of Indian communities;

5. provide a basis for the assessment of environmental matters included in self-government proposals;

6. suggest scope and limitations for negotiations;

7. analyse opportunities for participation in public environmental decision-making processes;

8. describe Ontario and Alberta general policy regarding environmental and resource use, stressing potential for Indian self-government;

9. identify the levers that could be used to convince provincial governments, and federal agencies, of the relevance of Indian participation in those activities. Arguments in support of their participation shall be clearly stated and developed; and

10. recommend mechanisms for conflict resolution.

NOTE: Given that the policy on self-government negotiations is clear on parameters such as no new program and funding to be limited to existing resources, options contemplated shall not rely on hypothetical decision relating to financial environment.

Appendix 2

Chapter 5: "The Impacts of Development"
in Issues, a background paper on behalf of the
Ontario Royal Commission on the Northern Environment,
pp. 189-195

Environmental Standards— Necessary Safeguards

Northerners care passionately about their environment. The Royal Commission was left in little doubt of this at the conclusion of its hearings. Most speakers agreed that development was necessary for economic survival, but nearly all wanted safeguards for the environment to be taken into account when plans were made and approved for that development. With few exceptions, northerners decried past desecration of the land and called for government-enforced standards to ensure that the environment is properly cared for in the future.

Respect for Environment—How Great a Priority?

Charges of pollution and environmental destruction brought to mind images of fish floating belly up, of scum-coated rivers, of black smoke belching from industrial stacks, of the haze created by the exhausts of vehicles, of refuse littering once-pleasant countryside.

To some of the people of northern Ontario, pollution also meant "Fish for Fun" signs along mercury-contaminated rivers, the destruction of the forest by clear-cutting, the flooding caused by hydro dams; and for native people, the abuse of an environment creatd by the Great Spirit, to be used, tended and shared.

For industry in the north, the environment is just one of many factors to be considered in cost-benefit analyses. Like other costs, those for environmental protection are kept to a minimum. Effective business management measures the environment in the dollars and cents that it would cost to install required pollution abatement equipment or to locate at a different site.

To native people and to many other northerners, such a business approach is difficult. How can one place a dollar figure on the land on which one's grandfather had his trapline, or the river from which one's family is fed and one's livelihood earned? But even if one did, others have usually decided which environmental impacts of a proposed development will be abated and which will not. Many northerners expressed resentment that such decisions are often made in the boardrooms of Toronto or government offices in Queen's Park and Ottawa by people who never directly experience the consequences of their decisions.

The Commission learned that northerners understand the cycle of natural change in the northern environment — the erosion of the land, the life cycle of forests, the shifting patterns of the rivers. It is man-caused changes accompanying large-scale developments which are most feared. Experience with these has shown them to be distructive when left uncontrolled. At the Commission's hearings, people referred to the north's legacies of man-made changes in the environment, such as mercury contamination, wood wastes in the waterways, polluting mine tailings.

Many northerners considered that development should be allowed only when adequate regard and respect have been shown for the northern environment. Good environmental legislation, they maintained, must consider the special character of northern Ontario.

The Commission discovered that few northerners tire of proclaiming that they live in the north out of a love for the land. Many stated proudly that they were born in the north, or that they had chosen to live there. Many spoke of their ardent wish to conserve and pass on this land to their children and generations yet unborn.

Some Sort of Control Necessary

Preservation of the environment in the face of future development was a subject of major concern to many people appearing before the Commission. Opinions differed as to how much regulation was appropriate, but there was universal agreement that some form of control was necessary. Questions regarding the matter of environmental standards begged answers. Who was responsible for what? Who would pay? Underlying the anxiety and concern was evidence of peoples' love for the land north of 50 and their strong desire to protect the environment.

One resident's strong attachment was expressed:

"For the land is here, this part of northwestern Ontario, 50 and north — it is still relatively undamaged, still alive, still infused with the quality of the celebration of the meaning of this land. It is one of the very few places left in the world where this is true."

(Millie Barrett, Geraldton, p. 1416)

The north, the Commission learned, is particularly susceptible to pollution:

"Environmental safeguards are equally as important in the north as in the south. Some of the factors in the north create unique problems . . . The reduced buffering capacity of the northern lakes makes them particularly susceptible to acidification . . . By their nature resource-based industries have wide-reaching environmental effects. The climate conditions in the north shorten the period of biological activity which in turn lowers the degree of regeneration as well as assimilation of wastes. This, therefore, requires a longer period of time for the natural systems to respond to man's disturbances."

(Ministry of the Environment, Red Lake, p. 559)

Recognition of this susceptibility, and the need to protect the land were expressed to the Commission:

"It has taken nature millions of years to cover the hard rock which is still very shallow and quite poor. The trees are low in height and stunted. In fact, it is a miracle that the land is covered with a forest . . . The industrial community and its allies in government who are bent on making the easy money, the fast buck, see it differently. They view it as 16,640,000 acres of unclaimed forest that they can log and turn to pulp. They do not realize that if you clear this forest you destroy permanently a delicately balanced ecological system. This land is so unique, so intolerant of disturbance that it seems blasphemous to even think of it as property."

(Treaty # 3, Dryden, p. 419)

For some people, apprehension was so great that further development was opposed:

"We, therefore, as native people are opposed to the big industrial development projects proposed by the provincial and federal governments. These projects completely destroy the land and the beautiful surroundings which are not replaceable but vitally important to the survival of the people. It also destroys the animals that need the elements of the forests and waters to survive. If these development projects do go ahead we will have nothing to offer to our nation yet to be born. Ours was and is the way of nature, a natural existence."

(Chief Fred Wesley, Moose Factory, p. 3234)

Not only natives suggested that development be restricted:

"We believe the past performance of Reed Paper in our area leaves much to be desired. We do not think the environment will withstand the mammoth mechanized development this company proposes. The already polluted English-Wabigoon system cannot be allowed to carry the effluent from any new pulp mill."

(Carl Stephens, Canadian Paperworkers Union, Kenora, p. 2737)

A well-known academic expressed his concern that an industrial society would further develop northern resources even when environmental degradation was a predictable consequence:

"The forgotten side of the equation, it seems to me, is the environment, and the social economic considerations of native people. In even a medium-term perspective (for example, the lifetime of our grandchildren), the environment must be considered of greater importance than the economic side, if we were forced to decide on one side of the equation or the other. However, the pressures for economic development in northern Ontario are so strong that there is little likelihood, during this century, that such an either/or choice would fall on the side of the environment. In realistic terms, therefore, the question is whether decisions on the use and development of water in northern Ontario can be made in a manner that will be compatible with the protection of the interests and rights of native people, and in a manner that preserves the vital elements of the environment, particularly the renewable resource components of it."

(Dr. Douglas Pimlott, Timmins, p. 914)

Not everyone was convinced that environmental protection should be the first consideration on the list of priorities. The Prospectors and Developers Association took exception to the phrase "preservation of the environment." Their contention was:

"The environment is constantly changing. Man, in common with all inhabitants of the biosphere, must adapt to these changes. A static environment is an impossibility . . . Every year this waterway strips five million tons of soil and rock from this region. This rate of erosion is increasing as the land rebounds from the last ice age. An activity of man is miniscule in comparison."
(Prospectors and Developers Association, Timmins, p. 1188)

The Cochrane Board of Trade voiced the need to protect the environment and to pass on a "decent and pleasing countryside and way of life to succeeding generations" (p. 1140) but were concerned that some environmentalists have forgotten that the wealth they consume or administer is created through development of natural resources:

"Many such persons are comfortably established in the affluent upper middle class of our society, they usually inhabit the southern cities of our province, far removed from the areas which they seek to 'protect' and they are usually well removed from that portion of our economy which earns its livelihood from the production, processing or distribution of real physical wealth . . . We are opposed to the unrealistic attitude of such people toward the wealth-producing segment of our society. They sneer at those of us who favour development of our natural resources, as though we were motivated only by greed, and intent on the defacement and destruction of our natural environment . . . We cannot join those who wish us to commit economic suicide by forbidding all development. We too are part of the environment, and we claim the right to a reasonable economic existence."
(Cochrane Board of Trade, Timmins, p. 1139)

Both natives and non-natives expressed a desire for some industrial development to help provide them with a more stable and varied economic base. However, they did not want development at the expense of the environment, and they wanted some control over potential damage to the environment:

"We look forward to progress in the north, but controlled developments for the betterment of our peoples, and not the type of development that is destructive to everything but the profit margin of a large multinational corporation. We have heard that Reed Paper no longer wants the tract of land they had asked for, but we fear that if Reed does not want these forests, then another company with the same bad habits will take the forest sooner or later anyway. We have also heard that a pipeline is to be built close to our communities. We want to know what will be the effects of this pipeline on the land and the animals, and why we have not been consulted about this pipeline that will affect our lives. We have been told that our rivers may be dammed to create hydroelectric power, but we have not been consulted and we think that dams will badly affect our lives."
(Bill Mamakeesic, Sandy Lake, p. 2482)

More specific pollution problems were recounted by northerners in addition to their general concern for the environment. Mercury contamination from pulp and paper mills of waterways received widespread condemnation. But there were other problems created by the forest industry:

" . . . the bush being cut down . . . does have an effect. First of all, it affects the partridge and the deer dependent on the pines and other sources for food. The moose and other large animals need it for protection and shelter from hunters and in the cold winters. The noise scares off the other animals."
(Daniel Yoki, Nakina, p. 1524)

"The forest companies bulldozed my trails. They have destroyed my traps. They knocked trees into the Lowbush River . . . Now I can't canoe anymore because of the deadfall."
(Ontario Abitibi Band, Timmins, p. 1232)

The use of heavy equipment in clear-cutting of the forests has had adverse effects on the soil itself:

"Soil compaction, deep ruts and trenches caused excessive damage to residual trees and layerings."
(Dr. Thomas Alcoze, Toronto, p. 2043)

Mills situated close to towns affect air and water quality:

" . . . unburned wood particles drift into the town depending on which way the wind is . . . Here we have . . . logs that drifted up on the shore from water drives."
(Township of Longlac, Nakina, p. 1459)

The mining industry has also created problems:

"The Kam Kotia Mines . . . is an abandoned mine site with a tailings area which has had some problems . . . Some leaching and spillage is taking place into what is called the little Kam Kotia Creek . . . The old tailings disposal area is, in fact, contaminating the area . . . East of Matheson, Ontario there is a waste disposal dump rising several hundred feet above normal

ground elevation. The content of short fibre asbestos in this waste rock is a health hazard; and the structure of the dump, we understand, is such as to allow erosion by wind as well as rain."
(Ontario Federation of Anglers and Hunters, Timmins, p. 1046)

A chief of Treaty # 9 described some of the residue with which northern residents have been confronted:

"You will have seen the deserted mineheads and several hundred yards of tailings piled 20 feet high. Like in so many other northern communities, outsiders came to Geraldton, dug up the ore and extracted the gold. It was shipped out of the north at a value of $35. per ounce. Where is that wealth today? Do you see it here in Geraldton? No, Mr. Commissioner, all you see today is the ancient structures of the tailings piles. We suggest you fly over the area when the snow has gone and see what the people of Geraldton have today. See how even after all these years, over a huge area nothing grows. Imagine what it must have been like at the height of activity."
(Chief Charlie Okeese, Geraldton, p. 1375)

The tourist industry did not entirely escape allocation of blame:

"American hunters are overkilling the animals . . . They destroy the property on our traplines . . . These people seem to have no respect for our environment."
(Cat Lake Reserve, Osnaburgh, p. 1818)

Acid rain, a possible result of sulphur dioxide emission from the incomplete burning of fuels or smelting processes, was raised as a hazard to vegetation, lakes and fish:

"Considerable evidence has been amassed on the subject of sulphuric emissions. Biochemists of the University of Toronto and McMaster University . . . have documented fallout of diluted sulphuric gases are causing the water quality in many lakes in northern Ontario to become more acidic than the fish populations can tolerate."
(Ontario Federation of Anglers and Hunters, Timmins, p. 1047)

The Commission was told that mercury compounds are more readily soluble in an acidic medium than in an alkaline or neutral one. One consequence could be increased concentration of mercury compounds in northern lakes, leached from rock outcroups by the action of acid rain.

Industry generally was felt to be the source of much pollution:

" . . . none of us, regardless of where we live, can be sure that the water we drink is not contaminated with radioactive materials, or PCB's, or DDT, or mercury, or asbestos fibres, or arsenic, or a combination of these and other poisons."
(Kenora-Keewatin Ministerial Association, p. 2690)

On the other hand, industry representatives advised the Commission that environmental damage is not necessarily as severe as contended by some. For example, Steep Rock Iron Mines described the results of development 30 years ago:

"These projects disturbed the environment to a very significant degree. Today, 30 years after the Steep Rock Diversion was constructed, and 15 years after the dredging was completed, it is evident that while the environment was temporarily disturbed and altered, it was not poisoned or permanently destroyed . . . Properly controlled, massive disruptions of the environment need not have a long-term, negative effect. The fact that the Atikokan area, including the very areas that were disturbed by the diversions and dredging is not only prime vacation area for thousands of tourists and fishermen, but also a favoured home for 6,000 residents of Atikokan, indicates that development of mineral resources, and enjoyment of our northern Ontario environment can exist together."
(Steep Rock Iron Mines, Pickle Lake, p. 1610)

A mining association declared that disruption of the environment was minimal:

"We estimate that these mining activities (north of 50) have affected some 16 square kilometers of land, or four one thousandths of one per cent of the territory you are examining. Evidence of the 26 worked-out mines is rapidly disappearing as the vegetation reasserts itself."
(Prospectors and Developers Association, Timmins, p. 1190)

While industry accepted the need for environmental protection, some concern was expressed by representatives of several mining companies about who should pay and what degree of protection was appropriate:

"When Umex decided to proceed with the development of a mine at Pickle Lake, it committed itself as a matter of corporate policy to the safeguarding of the environment and the furnishing of public services, all to very high standards. The costs have been unreasonably high . . . The time has arrived for consideration to be given to having the general public bear more of the costs of environmental protection. When a company cannot pass on to its customers the costs of environmental impact studies and pollution control projects, then the costs can become fatal when considering the feasibility of a project."
(Union Miniere Explorations and Mining Ltd., Pickle Lake, p. 1694)

"We, the Griffith, are fearful that controls will become so unreasonably rigid that industrial growth will be drastically cut and the economy in the area will become stagnant resulting in social as well as economic problems."
(Griffith Mine, Red Lake, p. 685)

The Ministry of the Environment countered arguments that adherence to environmental standards is driving away investment. Their officers pointed out that many competing jurisdictions, e.g., the United States, Sweden and other provinces all have similar standards. Since companies will be faced with some form of pollution control wherever they locate, inability to compete must be considered with other factors, such as differentials in labour costs, political and economic climates and accessibility of markets.

Considerable concern was expressed at the hearings over the process whereby the environmental effects of proposed developments are assessed. The mechanism for assessment in Ontario is the Environmental Assessment Act,[1] however, it has not as yet been applied north of 50. Industry indicated its wariness about the assessment process. The following comments from Reed Ltd. are representative of industry's feelings with respect to environmental assessment:

"We believe it is essential that whatever regulatory ground rules and development review and approval procedures are established, that these not be unreasonably and unduly restrictive and that they not be subject to arbitrary and unilateral change. If the Commission is to consider and make recommendations with respect to such environmental ground rules and review procedures for different classes of development, then these objectives should be kept in mind."
(Reed Ltd., Red Lake, p. 516)

[1]The Environmental Assessment Act came into effect in July of 1975. The Act establishes a process intended:

1) to identify and evaluate all potentially significant environmental effects of proposed undertakings at a stage when a broad range of alternatives and remedial measures (including the decision not to proceed) is available to the proponent;
2) to ensure that the proponent of an undertaking and those government officials who must approve the undertaking give consideration to means of avoiding or mitigating adverse environmental effects before granting approval to proceed.

All public sector undertakings are subject to the Act unless exempted by regulation.

Only those private sector undertakings designated by regulation are subject to the Act.

Proponents governed by the Act must prepare and submit an environmental assessment containing an evaluation of the ecological, social, cultural, and economic effects of the proposed undertaking and practical alternatives. An assessment, because of the broad definition of environment in the Act, can be used as a basis for determining the full range of economic and social costs and benefits of a proposed undertaking, not just its effects on the physical environment. Once an environmental assessment is submitted, the Ministry of the Environment coordinates a government review of the document by all ministries and agencies with relevant interests or responsibilities.

Both the environmental assessment and the government review are public documents and may be viewed by the public. The Act provides that any person may make written submissions on these documents to the Minister of the Environment. Members of the public may also request that a hearing be held by the Environmental Assessment Board by giving written notice to the Minister.

If a hearing is held, the acceptance of the environmental assessment and approval of the undertaking are decisions made by the Environmental Assessment Board. The provincial Cabinet may vary the decision of the Board, substitute its own decision, or require a new hearing to be held.

If no hearing is held, the Minister of the Environment decides upon the acceptability of the environmental assessment and the Cabinet determines whether the undertaking should be allowed to proceed.

All important notices and documents under the Act are available to interested members of the public and are included in a public record maintained by the Minister.

Onakawana Development Limited urged the Commission to consider the effects of uncertainty and delay in the assessment process and suggested that:

"A single government agency, a single, well-established procedure, and one jurisdiction for submissions, reports and hearings and approvals would be of great benefit."
(Onakawana Development Limited, Timmins, p. 958)

That is, it is not so much the existence of an assessment process that could inhibit development, but the uncertainties created by "a constant recycling or repetition of the process prior to approval". (p. 958)

There seemed, in fact, to be a general feeling among both developers and those anxious to control development that one of the Commission's most significant contributions would be to examine and clarify the procedures whereby proposed development projects for the north are assessed. In effect this would necessitate an examination of the existing legislation, the Environmental Assessment Act. Many felt that:

"Although your Inquiry has not been set up under, and indeed is completely independent from the recently proclaimed Environmental Assessment Act, we believe that there are strong parallels between your work and specific environmental assessment of designated undertakings under the jurisdiction of the Act. We believe, therefore, that your work will influence future application of the Act."
(Ontario Society for Environmental Management, Toronto, p. 2200)

Many of the suggestions made to the Commission were directed towards developing a humane and sensitive planning and environmental assessment model for the north. These included recommendations for provision for community hearings, full disclosure and access to all documents and information and adequate funding for public participation. A group from York University outlined what it considered essential to an adequate assessment:

"Assessment procedures should require effective participation by all affected individuals and groups, and permit participation by other interested organizations.

For this criterion to be fulfilled it is necessary that there be:
(a) full and convenient access to relevant information for all actors;
(b) provision of sufficient time and resources for disadvantaged groups to conduct original research and prepare both their own positions and responses to the proponent's arguments;
(c) independent forums for the evidence to be received and evaluated;
(d) a public information program."
(York University Polar Gas Case Study Group, Geraldton, p. 1307)

While industry expressed the wish that the assessment process be streamlined as much as possible and exorbitant costs avoided, most northerners were anxious that significant local input become an essential ingredient of the assessment process. Many felt that present legislation was inadequate because there was no such provision for "real" public involvement. Dr. John Spence drew a parallel with the situation in northern Quebec:

"If this development (Onakawana) were presently in northern Quebec, the terms of reference of the assessment would be established . . . (by) native people, provincial and federal representatives . . . In Quebec, native people would also participate in the evaluation of the assessment and in the formulation of the final impact statement."
(Dr. John Spence, Timmins, p. 1093)

The Northwestern Ontario Municipal Association also felt that:

"(Environmental) controls should be specific to individual sites and developments and should incorporate local input into decisions which will affect the lifestyle of the people of the area."
(Northwestern Ontario Municipal Association, Kenora, p. 2522)

The Law Union of Ontario urged the Commission to examine the present Environmental Assessment Act to determine whether it includes:

" . . . effective public participation. Funding must be made available to permit meaningful involvement by the individuals and communities affected by any proposal, and there must be real access to the decision-making process through both formal and community hearings."
(Law Union of Ontario, Kenora, p. 3041)

Pollution Probe recommended as well that:

" . . . the Commission critically examine Ontario's environmental assessment legislation and suggest amendments to close loopholes as large as the one through with the Darlington Nuclear Generating Station slipped."[1]
(Pollution Probe, Toronto, p. 2026)

[1]All public undertakings are subject to the Environmental Assessment Act unless specifically exempted. The Darlington Nuclear Generating Station was exempted on the grounds that it was well advanced in planning when the Act was proclaimed.

Representatives of Treaty # 9 raised a number of questions about the adequacy of the Environmental Assessment Act:

"In our opinion, the Environmental Assessment Act is unclear in its criteria and inadequate for examining such large-scale projects as Onakawana and Reed Paper developments. It is crucial that the whole Act be reviewed, refined and revised. These five questions, we think, are the vital ones to be asked:
1) Was the Act designed on the basis of sufficient knowledge of our fragile northern environment?
2) Did its design take into consideration any other worldwide environmental practices?
3) Does it have enough scope to cover massive projects with a multitude of environmental affects?
4) Is there a realistic method of enforcing the regulations of such an act?
5) Finally, and most critically, why was this Act established without prior consultation with the people of the north, the people to whom it matters the most?"
(Treaty # 9, Moose Factory, p. 3353)

And at Moosonee, Andrew Rickard, Chief of Grand Council Treaty # 9, stated that:

"The Environmental Assessment Act only provides for a southern industrial and urban society; it was not drafted with the fragile environment of our north in mind. Most important, it was developed without the input of our people, the majority of the inhabitants north of the 50th parallel. The Act contains no recognition of our culture, our economic style, nor the very real conceptual differences that exist between our society and your industrial society."
(Treaty # 9, Moosonee, p. 3093)

Beyond the question of assessment prior to the approval of a project lies the monitoring of the completed project and its adherence to environmental standards. Once an industrial plant is in operation what should be an acceptable level of environmental standards and how can these standards be enforced?

Current provincial standards were seen by some as not stringent enough to protect the environment:

"Ontario Hydro has repeatedly stated that the emission from its coal-fired generating station at Atikokan

will meet the standards established by the Ontario Ministry of the Environment. The project will not, of course, meet the United States and Minnesota SO_2 standards. Our concern is that the Ontario standards are inadequate."
(Treaty 3. Kenora, p. 2563A)

Others had no argument with the quality of the standards as such. In Kenora, Warner Troyer expressed his concern that government unwillingness to enforce standards was more of a problem than low standards:

"Nor do assurances from Premier William Davis and Environment Minister George Kerr that Ontario has the best pollution control and health protection legislation in the world give rise to much confidence. Vichy France, after all, had the first Good Samaritan legislation in history: and Nazi Germany had model social welfare laws. It is the will to enforce the laws, as demonstrated by the resources and priorities assigned to them, that talks, not the bare or barren statutes."
(Warner Troyer, Kenora, p. 2617)

Proposed solutions to the pollution problem could be divided into three groupings: a) promotion of the conserver ethic; b) utilization of technology to limit damage; and c) establishing and enforcing adequate safeguards for the environment.

Some of those advocating a conserver society pointed to the Indians, who had lived in the north for centures without damaging the ecology, as an example for all Ontarians:

"The native people have lived in Canada for thousands of years without electricity, gas, heat, or automobiles and we still survive . . . Is it not time that natives and non-natives work together to find a solution? With uncontrolled development aimed only at profits and without regard for the delicate balance of life, we will only gain a few years of easy living; then it will all begin again. Meanwhile, our traplines are destroyed, our waters polluted, and our morals defiled as unconcerned outsiders come into the communities. Listen to us! We can work together. We can help each other. People abuse what they have and then are still not happy. Study our way of life and you will find a way of live in the present economic pressures without destroying northern life and human lives."
(Native Student Association, Lakehead University, Osnaburgh, p. 1932)

Pollution Probe expressed its belief that:

"A stable environmental and economic future for Canada is possible only if we begin immediately to implement the 'conserver ethic'. In recognizing that natural resources are limited in extent, a conserver society seeks to minimize the waste and abuse of these resources. We can, quite literally, do more with less."
(Pollution Probe, Toronto, p. 2022)

With regard to technology, opinion was divided as to whether the present state of the art was sufficient to maintain the environment in a prudent manner. There were those who claimed that present technology is adequate:

"We submit that with the experience and technology developed through the years, modern industry can control pollution effectively. Mining developments of recent years in our area demonstrate this fact."
(Association of Professional Engineers, Red Lake, p. 669)

Others saw a need for further research and felt that government was the appropriate agency to initiate such research:

"We must develop alternative technologies which are soft or non-violent . . . Government must take an active part in developing these alternative technologies, and they must take an active part in evaluating technologies before they are put into use."
(David Schwartz, Kenora, p. 2952)

Once those technologies are available, they must be used, and non-compliance met with penalties:

"Pollution controls applied to factories would mean that the technological advances of the seventies and the eighties are being utilized to meet the requirements and wishes of both government and the people of the province. Once the mechanics of the controls are established, they must be both monitored and enforced rigidly, with fines and restrictions serious enough to warrant compliance on the part of the industry."
(Madsen Community Association, Red Lake, p. 539)

A high school student echoed this thought:

"Industry should not be allowed to step over government controls. If industry does not adhere to the regulations, strong penalties against the offenders should be strictly enforced. Our environment is our children's future."
(Cathy Morgan, Red Lake, p. 521)

Northern white residents, it was argued, must come out strongly in defence of environmental standards, otherwise they may find themselves in the position described by a native spokesman from Whitedog:

"You have been on this continent for 600 years now and there exists very little evidence that you've learned a thing. If you continue in your present fashion, in another 600 years you'll find yourselves sitting all alone and naked on a hunk of broken rock outside of where Ear Falls used to be, asking yourselves, 'Hey, what the hell went wrong?', and you might even add, 'Hmm, maybe we should have listened to them Indians'."
(Charles Wagamese, Whitedog, p. 2808)

Appendix 3

Ontario, Royal Commission on the Northern Environment, Final Report and Recommendations, 1985
R-12 to R-18

The Northern Forest

5.1 Recommendation:

That the Ministry of Natural Resources be required by law to establish and maintainan up-to-date Forest Resources Inventory and that this Inventory contain accurate information on timber volume and regeneration capability of the province's forests including timber volumes on already cut and regenerated areas.

5.2 Recommendation:

That the Crown Timber Act be amended to provide that forest product companies be strictly liable for wasting wood in forest areas allocated to them for cutting and subject to fines equal to the value at the mill of wasted timber; that the AAC be calculated in volumes of timber rather than in area of forest; that licencees be required to account for the volume of timber cut and used and the volume left; that the stumpage fees paid to the Government of Ontario by licenceesbe reduced for hardwoods, balsam, insect-damaged and dead timber to levels that will encourage the use of such timber.

5.3 Recommendation:

That the annual allowable cut be adjusted over the next decade, beginning in 1986, to reflect the actual timber supply in Ontario's forest.

5.4 Recommendation:

That the rehabilitation of the backlog of cut-over forest land not sufficiently regenerated occur over a 20 year period; that these efforts be concentrated first on forest lands that are most likely to sustain regrowth and are closest to existing mill sites and second on forest lands around communities in which the principal employer is the forest products industry.

5.5 Recommendtion:

That the Government of Ontario freeze mill capacity until wood supply under sustained yield management permits expansion.

5.6 Recommendation:

That the Reed Agreement should be repudiated by the Government of Ontario and no part of the tract should be licenced for cutting until Recommendations 5.9 and 5.27 of this report are implemented.

5.7 Recommendation:

That until the claims of White Dog and Grassy Narrows are settled, the Government of Ontario not grant any cutting rights in forest lands outside existing company management units to Great Lakes or any subsequent owner of the Dryden mill complex.

5.8 Recommendation:

That the Ministry of Natural Resources bring all company management units under forest management agreements by December 31, 1988.

5.9 Recommendation:

That sustained yield be imposed by law as an essential aspect of all forest management in Ontario.

5.10 Recommendation:

That the Ministry of Natural Resources amend the objective set out in the preamble of forest management agreements so that it calls for the management of the forest area on a sustained yield basis -- the volume of wood that can be cut not to exceed the volume growing in that area -- without reference to continuous supply, meeting market requirements or to mills.

5.11 Recommendation:

That the Ministry of Natural Resources begin, on an experimental basis, to allocate cutting rights through a public tender process.

5.12 Recommendation:

That "modified managment areas" as provided for by the standard forest management agreement be called "forest protection areas".

5.13 Recommendation:

That northern residents and communities be given the right to apply to the Minister of Natural Resources for designation of forest protection areas at any time, including in advance of the submission of the licensee's five-year plan or the signing of a forest management agreement.

5.14 Recommendation:

That the Minister of Natural Resources be empowered to impose such operating standards as the Minister deems necessary when authorizing the cutting of trees in forest protection areas.

5.15 Recommendation:

That if an objection to designation of a forest protection area is received, the Minister of Natural Resources be empowered to refer the matter to the Northern Development Authority; that this Authority be empowered to terminate or continue the designation of any forest protection area and to determine the conditions under which designation is or is not to occur.

5.16 Recommendation:

That the Ministry of Natural Resources prescribe the circumstances in which clear-cutting should not be used.

5.17 Recommendation:

That the Ministry formulate and issue on a regular basis "Standards for Cutting the Boreal Forest" which set out appropriate cutting methods for representative forest areas.

5.18 Recommendation:

That, for forest areas in the Reed Tract and north of existing Crown and company management units, licensees be required to demonstrate that proposed uses of clear-cutting and related clear-cut configurations will not irreparably harm regeneration capabilities of affected sites, the ecology of adjacent waterways and the viability of other significant forest uses.

5.19 Recommendation:

That the Ministry of Natural Resources consider imposing the requirement that all cutting in environmentally sensitive areas and forest protection areas be contracted out to specialized cutting companies with demonstrated experience and expertise in environmentally acceptable tree cutting and removal.

5.20 Recommendation:

That the Ministry of Natural Resources consider providing incentives, training and accreditation programs to northern-based enterprises wishing to acquire the skills necessary to offer specialized cutting services.

5.21 Recommendation:

That undertakings in which particular cutting methods are proposed for use in the boreal forest be subject to assessment under the Environmental Assessment Act and that class assessments of such cutting method not be permitted until an information base on the environmental effects of cutting methods in representative boreal forest areas has been generated from actual environmental assessments.

5.22 Recommendation:

That the Northern Development Authority be empowered to require that a resource use agreement be a condition to commencement of construction of access roads, north of 50.

5.23 Recommendation:

That an independent Forest Audit Agency be established with powers, obligations and independence similar to those of the Provincial Auditor.

5.24 Recommendation:

That the Forest Audit Agency inspect, monitor, measure and report upon the conditions of the province's forest and all aspects of forest management; and that the Agency be headed by an Inspector of Forests whose appointment is subject to the approval of the Legislature and is for a term of years and level or remuneration that ensures independence.

5.25 Recommendation:

That the Inspector of Forest should report to the Legislature annually on the condition of Ontario's forests, the conduct of forest management, the success or failure of management techniques including regeneration and the performance of sustained yield and other obligations imposed by forest management agreements on forest product companies and the Ministry of Natural Resources.

5.26 Recommendation:

That the post of "Provincial Forester" be reestablished within the Ministry of Natural Resources.

5.27 Recommendation:

That the Ministry of Natural Resources take all necessary steps to ensure that seedlings with genetic qualities of faster growth and larger timber volume be planted on at least 80 percent of cut-over areas immediately after cutting or as soon as weather otherwise permits.

5.28 Recommendation:

That the Ministry of Natural Resources take whatever steps may be necessary to expand intensive forestry activities by the Ministry and licensees, such as thinning, spacing and fertilization, so that by 1990, all areas artificially seeded or planted are spaced and thinned at intervals of time acceptable to the Inspector of Forests.

Mining

6.1 Recommendation:

That the Government of Ontario recognize the full importance of the mining industry to its economy and the future welfare of Ontario by reinstituting the Ministry of Mines.

6.2 Recommendation:

That in order to advance the rate of mine exploration and development in the north of Ontario, the Ministry of Mines increase its geological and technical staff to undertake innovative research, mapping, geo-chemical testing, airborne geophysics and diamond drilling.

6.3 Recommendation:

That the Ministry of Mines continue to support research on rock bursts and rock mechanics in coordination with similar research underway in other countries to improve the ability to predict unsafe rock conditions in mines and enhance safe ore recovery in mining incompetent rock structures.

6.4 Recommendation:

That the Ministry of Mines review the appropriateness of existing taxes imposed on the mining industry and recommend reforms which would encourage greater exploration and development in Ontario.

6.5 Recommendation:

That any new mining reduction mill or expansions of existing mills must incorporate the latest proven pollution abatement technologies and techniques into the design of the milling process.

Appendix 4

Ontario, Royal Commission on the Northern Environment, Final Report and Recommendations, 1985
4-21 to 4-27

Quotas

While the treaties guaranteed native people continued access to hunt, fish and trap, many native people emphasized to me the threat to their cultural traditions and a reduced ability to subsist is being brought about by government-imposed quotas.

Quotas set by the Ministry of Natural Resources for commercial fishing and trapping refer to, not only a maximum but a minimum allowable annual harvest. The minimum must be met for an operation to continue to be licensed. Some native people told me they feel compelled to over-fish the lakes each year to satisfy a minimum government quota to retain their licence, thereby causing a negative impact on long-term harvesting potential.

As Noah Atlookan pointed out at the Fort Hope hearing in September, 1983, Indians have sound environmental reasons for resisting quotas: *"Why we are not...in a hurry to fish these lakes to send fish out to sell, we are going to be here for a long time. We are not going anywhere so we have to go easy on our lakes so we can live off of them in the future. The Ministry of Natural Resources sets a quota to send out fish by the loads every day and pretty soon if we do that...our lakes will be fished out."*

In rejecting the idea of a quota system, the native people also emphasized to me both the spiritual ties of living off the land and the essential cultural traditions which enhance their way of life and preserve a symbiotic relationship to the northern environment.

The Pehtabun Chiefs Tribal Council noted the Indians' pragmatic use of resources - without the need for quotas - in a 1983 submission to me which emphasized nature as the key to sustenance as well as tradition and culture: *"It is because our way of life is at stake that we cannot allow any policy of the Ontario Government to place additional restrictions on the way we use the land. Otherwise, our civilization will be destroyed, and that not only would harm us, but everyone in Ontario . . . The truth of the matter is that European civilization and our civilization are quite different. Our civilization is based directly on the land -- the plants, the animals, the birds and the fish. We use them to feed ourselves and our children, and this means that if the land is destroyed, we will die."*

As the Summer Beaver Settlement Council (1982) submitted: *"We have protected our land and resources better than those people in the south and we can continue to do so."*

Who better to deal with resource issues than the people who have co-existed successfully with nature's largesse and restrictions for centuries? Surely it is time for a renewed confidence in the ability of Indian communities to participate meaningfully in resource planning and land use decisions regarding their economy.

As Chief Jim Diamond of the Ontario Abitibi Band told the Timmins hearing on November 24, 1977: *"I think that companies and governments should consult with the Indian people before they do anything to our land. We were here first. We live on the land*

and we understand that land. We have been pushed further and further north. Pretty soon we will have no place to go.

The Ministry of Natural Resources' quota system is one of the most prevalent native concerns and has served to widen the distance between native and non-native co-operation. Here, certainly, is an example where strife and dissatisfaction could have been avoided had the native people been consulted first.

It is my belief that if these feelings of mistrust and misunderstanding are to be overcome, the Ministry must begin the training and hiring of native conservation officers. This proposal has been endorsed by a number of native submittors to the Commission from communities such as Sachigo Lake, Fort Hope and New Post Band.

I am of the opinion that the long-standing ability of native people to manage their own resource harvesting and to monitor user pressure has not been sufficiently recognized. I envisage the need for at least one officer per community use area.

The Indian Conservation Officer would not only strive for mediation and compromise among conflicting resource parties regarding development of an appropriate quota system. Native people north of 50 would have official, knowledgable and local spokespersons to ensure equitable involvement in such matters as resource data collection, fieldwork, surveys and interpretation. The Indian Conservation Officer would ensure that native participation was meaningful throughout planning and resource management projects.

4.8 Recommendation:

That the Ministry of Natural Resources train and employ Indian Conservation Officers.

The presence of knowledgeable Indian Conservation Officers would, I believe, lead to a better understanding among competing resource users of the value of subsistence activity and resource gathering in Ontario north of 50. It would also help provide a means of two-way communication between native people and the provincial Government concerning environmental impacts on subsistence activities north of 50. I believe such officers would help mediate and seek compromise among conflicting resource users' quotas; they would also disseminate knowledge and encourage participation in planning at the local community level.

Indian Conservation Officers should have adequate training at a northern educational facility offering courses in resource conservation, management, government planning policy and native subsistence activity. They should play a key role in the hiring and training of native staff to assist in the management of hunting, fishing and trapping activities by native communities north of 50.

4.9 Recommendation:

That the Ministry of Natural Resources establish special committees to advise the Ministry on research, planning and

resource management matters as these pertain to Indian communities; and that Indian Conservation Officers be among the persons named to such committees.

There are economic, environmental and humane reasons for affirming the Indian communities' priority resource harvesting rights, whether for subsistence or commercial purposes, in land areas adjacent to their communities.

The Government of Ontario does not consider that the Indian rights to hunt, fish and trap are exclusive or have any priority over rights to engage in similar activities which may be granted by the Government. Further, it would appear that there may be legal restrictions on the right of Indians to hunt, fish and trap where the products of these activities are sold commercially.

Resource developments and related transportation systems have increased non-Indian hunting, fishing and trapping activities. Stocks of fish, game and wild life have been reduced as a result. The incentive I believe for Indians to continue hunting, fishing and trapping in treaty lands has diminished because of reduced returns and the lack of Indian control over traditional gathering areas.

I have spoken elsewhere in this report about the importance of traditional food gathering to the Indian communities of the north. Hunting, fishing and trapping are key activities in food gathering which have been relatively ignored by the Government of Ontario's resource allocation policies and decisions. This has contributed to the erosion of standards of living in Indian communities.

I considered a number of ways in which Indian rights to hunt, fish and trap could be protected from other resource users. The land areas I have recommended that the Government of Ontario grant to Indian communities will only provide limited secure opportunities for hunting, fishing and trapping. The Governments of Canada and Alberta, in recent agreements, have granted large areas of land to native groups for ownership and in some instances for management in order to secure native opportunities to hunt, fish and trap. I have concluded that the Government of Ontario must take steps to protect the rights of Indian peoples in the north to continue hunting, fishing and trapping on reasonable and productive land areas before other resource users totally frustrate the possibility of such activities continuing. Protecting these rights, which in law I would think is supported by the treaty obligations of the province, will also have economically beneficial repercussions for Indian communities. It will mean that those Indians who choose to hunt, fish and trap whether for personal consumption, community use or commercial purposes, will have priority rights to engage in these activities, subject only to conservation controls acceptable to the community. In a sense, what I am about to recommend would eventually involve the Indian peoples as the managers of the fish, game and wildlife they gather and the areas in which this gathering occurs.

I heard many calls at my hearings for protection of native traditional resource uses. At the Kingfisher Lake Hearing on June 14, 1983, the need for additional lands for Indian use was presented by Noah Winter, Band Administrator for the Kingfisher Lake Band and President of Kingfisher Lake Socio-Economic Development Corporation: *"... We, the native people of Kingfisher Lake, recommend to the Royal Commission that the surrounding area be used solely for the inhabitants of the area which are the members of Kingfisher Lake Band. This will act as a resource base to continue our native livelihood as much as possible; this land and its natural resources will act as a base for some of our economic development aspirations. This will also act as a base to continue and preserve our unique cultural heritage which we now enjoy. In order to make this possible we need to control and manage the said land with no interference from outside government regulations. What we ask, Mr. Commissioner, is nothing new. We ask only to leave the land to us as it has been for the last hundreds of years."*

4.10 Recommendation:

That the Government of Ontario designate community use areas in the province north of 50 in which hunting, fishing and trapping by Indian persons would have priority over other resource users, subject to Recommendation 4.11 to 4.14.

The community use areas I am recommending should encompass those lands on which the residents of an Indian community rely for fish, game and wildlife. I believe that community use areas may vary in size and location depending upon the productivity of the land and waters and conservation needs.

I received evidence from a number of Indian communities of both current and historic resource use patterns in areas surrounding their communities. Indians have had to hunt and trap over extensive areas of land in order to achieve what at times were only subsistence returns. I do not propose that gathering areas should be designated for all the land that has been used at one time or another for hunting, fishing and trapping by Indian people. Rather, community use areas should encompass those areas in which an Indian community is actively carrying on these pursuits.

I leave to the Government of Ontario the decision as to whether or not implementation of my recommendation for community use areas should occur by way of legislation or could occur under the considerable discretion the Government now has in determining resource uses on Crown land. In either event, the procedures governing the designation of community use areas should be clearly spelled out and publicized in ways the Indian people of the north can comprehend them. This may require dissemination of such procedures in Indian languages.

4.11 Recommendation:

That the Government of Ontario establish procedures for designation of community use areas by the Ministry of Natural

Resources; that such procedures be activated by an application by an Indian community located north of 50 and that the Ministry designate the Community Use Area as applied for within 90 days of the application if it has received evidence of the community's reliance on the area for hunting, fishing and trapping.

As communities wished to vary the size and location of their community use areas, they would again apply for modifications or new designations as necessary.

Those persons holding resource use or occupany rights previously granted by the Government should not, of course, be affected by the designation of community use areas. Nor should the existence of a community use area preclude public access across the land area designated.

4.12 **Recommendation:**

That the Ministry of Natural Resources exclude from any area designated as a community use area any existing rights of use of occupancy and make provision for easements to permit public access along water ways and reasonable public recreational and tourism uses which are not likely to impinge on fishing, hunting and trapping by members of the Indian community for whom the designation of a community use area was made.

As I have already indicated, I would expect that the management of fish, game and wildlife stocks in community use areas would eventually become the responsibilty of the Indian communities themselves, and in particular, resident Conservation Officers.

To prevent the continuation of disputes over the placing by the Ministry of restrictions on levels of hunting, fishing and trapping, I have concluded that there must be provision for independent determination of the appropriateness of such a restriction. The idea of an independent biologist which was contemplated by the now defunct Fishing Agreement accepted by the Government of Ontario in late 1983 suggests what might be an acceptable approach.

4.13 **Recommendation:**

That the Ministry name an independent scientist acceptable to affected Indian communities whose decisions on the appropriateness of any restriction on levels of hunting, fishing or trapping would be binding on all parties.

The possibility will no doubt arise of other resource uses in designated resource use areas. I do not believe that such uses, whether they involve forest cutting, mineral exploration, mining or the construction of an outpost tourist camp should necessarily be precluded in designated gathering areas. Whether such resource uses proceed should however be determined by the Northern Development Authority which should act on behalf of the

affected community in negotiating a resource use agreement with the developer. As I have recommended elsewhere in this report, it is most likely that any alternative resource use proposed for a community use area would be deemed to be a significant undertaking under the Environmental Assessment Act and require accordingly an assessment in conformity with this legislation.

4.14 Recommendation:

> **That in the event of any resource use other than fishing, hunting and trapping by the affected Indian community and its residents being proposed for a designated resource use area, that a precondition of such use be the negotiation of a resource-use agreement between the developer and the Northern Development Authority.**

My recommendations for the granting of additional lands to Indian communities and the designation of community use areas for their hunting, fishing and trapping activities would, if implemented, greatly contribute to the capacity of Indian communities in the north of Ontario to move towards greater self-sufficiency. There would also be a related increase in the perception of people in these communities about their capacity to control and influence their own destinies. These are recommendations, in other words, which would go some distance in helping to break the current feelings of hopelessness and despair which plague too many of our northern Indian communities.

EDUCATION

A brighter future for Ontario's Indians depends in large part upon improved and expanded educational opportunities. There can be no question about the failure of the white man's education system to adapt itself to the realities of Indian life. However, in speaking of Ontario's moral obligations to its original inhabitants, it would be unfair and unwise for us to assume the worst in the intent of past governments' actions. I believe we are witnessing today the results of action, undertaken not in malice or indifference, but rather in misguided but well-meaning ignorance of the impact of forcing one culture's values upon another.

No greater example of this exists in white-Indian relations than in the evolution of native education. More than any other issue addressed to me was the concern expressed by mothers, fathers and elders for the future of their children.

In different ways and emphasized with tautness of lips, furrowed brow and impassive eyes, they repeatedly directed attention to their unprepared, untrained and unemployed youth, who are controlled by the educational system of the south. The following quotes from native parents illustrate their concerns:

> *"Look around you -- our youth have learned they do not have to work to subsist."*

Appendix 5

Declaration of Political Intent between the Government of Canada, the Government of Ontario, and the Indian First Nations of Ontario, (1985)

C / Declaration of Political Intent between the Government of Canada, the Government of Ontario, and the Indian First Nations of Ontario

This commitment made this 20th day of December 1985

BETWEEN Her Majesty the Queen as represented by the Government of Canada represented herein by the Minister of Justice and the Minister of Indian Affairs and Northern Development (hereinafter referred to as 'Canada')

AND Her Majesty the Queen as represented by the Government of Ontario represented herein by the Attorney General and Minister Responsible for Native Affairs (hereinafter referred to as 'Ontario')

AND The Indian First Nations of Ontario [as] represented by the Ontario Regional Chief and the Chiefs of Ontario Planning and Priorities Committee (hereinafter referred to as 'the Indian First Nations of Ontario')

Whereas the Tripartite Council, consisting of representatives of Canada, Ontario, and the Indian First Nations of Ontario, was established in 1978 for the purpose of identifying, clarifying, negotiating, and resolving matters of mutual concern to the parties, and has demonstrated the value of formal tripartite discussions between federal and provincial ministers and the chiefs and headmen of the Indian First Nations of Ontario;

and whereas Canada, Ontario, and the Indian First Nations of Ontario hereby reaffirm their commitment to resolve issues of mutual concern within the tripartite process;

and whereas Canada, Ontario, and the Indian First Nations of Ontario believe it is desirable to enter into tripartite discussions on Indian First Nations self-government in which matters and arrangements with respect to the exercise of jurisdiction and powers by First Nations governments in Ontario are dealt with,

the parties hereto make the following commitment:

1.00 The parties hereby declare their commitment to enter into tripartite discussions to resolve issues relating to Indian First Nations self-government and matters and arrangements with respect to the exercise of jurisdiction and powers by First Nations governments in Ontario.

1.01 The parties agree that the matters with which the tripartite process on Indian First Nations, self-government may deal, with the approval of the participants, shall include:

(a) the forms, institutions, legal and constitutional status, source of jurisdiction, land issues, and financial base of First Nations governments in Ontario, and

(b) the clarification of areas of jurisdictional overlap and arrangements with respect to the exercise of jurisdiction by governments in Ontario.

1.02 The parties agree that this declaration shall not preclude and shall be without prejudice to:

(a) any other tripartite discussions or any bilateral discussions between Indian First Nations and Canada or Ontario on matters which may be dealt with under the tripartite process on Indian First Nations self-government;

(b) the rights of Ontario and Canada to enter into negotiations and arrangements on self-government with other representatives of the aboriginal peoples of Ontario;

(c) the constitutional discussions and processes contemplated by s. 37.1 of the Constitution Act, 1982, or

(d) the positions which any of the parties may adopt in any other forum.

1.03 The parties agree that this document is intended as an expression of goodwill and commitment to enter discussions. It is not intended to create, define, or affect legal rights or to be construed as an interpretive aid in the determination of any legal right.

2.00 This commitment shall come into force on the date of its execution and shall continue in force unless terminated by one or more of the parties on six months' written notice to the other parties hereto.

3.00 The parties agree that nothing in this declaration shall be so construed as to affect, prejudice, or derogate from aboriginal, treaty, constitutional, or any other rights, privileges, or freedoms which have accrued to or may accrue to any Indian First Nations regardless of whether such rights, privileges, and freedoms are recognized, established, or defined before or after the signing of this declaration.

Appendix 6

Memorandum of Understanding between the
Government of Canada, the Government of Ontario,
and the Nishnawbe-Aski Nation (1986)

B / Memorandum of Understanding between the Government of Canada, the Government of Ontario, and the Nishnawbe-Aski Nation

This MEMORANDUM OF UNDERSTANDING made this 24th day of February 1986

BETWEEN HER MAJESTY THE QUEEN IN RIGHT OF CANADA represented herein by the Minister of the Department of Indian Affairs and Northern Development (hereinafter referred to as 'Canada')

AND HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO represented herein by the Attorney General and Minister Responsible for Native Affairs (hereinafter referred to as 'Ontario')

AND THE NISHNAWBE-ASKI NATION represented herein by the Grand Chief (hereinafter referred to as 'NAN')

WHEREAS Canada, Ontario, and NAN wish to negotiate agreements on matters of mutual concern regarding NAN;

AND WHEREAS the parties are prepared to review the conditions and agreements between Canada, Ontario, and NAN with a view to providing for the present and future self-government needs of NAN, and to make such further provisions and agreements as are consistent with the rights and aspirations of NAN;

AND WHEREAS it is understood by the parties that Canada and Ontario will consider the public interest in the negotiation of any agreements pursuant to this memorandum;

AND WHEREAS NAN has the mandate from its constituents to negotiate these matters on their behalf;

AND WHEREAS the parties are willing to enter into 'local negotiations' for the purpose of recognizing NAN self-government within the context of Canadian Confederation;

NOW THEREFORE THIS MEMORANDUM OF UNDERSTANDING witnesseth that the parties hereto mutually agree as follows:

1 (a) To commence tripartite negotiations forthwith on the following matters:
   (i) fishing;
   (ii) trapping and hunting; and
   (iii) band status and lands for reserves.
   Such matters to be negotiated with the objective of reaching agreement within a period of twelve (12) months from the beginning of negotiations, subject to the provisions of section 3.

(b) To commence tripartite negotiations six (6) months from the date of signing of this memorandum on the following matters:
   (i) housing;
   (ii) community infrastructures, including, but not limited to, hydro, sewage, and water;
   (iii) education;
   (iv) health; and
   (v) social services.
   Such matters to be negotiated with the objective of reaching agreement within twelve (12) months from the beginning of negotiations, subject to the provisions of section 3.

(c) To commence tripartite negotiations twelve (12) months from the date of signing of this memorandum on the following matters:
   (i) economic development;
   (ii) zones of Nishnawbe-Aski Nation Band activity; and
   (iii) powers and institutions of self-government.
   Such matters to be negotiated with the objective of reaching agreement within a period of twelve (12) months from the beginning of negotiations, subject to the provisions of section 3.

2 It is understood that the parties are free to engage in preliminary bilateral or tripartite discussions or both regarding the matters which are to be the subject of negotiation prior to the commencement of the formal negotiation process.

3 The parties may, at any time, by mutual agreement extend the negotiation period.

4 The parties may, at any time, by mutual consent further define the matters to be considered or add to them.

5 The ministers agree to participate, as necessary, in meetings in order to expedite negotiations.

6 Each party shall appoint a chief negotiator and other negotiators to carry out the negotiations. The negotiators shall be given the authority to negotiate agreements and reach comprehensive solutions, subject only to ratification by each party in its usual way as determined by it.

7 The Indian Commission of Ontario (hereinafter referred to as 'the commission') is hereby appointed to facilitate the efforts of the parties in the negotiation of matters identified in this memorandum. The commission shall in addition to the powers provided in the orders-in-council constituting the commission, have the following powers:

(a) to convene and chair meetings of all parties, at its sole discretion, following a minimum notice of five (5) working days;

(b) to require each of the parties, upon reasonable notice, to make available, whenever practicable, experts within its employ, and any document relevant to any issue that is the subject of negotiations; however, nothing in this memorandum shall be construed as a requirement of any party to make available information that is privileged or would in court proceedings give rise to a right to receive from the court an order providing exemption from disclosure or is, in the case of information in the possession of Canada, a record for which an exemption is provided in the Access to Information Act, s.c. 1980–81–82–83, c.111, as amended and as it may be amended from time to time, or is, in the case of information in the possession of Ontario, a record for which an exemption is provided in the bill, the short title of which is the Freedom of Information and Protection of Privacy Act, 1985, which received second reading in the Legislative Assembly of Ontario on February 10, 1986 or is, in the event that an Ontario act concerning freedom of information comes into force, a record for which an exemption is provided in such act, as it may be amended from time to time.

8 To enable NAN to participate fully in these negotiations funds shall be provided as agreed by the parties.

9 The parties agree that the negotiations pursuant to this memorandum shall be without prejudice to:

(a) any other tripartite discussions or any bilateral discussions between Indian First Nations and Canada or Ontario on matters which may be dealt with under the tripartite process on Indian First Nations self-government;

(b) the rights of Ontario and Canada to enter into negotiations and arrangements on self-government with other representatives of the aboriginal peoples of Ontario;

(c) the constitutional discussions and processes contemplated by section 37.1 of the Constitution Act, 1982; and

(d) the positions which any of the parties may adopt in any other forum.

IN WITNESS WHEREOF the parties hereto have signed this Memorandum of Understanding the day and year first above written.

Appendix 7

Material provided by DIAND with
respect to self-government proposals

COMMUNITY INFRASTRUCTURE AND PUBLIC WORKS

Framework Proposal(s) Included:

Lake Babine, British Columbia "wants legislative authority in the following areas: housing, operation of roads and the regulation of traffic and local transportation, local works, construction, maintenance and management of buildings and structures on reserves, maintaining the community's infrastructure."

Alexander, Alberta wishes "to design, implement and control a Public Works system that will meet the needs of the Tribal members. Public works include the following functions: housing, renovations, operation and maintenance of band buildings, roads, bridges, buildings and maintenance, sanitation, solid waste removal, water and sewers construction, maintenance and distribution."

Kehewin, Alberta is "prepared to look at alternative ways of relating to other government jurisdictions and considering other kinds of financing mechanisms in order to meet our infrastructure needs."

Sandy Bay, Manitoba wants "more effective service delivery in the areas of housing, public works, sanitation and fire protection."

Akwesasne, Ontario "the band proposes to develop, implement and administer all programs, policies and procedures related to public works and physical environment, namely: private residences, private communication facilities, private transportation facilities, private health facilities, private economic development facilities, private energy facilities, roads, garbage, ambulatory service, water and sanitation, fire service, electrification, and planning to meet future needs."

Big Trout Lake, Ontario "presently manages public works through the Community Infrastructure and Services Unit. This control, including the concommitant financial control must be recognized in any self government agreement that is negotiated. The community will look at the possibility of gaining jurisdiction and control over air and ground transportation."

Whitefish Bay, Ontario "wants exclusive jurisdiction over Public Works on reserve. Private works would be administered through a land use planning regulatory authority."

Tobique, Atlantic feels it is "a legal entity solely accountable for actions falling within this section (Community Infrastructure and Public Works) or the program contribution areas dealing with roads and bridges."

Developmental Proposal(s) Included:

Swan Lake, Manitoba "this component will have responsibilities for all standard and basic living community needs. Housing, public work, sanitation, water, environmental control, transportation, and all other aspects of community service will be defined and described."

ENVIRONMENT

Framework Proposal(s) Included:

Big Trout Lake, Ontario wishes "to exercise jurisdiction and control over the access to and management of natural resources (renewable and non-renewable) in the area. Negotiation of environmental control will have implications for the jurisdiction of the Ontario Ministry of Natural Resources."

Whitefish Bay, Ontario wishes "to exercise its powers through bylaws and once enacted they would supersede federal and provincial laws... The band proposes to have exclusive occupational use and jurisdiction over the reserve environment."

Tobique, Atlantic states that the management of the environment, currently under Federal jurisdiction, will be "replaced by Wolastokwik Negoot-gook management system."

Alexander, Alberta:

Proposal: Alexander wishes to receive authority to deal with immediate and potential impacts regarding the environment. The community wishes to have some level of input with regard to the environment.

MANAGEMENT OF LANDS AND RESOURCES

Framework Proposal(s) Included:

Lake Babine, British Columbia "wants to assume the powers of the Minister under the Indian Act to administer, manage and control reserve land ... a decision making role off-reserve on its traditional lands. On-reserve ... control of all mining activity ... co-management with the province of the timber resource off-reserve on traditional lands. ...The band indicates that it wants legal recognition of reserve land by lending institutions in order to borrow monies. Furthermore, it wants legal clarification of the trust relationship with the Crown."

Alexander, Alberta wishes "to design, implement and control the management of Tribal Lands, including future lands that may be acquired and added to Tribal Lands ... design, implement and control a system that assures that all mineral resources are managed to the maximum benefit of the Tribal membership ... at minimum, direct consultation with potential impacts and, future right to enact bylaws in its own interest and consistent with Federal laws."

The Pas, Manitoba believes that "in addition to Land Management, we have exercised what we believe to be our authority under section 81 and 83 of the Indian Act."

Sandy Bay, Manitoba wants "administrative or management powers over its lands. It has indicated its preference that the reserve lands remain within federal jurisdiction under s.s.91(24) of the Constitution Act 1867."

Akwesasne, Ontario "wants 100% authority over (its) land, water, and air space in our territory. This authority would cover: property authority, protection and preservation, use and management, planning, improvement and development, enhancement, (wills and estates), leases and other encumbrances, royalties, and registrations. The band would continue to recognize current land title and leasing arrangements."

Rat Portage, Ontario "has exclusive control of all lands, waters and air space constituting Indian Reserve #38B and whereas it is a fundamental principle of the civil policy of the Rat Portage Band that these lands, waters and air space be protected from abuse, and used for purposes beneficial to the Band as a whole.

The Council of the Band shall establish a registration system which shall record all authorized uses of Band property, and all transaction respecting such uses. Any Band member who wishes to apply to use any part of the Band property for any use has a right

to make such application and to a decision on such application without delay."

United Indian Council, Ontario feels that "jurisdiction in this area (management of lands and resources) is essential. Lands promised under treaty have not been provided. Increased land is needed more now than ever as a result of the new membership provisions to the Indian Act... discussions with the recommendation of the Nielson Report (1986) regarding the sale and/or joint management of park lands. Unsold surrendered lands would also form a part of these discussions."

Whitefish Bay, Ontario "On-reserve the band proposes to own and manage all renewable and non-renewable resources including oil and gas, precious and base metals, sand, gravel and water. The band would exercise its authority through by-laws which would supersede federal and provincial laws. Where a by-law was not enacted the general law of the province would apply. The band proposes to produce hydro-electric energy for local band consumption and hunting, fishing and wild rice gathering rights unrestricted."

Off-reserve the band proposes that natural resources in its traditional land-use area be co-managed, however hunting, fishing and gathering rights would be practices unrestricted except at places taken up for settlement, mining, lumbering or similar purposes as provided in Treaty #3.

The band is further proposing that it would have a right of "first-use" of resources and that this would be negotiated on a resource by resource basis through a Tripartite Management Board (Band-Ontario-Canada). This board would be empowered by all three governments and would deal with the band's desire to share in royalties and profits from resource exploitation.

Land is described under the "Property" heading in the band's proposal. The band proposes to have exclusive authority over all land on reserve including the beds of lakes, rivers and streams. Land title is not dealt with as such in this section nor is it covered in the Natural Resources or Environment sections, however in the band's desire for "exclusive authority" would indicate that the band wants title to its reserve land. The proposal also states that the band wants to discuss a new (title) regime not subject to the shortcomings of the present system, however no detail is provided to clarify the new regime or to identify the shortcomings of the present system. The proposal further states that the band would want to mortgage its reserve land without compromising the land's reserve status. A proposal as to how this could be accomplished is not provided.

The band wants exclusive control over all land use on reserve. It proposes to establish a new land allotment scheme that would discontinue the certificate of possession (C.P.) and provide the

band with powers of expropriation necessary to carry out land use planning and implementation. The band states that it wants all DIAND's Indian Act powers over reserve property superseded but it does not indicate what law will supersede those powers or what they will be replaced by."

Developmental Proposal(s) Included:

Fort George, British Columbia wants "to explore the concept of Co-management on an overall basis" regarding the management of Lands Resources. "The extent of Co-management will rest with the eventual negotiations and settlement of our Comprehensive Claims. The technical experts will report to the Chairperson of the Portfolio and his committee to the General Band Manager and then to the Government Chief and Council. This group will carry our Policy as developed by the Clans through the Azahs."

McLeod Lake, British Columbia "intends to determine how a change to the status and administration of the reserve land base and the resources on it can be made for the benefit of our membership. We also will address how individual land rights will be defined and how a registry system can be administered by our government."

Swan Lake, Manitoba states that, "traditional teachings have made us experts in conservation, as our life is dependent upon the land and natural resources. We will recapture community responsibilities through this component of our framework."

Shoal Lake 39, Ontario proposes that "Natural Resources will be examined on a resource by resource basis in terms of their potential for creating sustained economic development for the communities."

Pointe Bleue, Quebec "Plus de la moitié de la loi porte sur l'administration des terres de catégorie 1A et 1A-N. La loi reprend le régime de base d'administration des terres, établi dans les conventions."

Kingsclear, Atlantic wishes "to conduct a comprehensive review and recommend changes to sections of the Indian Act that specifically refer to Lands, Revenues and Trusts."

Appendix 8

Methods which have been used to give
Native People Environmental Management Powers

METHODS WHICH HAVE BEEN USED TO GIVE NATIVE PEOPLE ENVIRONMENTAL MANAGEMENT POWERS

The Indian Act

In general, in the environmental field, Ministerial approval is required for most land use modifications and changes of significance. With regard to renewable resources, a band may enact bylaws, subject to Ministerial disallowance, with regard to fur bearing animals, fish and game. In practice, many bylaws, which have extended to matters off the reserve or which have contradicted laws of general application, have been disallowed. Water rights on reserve can only be determined case by case, as there is no valid framework applicable across Canada. Use and management of forests on the reserve may be controlled by the Band. With regard to non-renewable resources, the Indian Oil and Gas Act is the basis for regulation concerning exploration and development of oil and gas resources on reserve. In the case of mining, arrangements differ from province to province and depending on the type of the resource. With regard to planning and zoning, the Indian Act allows for appropriate by-laws applying to the reserve. There is no mention of impact assessment in the Indian Act, although where a project on or off reserve is funded by the federal government, or includes a significant federal interest, it may be submitted to the Environmental Assessment Review Process.

Environmental Management Provisions under neither the Indian Act nor the Claims Process

Sechelt Indian Band

Section 14 of the Sechelt Indian Band Self-Government Act authorizes the Band Council to make laws in relation to a wide variety of matters, including the preservation and management of natural resources on Sechelt lands, and the preservation, protection and management of fur-bearing animals, fish and game on Sechelt lands. It further authorizes the creation of administrative bodies and agencies to assist in the administration of the affairs of the Band.

The Band may be granted powers outside the Sechelt reserve lands if both the federal and provincial governments concur. The Act provides for the Sechelt Indian Government District

"which shall have jurisdiction over all Sechelt lands", which can include lands declared by the federal and provincial governments to be Sechelt lands for the purposes of the Act. The powers and duties of the Band may be transferred to the District by the Governor-in-Council, if provincial legislation respecting the District is in force. (Sechelt Indian Band Self-Government Act, Sections 17-22. See also Peters, Evelyn J., 1987, Aboriginal Self-government Arrangements in Canada, Aboriginal Peoples and Constitutional Reform, Background paper no. 15, Institute of Intergovernmental Relations, Queen's University, 1987, p.44)

Northern Flood Agreement

To deal with issues arising out of the construction of large scale hydro electric projects in northern Manitoba, the Northern Flood Agreement was signed in December, 1977, by the Province of Manitoba, Manitoba Hydro, the Government of Canada, and the Northern Flood Committee, which represented the various northern native bands. The Agreement does not carry any special powers in its own right; it uses the existing statutory powers of the Government of Canada and the Province of Manitoba. While it is not a self-government process, it provides a method of involving native people in the management of the lands and environment of northern Manitoba.

The parties to the agreement have conducted an ongoing dialogue concerning the various issues covered by the Agreement: land exchanges for impacted lands; land use; navigation; water quality; cemeteries and objects of cultural significance; and economic development.

To take the interests of native hunters, trappers and fishermen into account, the Province of Manitoba was to establish a Wildlife Advisory and Planning Board, on which residents of the affected reserves were to have majority representation. This Board was to recommend on all matters affecting wildlife, including: monitoring wildlife resources; advising on overabundance of species and maximum kill; promoting effective wildlife management practices; formulating and recommending programs consistent with the perpetuation of wildlife or with the continuation of harvesting of wildlife resources.

Caribou Management Agreements

Two caribou management agreements, Porcupine Caribou Management Agreement and The Beverly - Kaminuriak Management Agreement have now been signed by the Federal Government, the Territorial Governments and native organizations. The purpose of these agreements is to cooperatively manage caribou herds and to provide for the participation of native people in such management.

The Porcupine Caribou Agreement establishes a Porcupine Caribou Management Board which provides advice and recommendations to the Minister of Northern Affairs on management strategies for the Porcupine caribou herd, a herd management plan, guidelines for native participation in caribou management, predator management, and so forth. Native representatives are appointed to the Board by the Council of Yukon Indians, the Dene/Metis, and the Inuvialuit Game Council.

The Beverly-Kaminuriak Agreement establishes similar arrangements. However, an important feature of this Agreement is that it includes native people covered by treaty who reside in the provinces of Saskatchewan and Manitoba, the southern range of the herds.

Northern Land-Use Planning

Native people, through their organizations and as individuals, are involved in the land use planning process recently established in the territories. They have membership in the policy level Northern Land-Use Planning Policy Committees which recommend to the Minister of Northern Affairs on northern land-use planning policies, broad planning objectives and the planning program and priorities, as well as ensuring that the interests of all parties are considered in northern land use planning. They also have membership in Northern Land-Use Planning Commissions, which prepare terms of reference for area planning team studies, ensure public input to northern land-use plans, and develop northern land-use plans for Ministerial approval. They are also represented on the Area Planning Teams which undertake land-use planning studies and draft northern land-use plans. (For a critique of the Northern Land-Use Planning process see essays in Fenge, Terry, and Rees, William E., 1987, editors, Hinterland or Homeland?, Canadian Arctic Resources Committee, Ottawa, 1987.)

Environmental Management under the Claims Process

Three comprehensive claims have been negotiated to date: The James Bay and Northern Quebec Agreement, the Northeastern Quebec Agreement, and the Inuvialuit Final Agreement. Recently, Agreements in Principle were negotiated with the Dene/Metis and the Council for Yukon Indians. Negotiations of comprehensive claims with the Council for Yukon Indians, the Dene/Metis, The Tungavik Federation of Nunavut, the Nishga Tribal Council, the Conseil Attikamek-Montagnais, and the Labrabor Inuit Association are continuing. As well as bearing directly on what may be possible under non-claims self-government arrangements, these claims will establish the models and precedents for environmental management both on native lands and beyond native lands in all future comprehensive claims.

The James Bay Cree and Naskapi of Northcentral Quebec

Under the Cree/Naskapi Act, each of the nine Cree and Naskapi Bands were incorporated, and with their Category IA and IA-N lands constitute a municipality or village under the Quebec Cities and Towns Act. Their powers include making laws on access and residence to Band lands, zoning and land use planning, expropriation of lands for community purposes, regulation of buildings and other structures, parks and recreation, protection of the environment including natural resources, regulation of hunting, trapping and fishing, and regulation of roads, traffic and transportation.

According to Bartlett (p.45), the power to make land use and zoning by-laws confers a measure of control over development on Category I-A lands (see Appendix 2), but this is outweighed by Provincial control of mineral and forest development. Any major non-Indian development will be controlled by the province and be subject to provincial laws, including laws governing the environment.

Section 22 of the James Bay and Northern Quebec Agreement deals with the environment south of the 55th parallel, the traditional Cree territory.

- It establishes a "James Bay Advisory Committee on the Environment", a body, appointed by the Cree, Canada and Quebec, having advisory powers with respect to reviewing and overseeing the administration and management of the

environmental and social protection regime established under the Agreement.

- It sets out regulatory powers with respect to the various categories of land defined under the Agreement, the requirements for impact assessment and review, and the method of preparing and reviewing impact statements.

Section 24 of the Agreement sets out the regime for hunting, trapping and fishing. It establishes a Hunting, Trapping and Fishing Coordinating Committee to oversee the hunting, trapping and fishing regime.

A Harvester Income Security Program was established under the James Bay and Northern Quebec Agreement. It is administered by the independent Cree Hunters' and Trappers' Income Security Board, which has six members -- three appointed by the Cree and three by the Government of Quebec. (For a thorough discussion of the native subsistence harvesting interest and present and possible arrangements around it see Ames, R., Axford, D., Usher, P., Weick, E., and Wenzel, G., Keeping on the Land, Canadian Arctic Resource Committee, April, 1989.)

Inuit of Northern Quebec

Under the Kativik Act, a statute of the Province of Quebec, Inuit settlements became "Northern Village Municipalities" which have some powers of an environmental management nature, such as zoning and land use planning, parks, recreation and culture, and regulation of roads, transportation and traffic.

In 1978, the Kativik Act also created the Kativik Regional Government, a "non-ethnic, public administration for the northern third of Quebec" (see: Inuit Committee on National Issues, 1987, Completing Canada: Inuit Approaches to Self-Government, Aboriginal Peoples and Constitutional Reform, Position Paper, Institute of Intergovernmental Relations, Queen's University). Kativik has powers of a northern village municipality, as well as having regional government responsibilities over the whole territory, including the northern village municipalities. It has paramountcy with regard to municipal by-laws, including the power to establish minimum standards for building and road construction, sanitary conditions, water pollution and sewerage.

Certain provisions of the James Bay and Northern Quebec

Agreement not incorporated in the Kativik Act give Kativik additional functions including administration of the Inuit hunting, fishing and trapping support program and advising on the protection of the environment. Subject to the powers of the federal and provincial governments, Kativik may make laws governing harvesting activities and hunting and fishing by non-natives. However, any of the by-laws passed by Kativik may be disallowed by the provincial government.

The Agreement establishes a complicated land regime which divides the Inuit region of northern Quebec into three categories of land (See Appendix 2). Native people have varied rights to these three categories of land.

Three sections of the Agreement include the native people in the management of hunting, trapping and fishing, and in environmental protection, in all of northern Quebec.

Section 23 of the Agreement deals with environment and future development north of the 55th parallel. It establishes a procedure for adopting "environmental and social laws and regulations and land use regulations", an environmental and social impact assessment and review procedure, and other measures pertaining to thee native interest. In terms of specific instruments:

- A Kativik Environmental Advisory Committee reviews and recommends on laws, regulations and other appropriate measures. It is to be consulted from time to time on major issues involving the "Environmental and Social Protection Regime". While the KEAC consists of nine members, three each from the Federal Government, the Province of Quebec, and Kativik Region, the chairmanship alternates between the Federal Government and the Province.

- A Kativik Environmental Quality Commission is established as the Provincial environmental impact assessment and review body for matters under provincial jurisdiction. Four members of the EQC are appointed by Kativik Regional Government (at least two of whom are native -- Inuit or Naskapi -- from the Kativik Region), and four plus the chairman by the Province of Quebec.

- The Federal Government establishes a parallel process for matters under federal jurisdiction, on which Kativik appointed members of the EQC may sit.

- A Kativik Regional Development Council is established to

serve as the "preferential consultant" to the Office de planification et de development du Quebec.

Section 24 of the James Bay Agreement sets out regulation respecting hunting, fishing and trapping for both native and non-native people including the Hunting, Trapping and Fishing Coordinating Committee already described in connection with the Cree, above. It also defines Inuit harvesting rights with respect to their traditional lands. To ensure that these rights can be effective, the Inuit have negotiated the Northern Quebec Hunter Income Support Program which is administered by the Kativik Regional Government using grants from the Quebec Ministry of Recreation, Fish and Game.

Inuvialuit of the Western Arctic

The intention of the Inuvialuit Final Agreement with respect to environmental management is

> to assist in integrating the Inuvialuit into structures, functions and decisions involving wildlife management in the Settlement Region, with the goal of applying the knowledge and experience of both Inuvialuit and the scientific community to the task of conserving the wildlife resource. (DIAND, The Western Arctic Claim, A Guide to the Inuvialuit Final Agreement, Ottawa, 1984.)

Section 14 of the Inuvialuit Final Agreement provides for several measures by which Inuvialuit can participate, either as advisors or decision makers, in the management of their environment:

- The six Inuvialuit communities are each required to establish a community corporation under the Inuvialuit Final Agreement. Each community corporation is to establish a Hunters and Trappers Committee to advise, inform, and make representations to the Inuvialuit Game Council about the requirements of Inuvialuit wildlife harvesters and the allocation of various quotas. They were also to encourage and promote Inuvialuit involvement in conservation, research, management, enforcement and utilization of the wildlife resources of the Inuvialuit Settlement Region.

- An Inuvialuit Game Council, incorporated pursuant to the Societies Ordinance of the NWT, consisting of at least one member from each of the Hunters and Trappers Committees established under the Agreement, advises

governments about legislation, regulations, policies and administration involving wildlife, assigns community hunting and trapping areas and sub-allocates Inuvialuit harvesting quotas among the communities, and represents Inuvialuit interests in any other Canadian or international groups concerned with wildlife issues in the Inuvialuit Settlement region.

- A Wildlife Management Advisory Council (NWT), to advise government on matters relating to management, regulation, policy and administration of wildlife habitat and harvesting in the western Arctic. This council was to have an equal number of Inuvialuit and government representatives, plus a chairman.

- A Fisheries Joint Management Committee to assist in the management of fisheries affected by the Inuvialuit claim settlement. There were to be four voting members, two selected by each of the government and the Inuvialuit Game Council.

- With respect to the North Slope of the Yukon, the Agreement has been used to set aside a large tract of land west of the Babbage River for a national wilderness park. (DIAND, 1984, p.10)

- The Agreement provides that all development proposals on the North Slope will be screened to determine whether they might have a significant negative impact on wildlife habitat and the ability of native people to harvest wildlife. However, development activities will be permitted if the overall public need outweighs the conservation or harvesting need of the region, although the projects in question would be subjected to a public environmental assessment and review process. (DIAND, 1984, p.10)

According to DIAND (1984, p.8) a number of provision of the Inuvialuit Final Agreement affect the harvesting of game, marine mammals and fish. In areas specified in the Final Agreement:

- The Inuvialuit have exclusive or preferential rights to harvest game, furbearers, and all other species of wildlife except migratory birds. Harvesting rights are, however, subject to laws of general application pertaining to conservation and public safety.

- Inuvialuit have priority in the harvest of marine mammals in the Settlement Region, including first access to all harvestable quotas.

- They also have a preferential right to harvest fish for subsistence within the settlement region, including trade, barter and sale to other Inuvialuit.

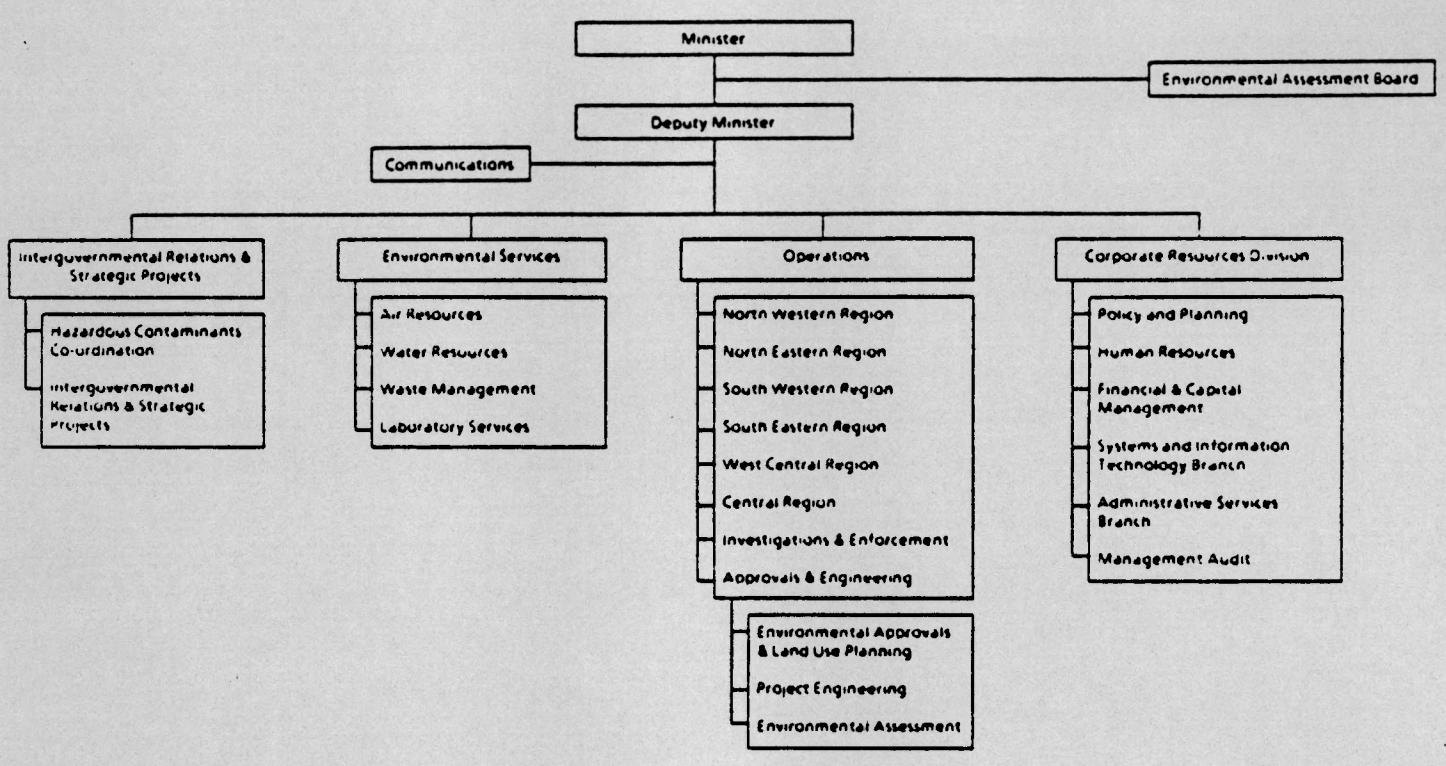
Claims Currently under Negotiation

Time does not permit a review of environmental management provisions of claims currently in negotiation or preparation. However, while it is recognized that the process of comprehensive claims is evolutionary, it is likely that, in general, the substantive precedents for such provisions have already been defined by the Agreements and arrangements which are in place.

Appendix 9

Ministry of the Environment
Organization Chart

MINISTRY OF THE ENVIRONMENT



Source: Bell and Pascoe, The Ontario Government:Structure and Functions (Toronto, 1988)

Appendix 10

Ontario Ministry of Natural Resources,
Statistics 1987-1988, pp. 89-97

LEGAL SERVICES BRANCH

Legal matters dealt with by the Branch include legal opinions, drafting statutes, regulations, orders in council, litigation and all other matters of a legal nature affecting the Ministry.

The Acts administered by the Ministry are as follows:

LANDS AND WATERS GROUP

AN ACT FOR THE SETTLEMENT OF CERTAIN QUESTIONS BETWEEN THE GOVERNMENTS OF CANADA AND ONTARIO RESPECTING INDIAN RESERVE LAND, 1891, permitted the Governments of Canada and Ontario to enter into an agreement for the settlement of certain questions relating to the provision of Indian reserve land in the area that was the subject of the Northwest Angle Treaty (Treaty No. 3).

AN ACT TO CONFIRM THE TITLE OF THE GOVERNMENT OF CANADA TO CERTAIN LANDS AND INDIAN LANDS, 1915, is the Act by which the Government of Ontario transferred to the government of Canada certain lands to be set apart as Indian reserve lands in the area that was the subject of the Northwest Angle Treaty (Treaty No. 3)

BEACH PROTECTION ACT prohibits the removal of sand from the bed, bank, beach, shore or waters of any lake, river or stream in Ontario except under the authority of a licence issued under the Act or written consent of the local municipality.

BEDS OF NAVIGABLE WATERS ACT (sometimes referred to as the "Cochrane Act") is declaratory legislation relating to title in the beds of navigable waters. It followed the decision in the 1911 case of Keewating Power versus The Town of Kenora. By the Act, the beds are deemed not to have passed to the grantee of bordering Crown land in the absence of an express grant.

CANADA COMPANY'S LAND ACT, 1922, empowers the Crown to sell and convey to purchasers of lands from the Canada Company the mineral rights in the lands.

CONSERVATION AUTHORITIES ACT provides for the establishment of conservation authorities for the purpose of establishing and undertaking in the area over which they are given jurisdiction, programs designed to further the conservation, restoration, development and management of natural resources other than gas, oil, coal and minerals.

INDIAN LANDS ACT, 1924, was passed by the legislature of Ontario and the Parliament of Canada to settle certain questions relating to the administration and control of Indian reserve land and surrendered Indian reserve land in Ontario.

LAKES AND RIVERS IMPROVEMENT ACT deals with: the construction, repair and use of dams; timber driving; and timber slide companies. The Act prohibits contruction of dams without Ministry approval. The Minister is given discretionary powers relating to the repair, reconstruction and removal of dams, maintenance of water levels, and regulation of use of waters or works.

MINING ACT sections 112, 113, 114, 115 and 162 only. The remainder of the Mining Act is now administered by the Ministry of Northern Development and Mines.

NORTH GEORGIAN BAY RECREATIONAL RESERVE ACT, 1962-3, established the North Georgian Bay Recreational Reserve and provides for the planning and development thereof and the appointment of a committee to advise the Minister thereon.

ONTARIO GEOGRAPHIC NAMES BOARD ACT provides for the establishment of a Geographic Names Board for Ontario having the duty to gather information respecting the names of places and geographical features, make recommendations thereon, collaborate with the Canadian Permanent Committee on Geographic Names, and provide information to government departments, etc. The Minister may approve a recommended name and thereupon it shall be used by all government departments and agencies in the preparation of maps and other publications.

PITS AND QUARRIES CONTROL ACT provides for the regulation of pit and quarry operations in designated parts of Ontario. Operations in designated areas must be licensed under the Act and are subject to periodic review to assure compliance with the provisions of the Act, the regulations and site plan.

PETROLEUM RESOURCES ACT sets out licensing requirements for various aspects of oil and natural gas exploration, drilling and production and provides for the making of regulations respecting oil and gas conservation and the safe operation of drilling and production facilities.

INDUSTRIAL AND MINING LANDS COMPENSATION ACT provides for agreements between the owner or operator of a mine and the owner or lessee of any land for payment of compensation for any damage or injury resulting or likely to result to the land or to its use and enjoyment from the operation of the mine.

GAS AND OIL LEASES ACT sets out the procedure whereby a lessor under a gas or oil lease may, upon default by the lessee under the terms of the lease, obtain an order declaring the lease void.

ONTARIO HARBOURS AGREEMENT ACT, 1962-63, confirms on behalf of Ontario the agreement between Ontario and Canada establishing the harbours which were public harbours at Confederation, providing that mines and minerals therein are administered by Ontario and confirming grants and quit claims listed therein. The federal harbours are Amherstburg, Belleville, Brockville, Chatham, Collingwood, Fort William, Gananoque, Goderich, Kincardine, Kingston, Kingsville, Leamington, Oshawa, Owen Sound, Penetanguishene, Port Arthur, Port Burwell, Port Hope, Port Stanley, Prescott, Rondeau Bay, Sarnia, Sault Ste. Marie, Southampton, Toronto, Whitby and Windsor.

PUBLIC LANDS ACT provides for: (1) The disposition of Crown land for a variety of purposes by sale, lease or licence, and by auction or tender; (2) The management of Crown land by the Ministry by zoning for land use, setting apart for public use, research, etc., and through agreements with municipalities on beaches and water lots; (3) The administration of roads on Crown lands including the designation of public forest roads and agreements with occupiers of private forest roads respecting the use by the public of private forest roads; (4) The administration and control of the construction and maintenance of dams; (5) The granting of water powers and privileges.

SURVEYORS ACT deals with the Association of Ontario Land Surveyors and the rules governing membership and conduct. The Surveyor-General is a member of the Council of the Association.

SURVEYS ACT defines the system of surveys and the rules for surveys. The Minister orders surveys made on his volition or upon application to settle disputes or lost lines, etc,; and hearing evidence, he confirms the surveys, with or without amendment. His decision is subject to appeal to the Divisional Court.

FOREST RESOURCES GROUP

ALGONQUIN FORESTRY AUTHORITY ACT establishes a Crown corporation known as the Algonquin Forestry Authority to harvest Crown timber in Algonquin Provincial Park and public lands adjacent to the park, to sell the logs and also to carry out such forestry, land management and other programs and projects as the Minister of Natural Resources authorizes.

ARBOREAL EMBLEM ACT, 1984 adopts the Eastern White Pine as the arboreal emblem of the Province of Ontario.

CROWN TIMBER ACT enables the granting of the following four types of licences to cut Crown timber, a licence based on a call for tenders, a licence to salvage timber, a licence for areas that do not exceed 64.75 hectares (160 acres), and a licence approved by Order in Council for large areas.

The Act also enables the Minister to enter into comprehensive forest management agreements with members of the forest industry to ensure that forests under the agreements are harvested and regenerated to produce successive crops of timber on a sustained yield basis.

Crown Management Units may be established under the Act and agreements entered into for the supply of Crown timber from such units. Under this arrangement, the party to the agreement does not have exclusive rights in a specific area until a licence is granted to him to fill his requirements for an operating season.

Crown dues and area charge are fixed by the regulations.

Other subjects dealt with are: forest management, operating and annual plans; examination of scalers and licensing of scalers; licensing of mills; penalties for wasteful practices, unauthorized cutting, removal of timber for scaling, and other violations; and protection of the Crown's interests through seizure of timber and a statutory lien for Crown charges.

FORESTRY ACT. Under this Act: (1) The Minister enters into agreements with landowners such as municipalities, conservation authorities and the National Capital Commission (Ottawa) to manage the forest lands; (2) Ministry tree nurseries are established and nursery stock is distributed; (3) Private forest reserves are set up on private lands with the consent of the owner; (4) The Minister, with the approval of the Lieutenant Governor in Council, may establish programs for the encouragement of forestry. At present, a managed forest tax reduction program has been established by the Minister.

FOREST TREE PEST CONTROL ACT provides for the control of outbreaks of forest tree insects and diseases on private land.

SETTLERS' PULPWOOD PROTECTION ACT provides for the regulation of the sale and of the price of pulpwood cut from settlers' land.

SPRUCE PULPWOOD EXPORTATION ACT provides for the exportation under the authority of an Order in Council of unmanufactured spruce pulpwood from lands granted under special Acts which prohibit such export.

TREES ACT provides that, with the Minister's approval, municipalities may pass by-laws restricting and regulating the destruction of trees and appoint enforcement officers. Generally, by by-law, municipalities may acquire land for forestry purposes and enter into agreements with the Minister for the management of such lands and related matters.

WOODLANDS IMPROVEMENT ACT provides for the Minister to enter into agreements with owners of lands suitable for forestry purposes and situate in a private forest management area for the planting of nursery stock or stand improvement.

WOODMEN'S EMPLOYMENT ACT authorizes the appointment of inspectors and the making of regulations respecting conditions in lumber camps. It also provides that Crown timber licensees are responsible for the acts and omissions of their jobbers and subcontractors who carry out operations.

WOODMEN'S LIEN FOR WAGES ACT provides a lien and a procedure to enforce such lien for persons performing labour on timber.

OUTDOOR RECREATION GROUP

ENDANGERED SPECIES ACT provides for the conservation, protection, restoration and propagation of species of flora and fauna of the Province of Ontario that are threatened with extinction.

FISHERIES ACT (CANADA) Ontario Fishery Regulations are made under this Act. They relate to open seasons for angling and commercial fishing and the licences required. The form of licences and the fees are prescribed under the Game and Fish Act.

FISHERIES LOAN ACT provides for loans to persons carrying on the business of commercial fishing or any other business dependent in whole or in part on the taking of fish from waters in which such taking has been prohibited by reason of the contamination of fish resulting from pollution of the water. Provision is made for federal-provincial agreements respecting the sharing of such loans.

FISH INPECTION ACT is complementary to the Federal Act.

FRESHWATER FISH MARKETING ACT (ONTARIO) complements the Freshwater Fish Marketing Act (Canada). Through these Acts and the federal-provincial agreement, the Freshwater Fish Marketing Corporation established under the Federal Act is the sole purchaser of commercial fish, as defined in the Federal Act, taken in that part of Ontario designated in the regulations, i.e., that part of Ontario westerly of longitude 86 degrees except the Territotial District of Rainy River but including that part of Lake of the Woods in the Territorial District of Rainy River. Sales to and purchases by persons for their own consumption or for consumption by persons or animals in the course of the purchaser's business are excepted.

GAME AND FISH ACT deals with the management of wildlife resources; game animals; game birds (upland); fur-bearing animals; frogs; sale and rearing of game fish; and offences and enforcement. Regulations made under the Act establish open seasons for hunting and trapping; bag limits; crown game preserves; the licensing of hunters, trappers, guides, persons operating game bird hunting preserves, and persons selling game fish for stocking and human consumption; the regulating of dogs used in hunting, aircraft transporting hunters, and conduct of hunters (hunter safety); and farmer-hunter relations. The Game and Fish Hearing Board was established under the Act on November 15, 1973.

MIGRATORY BIRDS CONVENTION ACT. Open seasons for migratory birds are set under this Act.

PARKS ASSISTANCE ACT provides for the establishment of parks in municipalities or in territory without municipal organization. The Minister may, with the approval of the Lieutenant-Governor in Council, make grants not exceeding 50 per cent of the cost of acquiring land and developing such parks. The parks established under the Act are to be maintained and operated in a manner complementary to provincial parks.

PROVINCIAL PARKS ACT provides for the establishment of provincial parks and their management and for certain employees having the authority of the O.P.P. in a provincial park. Advisory committees for one or more provincial parks may be appointed by the Minister with the approval of the Lieutenant-Governor in Council. Parks may be classified as a natural environment park, a nature reserve park, a wilderness park, a recreational park, a waterways park, or an historical park. Any of these classes may be zoned with controlled use in zones.

Mining is prohibited in provincial parks except as provided in the regulations. The regulations on mining were revoked in 1956 but rights and interest existing at that time were preserved.

Hunting is prohibited in provincial parks except as provided in the regulations under the Game and Fish Act or where the prohibition is removed by designation of the Lieutenant-Governor in Council under the Provincial Parks Act. This does not apply to the Townships of Bruton and Clyde (added to Algonquin Provincial Park as a Special Act).

Concession leases are granted under the Act. The province calls for tenders for buildings and facilities.

A daily vehicle permit charge is $4.25 or $42.50 for an annual permit. A bus permit charge is $17.00 per day. Senior Citizens are allowed free admission during the week except for camping on weekends, when half rates apply. Campsite charges are $9.25 per night, or $10.25 per night where shower facilities are available, and $12.00 per night for campsites with electrical power. The charge for an extra car on a campsite is $4.25 per night. On unorganized campsites in park interiors the charge is $3.00 per person. Group camping charge is $7.50 per night for adults per campsite and $1.50 per night for persons 19-65 years of age. Reservation fee for campsite is $2.50. The above fees reflect those charged during peak periods. They may vary, depending on location and time of year.

This Act does not apply to any park under the management of the Niagara Parks Commission, the St. Lawrence Commission or the St. Clair Parkway Commission.

WILDERNESS AREAS ACT was passed on March 26, 1959, to preserve areas having some unique feature. Development or utilization or the natural resources in an area more than 260 ha (640 acres) in size is not affected by this Act.

WILD RICE HARVESTING ACT prohibits the harvesting of rice on Crown land except under the authority of a licence.

AVIATION AND FIRE MANAGEMENT CENTRE

FOREST FIRES PREVENTION ACT applies to the seven fire regions set up by regulation. The fire season from April 1st to October 31st, may be extended by regulation. Fire permits are required during the fire season to (a) start fires in a fire region except for fires lit for cooking or warmth or to (b) ignite fireworks in or within 300 m of a forest or woodland. Work permits are required at any time of the year for carrying on any logging, mining, industrial operation or clearing in or within 300 m of a forest or woodland. Areas may be established as restricted fire zones in which fires for cooking or warmth will be restricted to portable stoves and barbecues or as restricted travel zones in which a travel permit will be required except on public roads, cities, towns, villages, police villages, supervised camping grounds and water adjacent thereto. The Minister may declare emergency areas and may make orders for suppression and the safety and evacuation of persons. The Minister may enter into agreements with Canada, any province, any federal or provincial agency or municipality respecting the prevention and control of forest fires. The regulations establish fire precautions.

GENERAL

ALGONQUIN PROVINCIAL PARK EXTENSION ACT, 1960-1, adds the public lands in the Geographic Townships of Bruton and Clyde in the Provincial County of Haliburton to the park, subject to hunting.

CONSERVATION LAND ACT, 1988, provides for the establishment of a program for the payment of grants to promote the recognition, encouragement and support of the stewardship of conservation of certain lands.

GANANOQUE LANDS ACT, 1961-2, vests certain lands in the town of Gananoque in the Crown and authorizes the sale of encroachments to adjoining owners for a fee of $50.00 and the granting of the balance of the land.

LAC SEUL CONSERVATION ACT, 1928, provides for the execution of an agreement between the Government of the Province of Ontario, represented by the Minister of Lands and Forests, the Government of Canada and the Government of the Province of Manitoba regarding the construction of a dam at the outlet of Lac Seul.

LAKE OF THE WOODS CONTROL BOARD ACT, 1922, is complementary to a Federal Act of 1921. It deals with the regulation of the water levels of the Winnipeg River, the English River, Lac Seul and Lake St. Joseph. The Board was created following a report in 1917 by the International Joint Commission which was established under a treaty made in 1909 between the United States and Great Britain. The membership of the Board consists of a Federal representative and one from Manitoba and two from Ontario. One Ontario member is appointed by the Ontario Hydro. The other is R. M. Odell, Chairman of the Lake of the Woods Control Board and Acting Supervisor, Models and Consultative Services, Conservation Authorities and Water Management Branch, Ministry of Natural Resources, with D. L. Strelchuk as alternate member.

The Board has the duty to secure severally and at all times the most dependable flow and the most advantageous and beneficial use of the waters of the Winnipeg and English Rivers and, for the purpose, to regulate the flow of:

(a) Lake of the Woods, to levels recommended by the International Joint Commission as agreed by Canada and the United States;
(b) Lac Seul, to levels recommended by the Board and approved by the Lieutenant-Governors in Council of Ontario and Manitoba and to regulate the flow into Lac Seul through the Lake St. Joseph diversion.
(c) Winnipeg River, between its junction with the English River and Lake of the Woods, and the English River between its junction with the Winnipeg River and Lac Seul; and
(d) Other waters of the watershed of the Winnipeg River as are placed under its jurisdiction by the Governor-General in Council and the Lieutenant-Governors in Council of Ontario and Manitoba.

MANITOBA-ONTARIO LAKE ST.JOSEPH DIVERSION AGREEMENT AUTHORIZATION ACT, 1958, provides for entry by Ontario and The Hydro-Electric Power Commission of Ontario into agreement with Manitoba and The Manitoba Hydro-Electric Board in respect of the diversion of water into the Winnipeg River and electrical power generated from such waters in Ontario and Manitoba.

MINERAL EMBLEM ACT, 1975, adopts the amethyst as the mineral emblem of the Province of Ontario.

MINISTRY OF NATURAL RESOURCES ACT effective as of April 1, 1972, created the new Ministry of Natural Resources by amalgamating the former Department of Lands and Forests and Department of Mines and Northern Affairs and repealed the provisions of a number of Acts on which the departments depended for administrative authority. Effective October 30, 1973, the Act provides for the appointment of a Mining and Lands Commissioner and advisory committees.

NATIONAL RADIO OBSERVATORY ACT, 1962-3, provides for the transfer of administration and control of certain public lands in the Township of White, District of Nipissing, to Canada for the maintenance and operation of a national radio observatory.

OTTAWA RIVER WATER POWERS ACT, 1943, ratifies and confirms an agreement between the Province of Ontario, the Province of Quebec, the Hydro-Electric Power Commission of Ontario and the Quebec Streams Commission respecting the development of water power on the Ottawa River.

SEINE RIVER DIVERSION ACT, 1952, confirms the partial diversion of the Seine River and authorizes the completion and operation of the diversion by Steep Rock Iron Mines Limited.

Appendix 11

Ontario Ministry of Natural Resources
"Agencies, Boards and Commissions"

AGENCIES, BOARDS AND COMMISSIONS

A number of agencies, boards and commissions are associated with the Ministry of Natural Resources, all of them concerned in one way or another with the management of natural resources in Ontario.

The groups listed here are those which are linked administratively or financially to MNR, and which do not produce their own annual reports. The list does not include those groups officially linked to MNR which produce their own annual reports: Ontario's 38 Conservation Authorities, the Algonquin Forestry Authority and the Provincial Parks Council.

Board of Examiners of the Association of Ontario Land Surveyors

This eight-member board oversees the educational and practical training and exams that lead to becoming a member of the Association of Ontario Land Surveyors (AOLS). For example, the board approves the course content of the survey science course at the University of Toronto's Erindale College, as well as the two-year apprenticeship program (called a term of articles). The board also sets the professional examinations required at the end of this training, comprising an oral exam as well as a written statutes exam. Following the successful completion of these exams, the board admits the student to membership in the AOLS. Two of the board's members are appointed by Order-in-Council and six are appointed by the Council of the Association of Ontario Land Surveyors.

Council of the Association of Ontario Land Surveyors

This 12-member council is the board of directors for the Association of Ontario Land Surveyors (AOLS). The council includes: Ontario's Surveyor General; two members appointed by the Lieutenant-Governor-in-Council; one member appointed by the Minister of Natural Resources; a president, vice-president and six elected members. The committee's function is to establish policies to regulate the practice of professional land surveying and govern the profession in accordance with the Surveyors Act, its regulations and the bylaws. It also establishes and maintains high standards of knowledge and skill among its members.

Crown Timber Board of Examiners

The Minister of Natural Resources appoints three senior MNR technicians from the wood measurement field to this board, which sets the written and practical exams for the provincial scaler's licence. Scaling is the process of estimating the quantity and quality of cut timber so that its volume and stumpage value can be determined. Under the Crown Timber Act, all wood cut from Crown lands must be measured by licensed scalers. Sixty to 75 ministry staff, timber company employees, and university and college students take the four-week course each year.

Game and Fish Hearing Board

This board is made up of five members appointed by the Lieutenant-Governor-in-Council. The board conducts hearings into cases where the ministry has turned down an application for a trapping or commercial fishing licence. The board hears evidence, then delivers a written summary and recommendation to the Minister of Natural Resources, who then decides whether or not to issue a licence.

The Lake of the Woods Control Board

This four-member board is responsible for regulating the levels of The Lake of the Woods and Lac Seul and the Winnipeg and English rivers between the lake outlets and their confluence. The Lake of the Woods and Lac Seul are the major storage reservoirs for five generating stations in Ontario and for six in Manitoba. The board is advised by representatives from seven interest groups representing tourism, energy generation, native peoples, cottagers and MNR. Advice from these groups helps the board balance the needs of competing uses for water. The board consists of two members from Ontario, one from Manitoba, and one from the federal government.

Ontario Forestry Council

The Ontario Forestry Council was established by the Ontario government in 1984 to recommend priorities and funding for forest research. Approximately $16-million is spent in Ontario each year on forestry research by the federal and provincial governments, universities and industry. These efforts are being co-ordinated by the council, whose 10 members represent governments, universities and industry. In January 1987, under the auspices of the council, the Ontario Forestry Research Committee was formed to establish the direction, priorities, execution and dissemination of forestry research with respect to the needs of forest management in Ontario. This committee replaces the Canada-Ontario Joint Forestry Reseach Committee and the advisory committees to the Great Lakes Forestry Centre, the Canadian Forestry Service and MNR's Ontario Tree Improvement and Forest Biomass Institute.

ORGANISMES, CONSEILS ET COMMISSIONS

Un certain nombre d'organismes, de conseils et de commissions sont rattachés au ministère des Richesses naturelles et s'occupent d'une façon ou d'une autre de la gestion des richesses naturelles de l'Ontario.

Les groupes qui figurent ici sont rattachés administrativement ou financièrement au MRN, mais ne publient pas leur propre rapport annuel. Les groupes officiellement rattachés au MRN et qui publient leur propre rapport annuel ne figurent pas ici, à savoir : les 38 offices de protection de la nature de l'Ontario, l'Office de foresterie du parc Algonquin et le Conseil des parcs provinciaux.

Conseil d'examen de l'Association des arpenteurs-géomètres de l'Ontario

Ce conseil, composé de huit membres, supervise la formation théorique et pratique et les examens qui permettent de devenir membre de l'Association des arpenteurs-géomètres de l'Ontario (AAO). Il approuve, par exemple, le programme des cours d'arpentage offerts au collège Erindale de l'Université de Toronto ainsi que le programme d'apprentissage de deux ans (appelé stage de formation). Il organise également les examens professionnels exigés à la fin de la formation et qui consistent en un examen oral et un examen écrit sur les règlements. Le Conseil admet comme membres de l'Association les candidats qui ont réussi à ces examens. Deux des membres du conseil sont nommés par décret du lieutenant-gouverneur, et les six autres sont nommés par le Conseil de l'Association des arpenteurs-géomètres de l'Ontario.

Conseil de l'Association des arpenteurs-géomètres de l'Ontario

Ce conseil, composé de 12 membres, est le conseil d'administration de l'Association des arpenteurs-géomètres de l'Ontario (AAO). Il comprend : l'arpenteur général de l'Ontario, deux membres nommés par décret du lieutenant-gouverneur, un membre nommé par le ministre des Richesses naturelles, un président et un vice-président, et six membres élus. Le Conseil a pour mandat d'établir les règles de conduite régissant les pratiques professionnelles d'arpentage et de réglementer la profession selon la Loi sur l'arpentage. ses règlements et les ordonnances connexes. De plus, il établit et maintient des normes élevées de connaissances et de compétences chez ses membres.

Commission d'examen du bois de la Couronne

Le ministre des Richesses naturelles nomme trois techniciens principaux dans le domaine du mesurage du bois à la Commission d'examen du bois de la Couronne. Cette commission élabore les examens écrits et pratiques pour l'obtention du permis provincial de mesureur du bois. Le mesurage du bois est le processus par lequel la qualité et la quantité du bois coupé sont évaluées afin d'en établir le volume et de déterminer le montant des droits de coupe. Aux termes de la Loi sur le bois de la Couronne, tout le bois coupé sur les terres de la Couronne doit être mesuré par des mesureurs autorisés. Tous les ans, de 60 à 75 membres du personnel du ministère, employés de sociétés forestières et étudiants des universités et collèges suivent le cours de formation d'une durée de quatre semaines.

Commission d'enquête sur les permis commerciaux de chasse ou de pêche

Cette commission se compose de cinq membres nommés par décret du lieutenant-gouverneur. Elle tient des audiences sur les cas de refus de permis de piégeage ou de pêche commerciale par le Ministère. La Commission entend les témoins puis soumet un résumé écrit et une recommandation au ministre des Richesses naturelles qui décide alors d'accorder ou non un permis.

Commission de contrôle du lac des Bois

Cette commission composée de quatre membres est responsable de la régulation du niveau d'eau du lac des Bois et du lac Seul, de la rivière Winnipeg et de la rivière des Anglais, entre les sorties des lacs et leurs confluents. Le lac des Bois et le lac Seul constituent deux importants réservoirs d'emmagasinage pour cinq centrales électriques en Ontario et six au Manitoba. Dans ses fonctions, la Commission reçoit les conseils de porte-parole de sept groupes d'intérêt représentant les autochtones, les propriétaires de chalets et le MRN. Les conseils reçus de ces porte-parole aident la Commission à répartir équitablement les diverses utilisations de l'eau. Parmi les quatre membres de la Commission, deux viennent de l'Ontario, un du Manitoba et l'autre du gouvernement fédéral.

Conseil de foresterie de l'Ontario

Le Conseil de foresterie de l'Ontario, créé par le gouvernement de l'Ontario en 1984, est chargé de recommander les priorités et le financement de la recherche en foresterie. Les gouvernements fédéral et provincial, les universités et l'industrie consacrent environ 16 000 000 $ chaque année à la recherche en foresterie. Le Conseil coordonne ces travaux et ses dix membres représentent les gouvernements, les universités et l'industrie. En janvier 1987, sous les auspices du conseil, le Comité sur la recherche forestière de l'Ontario a été formé dans le but de donner des orientations et des priorités à la recherche, d'effectuer la recherche et de

Ontario Geographic Names Board

The board is Ontario's official custodian of a bank of records comprising maps, charts, gazetteers (geographical index), card index and correspondence files containing current and historical information on the official status, geographical position, and usage of approximately 220,000 names of Ontario cities, towns, villages (both incorporated and unincorporated), counties, townships, lakes, rivers, islands, valleys, ridges, localities and other cultural and natural geographical features. To date, about 70,000 of these names have been officially adopted for Ontario government use – on maps, charts, statutes, regulations, property descriptions, plans of survey, road and highway signs, and so on. The board serves as official adviser to the Minister in all matters affecting Ontario's geographical nomenclature: its adoption, deletion, or use of alternate forms, and the formulation and development of policies affecting the jurisdiction, legislation and treatment of names in languages other than English. The board is composed of seven members, two of whom are ex officio ministry officials (the Surveyor General and executive secretary), with another five appointed from the private sector by Order-in-Council. The board, established in 1971, meets quarterly and is supported by MNR through the Geographic Names Section (Surveying Services) which functions as the OGNB Secretariat.

Ontario Renewable Resources Research Review Board

This 11-member board helps the ministry keep abreast of the latest developments by supporting relevant research at outside institutions. It reviews applications to the Ontario Renewable Resources Research Grants Program, and recommends appropriate projects to the Minister of Natural Resources. In 1987-88, the ministry awarded $646,510 to 35 research projects at nine Ontario universities and the Royal Ontario Museum.

Ottawa River Regulation Planning Board

This seven-member board is responsible for formulating policies, guidelines and criteria to ensure the integrated management of the 19 principal reservoirs of the Ottawa River basin. The board's goal is to reduce the adverse impact of high and low water levels, while maintaining the benefits derived from energy generation at the basin's 43 generating stations. One board member is named by MNR, one by Ontario Hydro, two by Quebec, and three by the federal government.

Public Agricultural Lands Committee

This four-member committee reviews all applications for public lands required for agricultural purposes. The committee includes representatives from MNR and the Ministry of Agriculture and Food.

Rabies Advisory Committee

This seven-member committee, appointed by an Order-in-Council, co-ordinates MNR's rabies research program. The members, all chosen for their technical expertise in rabies research, represent the Ministry of Health, Ministry of Agriculture and Food, Agriculture Canada, and the academic community. They keep MNR informed of recent developments in rabies research, and advise the ministry how to allocate its rabies research funds.

Sturgeon River/ Lake Nipissing/French River Watershed Advisory Board

The nine private citizens appointed to this board by the Minister of Natural Resources provide advice to MNR on how to manage the Sturgeon River/Lake Nipissing/French River watershed. The board reviews such things as the operation of the watershed's six major water control structures. The board provides information to the public during the spring runoff when water levels are high and at times when levels are low due to drought, in addition to providing public education on water management issues.

diffuser les résultats de cette recherche en foresterie, en ce qui a trait aux besoins de la gestion forestière en Ontario. Ce comité remplace le Comité conjoint de recherche forestière Canada-Ontario et les comités consultatifs du Centre forestier des Grands Lacs, du Service canadien des forêts et de l'Institut ontarien d'amélioration des arbres et de la biomasse forestière.

Commission de toponymie de l'Ontario

Cette commission est chargée officiellement de conserver des archives consistant en cartes terrestres et marines, répertoires toponymiques, fichiers et correspondance contenant des renseignements courants et historiques sur le statut officiel, la position géographique, l'application toponymique et l'usage d'environ 220 000 noms de villes, villages (incorporés et non incorporés), comtés, cantons, lacs, rivières, îles, vallées, crêtes, localités et autres lieux géographiques, culturels et naturels en Ontario. À ce jour, environ 70 000 de ces noms ont été adoptés par le gouvernement de l'Ontario pour usage dans les publications officielles telles que les cartes, les statuts, les règlements, les descriptions de propriétés, les plans d'arpentage, les panneaux routiers, et autres. La Commission conseille officiellement le ministre sur tout ce qui concerne la toponymie en Ontario : adoption, suppression, usage d'autres noms, et élaboration de politiques touchant la juridiction, les lois et le traitement des noms dans des langues autres que l'anglais. La Commission se compose de sept membres, dont deux sont des représentants ex officio du Ministère (l'arpenteur général et le secrétaire général) et cinq appartiennent au secteur privé et sont nommés par décret du lieutenant-gouverneur. La Commission, créée en 1971, se réunit tous les trimestres et est financée par le MRN, par l'intermédiaire de sa Section de toponymie (Services d'arpentage), qui joue le rôle de secrétariat de la CTO.

Commission ontarienne d'examen des recherches sur les ressources renouvelables

Cette commission, composée de 11 membres, aide le Ministère à se tenir à la pointe du progrès en finançant les recherches effectuées par des établissements extérieurs. Elle étudie les demandes soumises dans le cadre du Programme de subvention de recherche sur les ressources renouvelables et recommande les projets appropriés qui devraient être acceptés au ministère des Richesses naturelles. En 1987-1988, le Ministère a accordé 646 510 $ à 35 projets de recherche de neuf universités ontariennes et du Musée royal de l'Ontario.

Commission de planification de la régulation de la rivière des Outaouais

Cette commission, composée de sept membres, est responsable de formuler des politiques, directives et critères en vue d'assurer la gestion intégrée des 19 réservoirs principaux du bassin de la rivière des Outaouais. Le but de la Commission est de réduire l'effet négatif des niveaux d'eau faibles et élevés tout en maintenant les avantages tirés de la production d'électricité des 43 centrales électriques du bassin. La Commission est composée de sept membres élus comme suit : un par l'Ontario, un par Ontario Hydro, deux par le Québec et trois par le gouvernement fédéral.

Comité des terres publiques agricoles

Ce comité, composé de quatre membres, étudie toutes les demandes de terres publiques requises à des fins agricoles. Le comité comprend des représentants du MRN et du ministère de l'Agriculture et de l'Alimentation.

Comité consultatif sur la rage

Ce comité, composé de sept membres nommés par décret du lieutenant-gouverneur, coordonne le programme de recherche du MRN sur la rage. Les membres, qui sont tous choisis d'après leurs compétences techniques en matière de recherches sur la rage, représentent les ministères de la Santé et de l'Agriculture et de l'Alimentation, Agriculture Canada et les facultés universitaires. Le Comité tient le MRN au courant des récents progrès de recherche et fait des recommandations pour l'allocation des ses fonds de recherche sur la rage.

Conseil consultatif pour la gestion du bassin de la rivière Sturgeon, du lac Nipissing et de la rivière des Français

Les neuf représentants du public, nommés par le ministre des Richesses naturelles pour faire partie de ce conseil font des recommandations au MRN en ce qui concerne la gestion du bassin de la rivière Sturgeon, du lac Nipissing et de la rivière des Français. Le Conseil étudie des questions, telles qui l'exploitation des six principaux ouvrages de

Mining and Lands Commissioner

The Mining and Lands Commissioner exercises administrative and reporting functions under three statutes administered by the Ministry of Natural Resources. Under the Conservation Authorities Act, the Commissioner hears appeals from refusals of conservation authorities to issue permits under their fill and construction regulations. Under the Lakes and Rivers Improvement Act, the tribunal holds hearings in respect to the construction of dams and the diversion of waterways. The Commissioner also holds hearings under the Beach Protection Act in regards to the refusal to issue or renew, the suspension, and the revocation of licences to take sand and gravel. During 1987-88, the Commissioner conducted six hearings under the Conservation Authorities Act. No hearings were held in 1987-88 under the Beach Protection Act or the Lakes and Rivers Improvement Act.

Ontario Fisheries Advisory Council

The Ontario Fisheries Advisory Council was established in 1987 to advise the Minister of Natural Resources on the expenditures of Ontario's fisheries management program. The council consists of 12 members representing a broad cross-section of users of the fisheries resource in Ontario, including several special interest groups (Northern Ontario Tourist Outfitters, Ontario Federation of Anglers and Hunters and Ontario Fish Producers' Association). In addition to the review of expenditures. the council will advise the Minister on major ministry fisheries policies and programs.

contrôle des eaux du bassin, et renseigne le public durant les périodes d'écoulement du printemps lorsque le niveau est élevé, et en période de sécheresse lorsque le niveau est bas. Il renseigne également le public sur les questions de gestion des eaux.

Commissaire aux mines et aux terres

Le commissaire aux mines et aux terres exerce des fonctions d'administration et de signalement en vertu de trois lois régies par le ministère des Richesses naturelles. Aux termes de la Loi sur les offices de protection de la nature, le commissaire entend les appels concernant le refus des offices de protection de la nature d'accorder des permis conformément aux règlements sur le remblayage et la construction. En vertu de la Loi sur l'aménagement des lacs et des rivières, le tribunal tient des audiences concernant la construction des barrages et le détournement des cours d'eau. Le commissaire tient aussi des audiences en vertu de la Loi sur l'enlèvement du sable, en ce qui a trait au refus d'accorder ou de renouveler un permis d'enlèvement de sable ou de gravier ou à la suspension ou la révocation d'un tel permis. Au cours de 1987-1988, le commissaire a tenu six audiences conformément à la Loi sur les offices de protection de la nature. Aucune audience n'a été tenue en vertu de la Loi sur l'enlèvement du sable et de la Loi sur l'aménagement des lacs et des rivières.

Conseil consultatif de l'Ontario sur les pêches

Le Conseil consultatif de l'Ontario sur les pêches a été créé en 1987 pour conseiller le ministre des Richesses naturelles sur les dépenses du programme de gestion des pêches de l'Ontario. Il est formé de 12 membres représentant les utilisateurs des ressources de pêche de l'Ontario, y compris plusieurs groupes d'intérêt spéciaux (comme la Northern Ontario Tourist Outfitters, l'Ontario Federation of Anglers and Hunters et l'Ontario Fish Producers Association). En plus de revoir les dépenses du programme, le Conseil fait des recommandations au ministre sur les politiques et les programmes importants du Ministère.

Appendix 12

Ontario Ministry of Natural Resources,
"Statement of Philosophy on Integrated Resource Management", (1985)

APPENDIX A

MINISTRY OF NATURAL RESOURCES'

STATEMENT OF PHILOSOPHY

ON INTEGRATED RESOURCE MANAGEMENT

1. DEFINITION

Integrated resource management (IRM) is the coordination of resource management programs and activities so that long-term benefits are optimized and conflicts between programs are minimized.
(Benefits are defined by corporately-approved program targets and by District Land Use Guidelines).

IRM is the main corporate philosophy to be used by MNR staff to achieve Ministry goals, objectives and targets. IRM is not an end in itself, but a means of achieving results.

2. PRINCIPLES

i. All components of the ministry's management system must operate using the integrated resource management approach and must be assessed continually to improve individual components and the linkages between components. The IRM approach applies to all areas, including policy development, land use and resource planning, work planning, and operations.

ii. The onus is on individual staff to contribute actively to the achievement of all ministry programs, whenever this is possible. It is through an understanding of the interrelationships between programs, and by contributing wherever possible, that every staff member can help to resolve program conflicts before they occur, and to increase the benefits of our programs to the people of the Province.

iii. In most cases, the multiple use of resources will be MNR's desired direction since it is the best approach to optimizing benefits and minimizing conflicts. However, in some specific cases, or for certain periods of time, a single use can be the best approach to satisfy these two criteria. Multiple use may be thought of as (1) concurrent use, or more than one use occurring on the same site at the same time, and (2) sequential use, or one use occurring after another on the same site in a planned sequence.

iv. Natural and human resources should be blended together in a way that will yield the optimum combination of benefits. The District Land Use Guidelines identify program targets and general directions which constitute the benefits that MNR seeks to attain. Ministry staff must strive to use all the resources available in an efficient and effective combination.

v. Ministry staff must continually strive to maintain open and effective communications within our ministry and with outside agencies, interest groups, and the public. If we can establish and maintain open communication between programs and across the different levels of the ministry, we will find it much easier to work in an integrated resource management fashion. External communications are integral to maintaining an informed and effective system of decision-making. Good external communications will also help to keep us abreast of outside interests and viewpoints. Through open communications -- both internally and externally -- we can work together to make integrated resource management a reality.

vi. The ministry must have regard for both the individual and combined consequences of its policies, plans, and programs. We must take into account the combinations of social, economic and environmental impacts of all our activities (these impacts may be short-term, long-term, positive or negative).

3. EXPECTATIONS FROM MNR STAFF

i. The key to success is for every individual MNR staff member to adopt a positive attitude and commitment to IRM.

ii. The effectiveness of IRM also depends on all staff developing a good knowledge and awareness of how it can be achieved. All staff must make special efforts to understand the basic elements of all MNR programs, and the effects of MNR activities on the social and economic well-being of the people of Ontario.

Examples of how we can achieve this include: working in inter-disciplinary teams; increased and diversified training; and job crossovers.

iii. The most obvious opportunity to apply the IRM approach is in the day-to-day activities of field staff. However, main office staff must also apply the philosophy of IRM in their functions if the concept is to be effective throughout the ministry. In developing MNR policies, procedures, and training courses, all staff must adhere to the philosophy of IRM, and ensure that any directives being developed assist field staff in their attempts to achieve integration.

iv. MNR managers will play a pivotal role in helping their staff to achieve positive attitudes, knowledge and awareness of IRM by: setting the example themselves; demonstrating the values of the IRM approach; adopting and encouraging a team approach to decision-making; and encouraging their staff to take advantage of job-crossovers and training opportunities.

Released: 1985 02 07

Appendix 13

Ontario Ministry of Natural Resources,
"Summary of Conclusions from a Review of
Integrated Resource Management Paper", (1984)

APPENDIX B

SUMMARY OF CONCLUSIONS FROM A REVIEW
OF INTEGRATED RESOURCE MANAGEMENT PAPER
- SPRING 1984 -

- There is no concensus on any single option or combination of options; but Option C (individual management and operating plans for each program, as required) and Option D (individual management plans for each program; generally only one integrated operating plan) were favoured as the best overall approach

- There are fundamental differences between planning on private land and on Crown land

- There is general agreement that the field should be given some flexibility to choose the option that best fits individual circumstances

- There are significant differences between the regions in their planning needs and circumstances; a single approach to planning would not serve all regions well

- Changes should not be made to existing processes which are working

- New options were suggested - in particular, one management plan and several operating plans

- Some guidelines, definitions, and standards are needed

- There was no agreement on what geographical area should be the basis for planning

- There was no conclusion on where Mineral Resources and Conservation Authority "Planning" fits in MNR's resource management planning processes

- There is lack of concensus, and a level of confusion over the contents, audiences, and aims of various ministry plans. The current understanding of strategic plans, management plans, and operating plans is not consistent across the province or across program lines. Nor is there a concensus on what these plans should be

- The requirements of plan approval in MNR differ; forest management plans have requirements set in legislation

- Resource management planning in MNR needs to be well managed.

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Appendix 14

Public Hearing Notices, "Class Environmental Assessment of Timber Management" and "Quetico Park - Five Year Review of Management Plan"

Ontario

ENVIRONMENTAL ASSESSMENT BOARD

FUNDING FOR INTERVENORS

Notice of Public Hearing for Funding on the Proposal by the Ministry of Natural Resources for a Class Environmental Assessment for Timber Management on Crown Lands in Ontario

The Environmental Assessment Board is authorized by Order in Council 2449/87 to provide funding up to a total of $300,000 In connection with the environmental assessment hearing with respect to the Ministry of Natural Resources Timber Management Class Environmental Assessment.

Public hearings on this matter are expected to commence in the spring of 1988. Notice will shortly be published of preliminary meetings which will be held to deal with procedural matters and the identification of Issues and parties, in preparation for the main hearings.

Funding will be made available to assist applicants who meet the criteria established in the Order in Council.

A funding panel, established by the Chairman of the Environmental Assessment Board, will consider requests for funding by applicants. Forms setting out the information required by the Funding Panel must be obtained and completed **prior** to funding hearings being established. Location of these hearings will be dependent on the applications received. All applicants should contact the Board by **December 17, 1987.**

Please telephone the Board Secretary for further details at (416) 323-4806. The Board accepts collect calls.

Dated at Toronto this 25th day of November, 1987

Y. Lane
Board Secretary

Quetico Provincial Park Five-Year Review of Management Plan

The public Is Invited to participate in a review of the Quetico Pronvincial Park management plan.

An information package is available containing key issues and preliminary revisions to the management plan. To get a copy of the information package, contact:

Quetico Provincial Park
Atikokan District Office
108 Saturn Avenue
P0T 1C0
Tel: (807) 597-6971

Meeting will be held by the Provincial Parks Council at 7:30 pm in:

Fort Frances
Knights of Columbus
March 1, 1988

Atikokan
Moose Lodge
March 2, 1988

Thunder Bay
Red Oak Inn
March 3, 1988

Toronto
MacDonaid Block
Superior Room
900 Bay Street
March 28, 1988

The Ontario Ministry of Natural Resources encourages you to make your views known.

Ontario
Ministry of Natural Resources

Vincent G. Kerrio
Minister