ENVIRONMENTAL MANAGEMENT UNDER NATIVE SELF-GOVERNMENT

NEEDS IDENTIFICATION STUDY

THE RAWSON ACADEMY OF AQUATIC SCIENCE

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1. INTRODUCTION

1.1 Project Objectives

This project is being undertaken for the Self-Government Sector, Indian and Northern Affairs Canada. It is the first step of a much larger project which would have as its objectives:

- To research the potential for Indian (native) involvement in environmental management and protection within the present legal framework (Federal and Provincial/Territorial).
- To provide a basis for the assessment of environmental matters included in self-government proposals.
- To identify the levers that could be used to convince provincial governments, federal agencies, and to some extent regional governments if appropriate, of the relevance of native participation in those activities.
- To suggest the scope and limits of negotiations.
- To recommend mechanisms for the resolution of conflicts in such negotiations.

The purpose of this project is to identify the matters that the larger project should examine, assign priorities to such matters, and suggest a study outline for the larger project.

1.2 Outline of Work Conducted in this Project

This project is a "needs analysis" which:

- Discusses in a preliminary way principles and issues relevant to environmental management within native self-government of a non-constitutional nature;
- Examines the nature of possible criteria that might be

applied to evaluate environmental measures within self-government proposals;

- Provides a brief, selective, examination of arrangements of a self-government nature which already apply to various native groups;

- Outlines the institutional and legislative regime applicable to environmental decision-making in the Province of Ontario;

- Indicates the issues that should be considered in the larger project described in Section 1.2; and

- Suggests a framework for undertaking the larger project.

1.3 Environmental Management: the Need for Definition

However familiar the concept of environmental management may first appear, there are significant possibilities for confusion and disagreement over a working definition, particularly where the effect of the definition in practice may be to circumscribe responsibilities for decision-making in the course of self-government negotiations. The difficulties emerge from the imprecision of the separate ideas of environment and of management and are compounded by their juxtaposition. In his constitutional study of Environmental Management, J.W. McNeill (1971) remarked that consensus on what should and should not be encompassed by "environmental management" will always be difficult to achieve:

> The quality of the physical-natural environment is the product of human value structures, so both collective and individual values are involved as well as the institutional and political mechanisms for expressing choice and obtaining agreement.

Both narrow and more broad-ranging formulations of environmental management issues might be advanced. A comparatively narrow view is indicated by the specification of land, water and wildlife issues in the terms of reference for this project. But it must be observed that since the time of McNeill's study in 1971, comprehensive approaches to environmental management have become much more widely accepted. The existence of the World Conservation Strategy and the broad focus of the report of the United Nations World Commission on Environment and Development illustrate the extent of this evolution.

Legal commentaries have also recognized a potentially all-encompassing interpretation of environmental law, one obvious mechanism for ensuring native people an involvement in environmental management:

> If the law of torts asks the question, 'Who is my neighbor?', environmental law asks a further question, 'Where is my neighbor?' and the answer seems to be 'Everywhere'....the smokestacks of Sudbury affect the growth of forests in New England, and the steel mills of Ohio kill the fish of North Western Ontario. Our enjoyment of life, and indeed our very lives, depend to no small degree on the actions of thousands of strangers who work, or worked a generation ago, at Three Mile Island or the Love Canal or Port Hope or a potash plant in Saskatchewan. (Nelligan, Environmental Law, Law Society of Upper Canada Special Lecture, 1983)

Thus, the restrictions in the intended scope of environmental management suggested by reference to water, land and wildlife questions are not easily accommodated by current approaches to the "protection" of the environment, even though more narrowly focussed "management" regimes are often utilized in practice and are undoubtedly expected by some parties to be relevant models in self-government. Can a concern with water management exclude concern for acidification from distant sources of emission or a concern for inter-basin transfer proposals and exports? Can a concern for land management exclude concern for the possible impact of hazardous waste transportation and storage systems. And can a concern for wildlife management exclude reference to the views of international animal rights or welfare associations whose energies are directed to the elimination or regulation of trapping by natives and non-natives. When native cultural interests are involved as well in self-government negotiations, it will be seen that the idea of environmental management carries a heavy burden.

> Need: In order to reduce the possibilities for confusion about terminology and to align expectations as much as possible, there is considerable merit in undertaking a review that provides a clear understanding of the functions and limitations of environmental management in advance of detailed negotiations.

2. EXISTING APPROACHES TO NATIVE INVOLVEMENT IN ENVIRONMENTAL MANAGEMENT

2.1 Native Interest in Environmental Management

In considering native environmental management within the context of self-government, it is impossible to separate the environment from a host of other issues, most particularly economic and cultural issues. It is often the economy and culture that are founded on the direct use of the environment and its resources that native people are attempting to preserve when they negotiate for environmental management powers. As well, native people are concerned that they should have a measure of control over non-traditional uses of the environment such as logging, oil and gas development, mining, recreation, and the development of hydro-electric power.

The concern here is two fold. First, native people, having lived with destruction of habitat by mercury contamination, agriculture, deforestation, flooding and many other means, recognize the capacity of industrial activity to damage the environment beyond retrieval. They believe that industrial development must be held in check by whatever institutions can be arranged. Second, on their reserves and in their communities, native groups are faced with a third world situation of limited resources, growing populations, and present and potential impoverishment. They have seen mining, pulp and paper, and oil companies grow wealthy on the resources of lands which they believe they have never surrendered. What they want is more than a cut of someone else's action; they want a cut of their own. Increasingly, we can expect native people to raise resource revenue sharing issues in self-government negotiations.

There would be little controversy over several aspects of the native interest in land:

- the achievement of greater community stability through influencing the pace of economic change and controlling access to the community (roads and other means of access); and

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

- the continuity of community experience;

- preservation of sacred places and avoidance of flooding of burial grounds;

- security from environmental hazards and contaminants;

The priority accorded to each of the above will vary from native group to native group. Indian Bands living close to major urban centers would likely place less of a premium on subsistence and commercial uses of renewable resources than on the continuity of community experience and security from environmental hazards and contaminants. However, native people living in the north would likely give more emphasis to subsistence harvesting, since this is still the basis for their economy and culture.

Many observers have noted that federal and provincial wildlife conservation law has impeded native subsistence and economic development based on wildlife resources. If native people are to share in the management of wildlife resources, the rights and restrictions which would define and constrain such management must be clear. In addition, more information is needed about the costs of restricted access to resources in terms of income loss and social welfare.

Because the environment-economy issue is so central to the continued existence of native people as distinct peoples, it would be most surprising if the issue did not play a large role in discussions concerning self-government. It is an issue that perpetually takes on new appearances and directions. There is bound to be a great deal of uncertainty about how best to deal with it, and policy-makers must therefore be prepared to be flexible and understand where the native people are coming from.

> Need: Native communities will differ in terms of their expectations for environmental and resource management powers. The native interest in these matters should be analyzed on the basis of self-government proposals already received and on the basis of other existing statements of native aspirations and concerns.

2.1.1 Forms of Native Participation

Native peoples participate in environmental management via a variety of mechanisms -- regional and local elected governments, game management and advisory councils, environmental impact assessment panels, special purpose committees, administrative boards, native corporations, and so forth. On the basis of the powers they hold, as reviewed later in this report, the native involvement in environmental management appears to consist of three basic functions:

- Decision-making: In which direction is given concerning the allocation and use of environmental resources, including allocation between native and non-native uses and present and future uses (conservation).

- Administration: Delivering and overseeing, without modification, environmentally or conservationally oriented programs.

- Advice: Exercising influence with respect to specific matters by direct access to decision making authorities.

In considering the place of such powers within the context of self-government, several questions are important:

- Are they based on a statute or are they of an informal character?

- Do they focus on particular aspects of the environment or are they more generally oriented?

- Are they exclusive or shared?

- If shared, what is the balance between native and non-native representation?

- Is the field in question one in which conflict is likely to arise?

- Are the powers confined within particular geographic boundaries, such as the boundaries of a reserve, or can these be transcended?

Practically, these questions take on different shades of meaning from region to region, depending on historic factors, provincial or territorial legislation, and attitudes toward native people. As will be seen from Section 3, the regime bearing on environmental management in Ontario is complex.

Yet there may be greater willingness to consider non-constitutional arrangements in Ontario than in other jurisdictions. Matters would probably be simplest in the Northwest Territories where much of the legislation bearing on native environmental interests is still federal and where native people have a great deal of political power deriving from their majority status.

2.1.2 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, in the case of 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. 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 their forests cleared on the basis of timber permits issued by distant, unknown and uncaring bureaucracies, their fish killed by sulphur-dioxide emission originating hundreds, perhaps thousands, of miles away, and their wildlife contaminated by poisonous substances. Nor have problems always been of distant origin: some native groups have lived for generations in the shadow of enormous polluters located just outside the reservation.

As a third issue, 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 has 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 land bases were substantially reduced through involuntary surrenders of lands for purposes such as railways, highways, dams and army bases. Indian witnesses appearing before the Penner committee claimed rights to lands beyond their reserves because some of these lands were alienated from Indian control involuntarily. In addition, arguing that by treaty they only intended to share the land, not relinquish it, Indian witnesses emphasized consistently that their rights did not end at the boundaries of reserves. Emphasizing the need to develop mechanisms whereby Indian people could participate in the control and management of lands and resources they once held, they 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)

2.1.3 Legal Aspects of Native Environmental and Resource Management

The native interest in renewable resources, especially fish and game, has been the subject of extensive legal analysis and commentary for many years. Somewhat more recently the native interest in non-renewable resources has also become the focus of more active inquiry by legal researchers and practitioners.

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. Frequently such decisions merely exempt native people from the application of existing conservation and resource management regimes without establishing their authority to influence such programs or to establish equivalent arrangements of their own. Thus, at least in Ontario, it would appear that native groups have endeavoured to participate in environmental decisions through involvement in such other processes as negotiations, commissions, inquiries

and environmental assessments and, where necessary, by means of political demonstrations.

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 provision, 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)

- 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 new development in doctrine which emphasized 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 and for preparatory research. The diversity and complexity of existing legal regimes suggest that in several instances highly particularized research may be required. (For discussion of conservation measures regarding fish, fur-bearing animals and other game on reserves under sections 73 and 81 of the Indian Act see McNeil, Indian Hunting, Trapping and Fishing Rights in the Prairie Provinces of Canada, University of Saskatchewan Native Law Centre, 1983, pp57-60) The existence of 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; great emphasis would be placed on the evaluation of options and the combination of options.

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.

- 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 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.

In addition to the hunting and fishing context from which the above examples were drawn, legal claims relating to other resource sectors are also available. With regard to water, 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. 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.

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)

Need: Existing entitlements and contemporary constitutional arrangements will provide a framework for discussions. Research possibilities are virtually unlimited in light of the diversity of treaty arrangements and provincial regulatory measures across Canada. Initially however it would appear essential to examine environmental management possibilities (a) under the doctrine of aboriginal rights, and (b) under the Indian Act and appropriate regulations.

Need: Legal analysis of existing opportunities for participation in environmental decision-making processes under existing environmental legislation. This should include a discussion of procedural arrangements applicable to environmental decision-making, with an emphasis on the environmental assessment process.

2.1.4 International Interests

Although environmental management as a subject for discussion in the context of self-government is unlikely to involve international interests directly (border locations and trans-border wildlife migrations are exceptions), it is worthwhile to bear in mind that international considerations are important to native resource use and are of concern to federal responsibilities for international affairs. Several existing international agreements (Migratory Birds Convention, Great Lakes Water Quality Agreements of 1972 and 1978, and UNCLOS) have implications for native involvement in environmental management. (Litigation is now underway concerning the relationship of Section 35(1) of the Constitution Act, 1982, to the Migratory Birds Convention.) There are several other areas where international interests are likely to require consideration in the design and implementation of environmental management regimes involving native Canadians.

The Canada - United States agreement to conserve the Porcupine caribou herd is an example of native involvement in the management of an international wildlife resource. The agreement provides for the creation of an eight member International Porcupine Caribou Board, with representation from governments and user groups in each country.

2.1.5 Criteria to Evaluate Effectiveness

Existing self-government arrangements for native people's involvement in environmental management will be discussed below. Each of these address native interests in the management and economic and cultural use of the environment in a variety of ways.

Let us consider briefly how existing and possible processes and methods might be assessed for their effectiveness. A list of criteria arising out of questions such as the following might be applied:

- Are the proposed approaches needed? Can the objectives be achieved via existing laws or institutions of particular of general application?

- Are the self-government arrangements reasonably simple and straight-forward in their approach or are they roundabout, bureaucratic and obscure?

- To what extent do they provide real management powers to native people?
- To what degree do they provide access to people in government who have such powers?
- Do they work quickly and effectively?
- Do they cover the environmental interests of native people in a geographic and biological sense?
- Are they compatible with existing laws and regulations?
- Do they allow native people sufficient authority within existing legislation and regulations?
- Would new legislation or regulations be needed?
- Do they include methods of resolving conflicts?
- Do they involve native people in determining and protecting harvesting rights?

2.2 Policy Perspectives

Native interests in the environment are difficult to bring within the purview of the self-government process because the various components of the environment -- lands, waters, minerals, flora and fauna -- are already heavily governed in all jurisdictions of Canada. How to make room for, and restore, the native interest, which was often not recognized when federal, provincial and territorial laws concerning lands and resources were originally passed, and which is still only very reluctantly recognized by most provinces, is therefore a complex problem.

2.2.1 Native People

The general interest and objectives of native people with respect to environmental management have already been discussed in Part 2.1, above.

More specific objectives as stated in self-government proposals to DIAND relate to powers with regard to the management of renewable and non-renewable resources; waters; control of access to lands; zoning; land transfers;

collection of natural resource rents and fees; development of natural resource based industries; and environmental impact assessment. Such goals relate to lands both on and off the reserve. In some cases, the reference has been to exclusive powers, but usually there is recognition that all that is possible in a non-constitutional process are limited or shared powers. The specific goals of various bands are summarized Appendix 1.

2.2.2 Federal Government

The federal policy on native self-government is exploratory and open-ended, and founded on the belief that aboriginal peoples should have institutions of self-government that meet their unique requirements, including requirements bearing on environmental management. Since 1985, the Federal Government has been pursuing non-constitutional initiatives based on the view that self-government must be flexible enough to take into account the differing requirements of aboriginal communities across Canada. Negotiations to advance self-government have been community-based, conducted at a practical level, and tailored to specific circumstances.

The Comprehensive Claims Policy announced in December, 1986 recognizes that the settlement of claims and questions of authority and control over aboriginal lands are related. The policy allows for the negotiation of a broader range of issues. In addition to self-government, these can include land selection, environmental management, resource revenue-sharing, hunting, fishing and trapping rights and other topics.

2.2.3 Provincial Governments

While the Federal Government has exclusive jurisdiction over Indians and lands reserved for Indians, the Provinces, based on their powers over public lands, have asserted claims to Indian lands, resources and jurisdiction beyond reserve boundaries. The assertion of provincial interest and denial of the native interest has been historically most evident in British Columbia and Quebec, neither of which recognized the existence of aboriginal title and both of which challenged the ambit of the Indian Reserve system. The self-government arrangements for the Sechelt Band reflect the limitations inherent in British Columbia's position. In Ontario and the Prairie Provinces, the need to treat with respect to aboriginal title was 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. (Bartlett, Richard, 1986, Subjugation Self-management, and Self-government of Aboriginal Lands and Resources, Aboriginal Peoples and Constitutional Reform, Background paper no. 11, Institute of Intergovernmental Relations, Queen's University, 1986, pp. 27-29.)

> Need: Existing provincial policies will require analysis to determine the scope of possible arrangements for native involvement in management. In Ontario, for example, it would appear worthwhile to study carefully the views of the Office of Native Affairs, the Ministry of Natural Resources, (especially the office of Indian Resource Policy), the Environmental Assessment Board and Ontario Hydro on native participation in resource planning and environmental management.

> Need: On a sectoral basis within each relevant province, existing programs regarding forest, water, minerals, fur, game and fish should be analysed. Public opinion as a factor influencing provincial policy might also be examined on a selective basis.

2.2.4 Territorial Governments

Native people form a much larger proportion of the population of the territories than of the provinces. They have become highly politically aware and active, and are strongly represented in territorial legislatures. The territorial governments therefore have an understanding of, and concern for, the native environmental interest.

> Need: Existing territorial policies will require analysis to determine the scope of possible arrangements for native involvement in management.

2.2.5 Local Government

Native Bands could attain forms of self-government which could allow for cooperation with neighboring municipalities on matters of common ecological and economic concern. In this context, it should be noted that some northern municipalities, such as North Bay, have very extensive boundaries.

> Need: A review of the possibilities for cooperative informal arrangements between Indian reserves and nearby municipalities on environmental factors affecting their common interest.

2.2.6 Public

There may be wide differences between Canadian public attitudes in general to native self-government and the attitudes of particular publics, especially where native self-government is seen as threatening to existing rights with respect to matters such as property and access. At the general level, Decima Research has reported that:

- The aboriginal issue is not prominent in the public mind.
- The Canadian public has very little knowledge of aboriginal issues.
- Public attitudes are divided and fluid.
- Emotional issues drive support for the native position - a belief that Canada has a shameful history in dealing with native people.
- Very few people belief they are personally affected by native issues.
- Attitudes are optimistic regarding the possibility of solutions negotiated in good faith.

In contrast, specific publics, such as non-native angling and hunting organizations may have very direct and specifically focussed attitudes toward native management of the environmental resources of concern to them, and may be in a

position to exert pressure on government by lobbying and other means (See Appendix 3).

2.3 Examples of Native Environmental Management

Examples of native environmental management can be found both within and outside of the self-government process. Within the process, the examples fall into three categories: Self-government under the Indian Act; self-government under neither the Indian Act nor the claims process; and self-government under the Comprehensive Claims process. Outside of the process, native environmental management interests are accommodated by native membership on government convened boards and committees and by participation in environmental assessment and review processes.

Examples of environmental management are given below. It should be cautioned that the examples are derived from direct legislation, agreements and written commentary, not from contact with the agencies involved, which would have taken considerably longer than the deadline for this needs study allowed. Therefore, apart from being able to state that an agreement or statute calls for an environmental process or body, and being able to provide a description of the body's general powers, it cannot in some cases be said whether the process or body was in fact established as intended or had the desired effect.

> **Need: Several of the arrangements described in** the sections which follow merit evaluation in terms of their effectiveness from the viewpoint of native communities and governments. These schemes might be compared, for example, on the basis of criteria such as those listed in section 2.1.4. The objective would be to identify successful models and the circumstances in which each is most appropriate for further use.

2.3.1 Environmental Management Provisions under 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 Oilll 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.

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

2.3.2.1 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)

2.3.2.2 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.

2.3.2.3 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.

2.3.2.4 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.)

2.3.3 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, and Agreement in Principle was negotiated with the Dene/Metis. 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 proceeding. 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.

2.3.3.1 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, unpublished version, Canadian Arctic Resource Committee, April, 1988.)

2.3.3.2 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 the 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.

2.3.3.4 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.

2.3.3.5 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.

2.3.4 Conclusions from the Foregoing Cases

It was suggested earlier that, broadly speaking, native objectives with regard to their environment would include the protection and enhancement of traditional native uses of the environment and its resources, control over uses of the environment by non-native interests, and non-traditional development of environmental resources for the benefit of native people. Such objectives would be informed by, and inclusive of, cultural, social and economic concerns.

Given that the self-government process under consideration here is non-constitutional, and given the complex scientific and inter-jurisdictional aspects of environmental issues today, native people cannot expect their interests in the environment to be imbedded in arrangements which give them exclusive powers of management. However, as Section 2.3 has shown, there are now a considerable number of precedents for arrangements which give native people shared and limited powers. It has been noted earlier that these powers fall into three general categories:

- Decision powers: In which native people have limited or shared powers concerning the allocation and use of environmental resources, including allocation between native and non-native uses (control over economic development) and present and future uses (conservation).

- Administrative powers: In which native people have limited or shared powers to deliver and oversee environmentally or conservationally oriented programs.

- Advisory powers: In which native people have varying degrees of direct access to decision making authorities either via a process which represents them exclusively or via a shared process.

It is rarely possible to make sharp distinctions among these three categories. Usually, whether its primary intent is decision-making, administrative or advisory, a single body formally or informally functions at all three levels.

However, an important issue is whether the body's powers are confined to a particular tract of land such as a reserve or the Category I lands under the James Bay and Northern Quebec Agreement, or the lands of the Sechelt Band, or whether they are geographically broader. This is not always clear. For the most part, powers would appear to be restricted to the boundaries of the particular tract of land of interest -- the reservation, Sechelt lands, the lands defined by the Quebec and western Arctic claims settlements. In the claims settlement regions, this might not be of great importance since territories defined by claims are large, perhaps large enough to encompass most native environmental interests of consequence. Where territories are not large, powers might, in some cases, transcend defined boundaries. Provision for "extra-territorial" powers is included in the Sechelt Indian Band Self-Government Act, although arranging to exercise such powers could be difficult.

Other distinctions would hinge on the scope of the body's powers. 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 related mainly to 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? 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 scope 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 level of 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 successful particular issue lobbying groups like the Alaska Eskimo Whaling Commission.

Two very general principles would seem to underlie the geographic scope, span of interests, and authority of the 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 typically allow them. However, even though native people have constitutionally recognized rights, such powers are usually carefully limited to generally available to property holders. 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. Both constitutional and decision-making powers are scarce commodities; those who have them are reluctant to share them.

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 all of northern Quebec under the Agreement. Native people have equal representation with government -- there are twelve members, three each from the Inuit, the Cree, Canada and Quebec. However, equal representation should not necessarily be construed as equal power. The government members would presumably know how to access and move the relevant federal and provincial bureaucracies, which could give them something of a tactical 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 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 a combination of local and regional (on and off-reserve) concerns.

The majority of the bodies dealt with in Section 2.3 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.

3. THE ENVIRONMENTAL MANAGEMENT REGIME IN ONTARIO

3.1 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 list of federal government legislation has already been prepared. See Appendix 4). The section concludes with recommendations concerning priorities for detailed investigation in relation to environmental and resource management in Ontario. Corresponding or equivalent research requirements would apply in other jurisdictions.

3.1.1 The Legislature

Appendix 5 lists Ontario legislation generally understood to involve environmental matters. Legislation likely to be of interest to native communities in the province differs somewhat from the conventional listing. Not all of the matters affected by this legislation will be of equal significance to all native groups, but 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 (Natural Resources)
- The Crown Timber Act (MNR)
- The Endangered Species Act (MNR)
- The Environmental Assessment Act (Environment)
- The Environmental Protection Act (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.

3.1.2 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 Mercury Disability Board to administer compensation awards.

In the formulation of policy or in the initiation of specific projects and programmes, 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 6) MOE is responsible for the implementation and enforcement of standards and guidelines set out in or formulated under the legislation which it administers. (See Appendix 7) 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.

- 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.

- Tourism and Recreation

The Ministry's Tourism Division promotes the use and development of tourist facilities in Ontario by means of research assistance, marketing initiatives, financial support and management training.

- 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.

3.1.3 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
- Northern Development and Mines
    - Northern Development Councils
- Native Affairs Directorate
    - Ontario Tripartite Council
    - Indian Commission of Ontario
    - Interministerial Committee on Native Affairs

3.1.4. 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. The recommendations of the RCNE dealing specifically with The Indian People in the North of Ontario are attached as Appendix 8).

Somewhat less prominent investigations have also been utilized by the provincial government to examine environmental matters. The Temagami Working Group (Appendix 9) 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.)

3.1.5 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.

3.1.6 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. The IJC's study of Great Lakes Diversions and Consumptive Uses (1985) involved public meetings in which some native representatives participated. (Report, Appendix E) Several bodies whose focus is the water quality of the Great Lakes Basin also exist and involve provincial participation. The Lake of the Woods Control Board is a joint federal-provincial authority with responsibility for regulation of the waters in an important regional watershed where several native communities have environmental and resource interests.

3.1.7 The Private Sector Decision-Makers

The Environmental Assessment Act has infrequently been applied to privately-initiated projects. (A proposed Reed paper mill at Ear Falls, an Inco proposal for a power dam on the Spanish River and the Onakawana development are examples of private undertakings which were designated for environmental assessment.) Because private undertakings not subject to environmental assessment often have important consequences for the communities in or near which they will operate, Ontario has recently experimented with the negotiation of agreements between local residents and project developers.

3.2 Forms of Environmental Decisions

3.2.1 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. (Spiegel, "Ontario Provincial Native Policy and

Directions", in Long and Boldt eds. Governments in Conflict? Provinces and Indian Nations in Canada, 1988, p102)

3.2.2 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. (see 3.2.5 below)

The possibility also exists in Ontario that environmental assessments may occur on a "class" or comprehensive basis rather than with respect to one specific project. An example of this procedure is the Class Environmental Assessment for Timber Management on Crown Lands in Ontario which is presently underway. Native groups including the Nishnawbe-Aski Nation and the Windigo Tribal Council are participating in the assessment hearings because of concern that forest industry activities have damaged native interests in the past and in order to ensure that future resource development will benefit native communities.

3.2.3 Regulations

The regulation-making process permits the development or refinement of standards 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. (For a description of the scope of applicability of environmental assessment to 1984 see Estrin, Environmental Law, 1984, pp197-219. There is now an extensive literature assessing the operation of the act and outlining reforms.)

3.2.4 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 deals extensively with native interests in environmental management and resource use. It will be an important source of ideas on arrangements which may be advocated by native groups or provincial officials in discussions concerning the environmental and economic dimensions of self-government.

3.2.5 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)

3.2.6 General Observations

This brief discussion of environmental decision makers 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.)

Need: Certain aspects of the complex Ontario environmental management regime will be of greater general interest to self-government negotiations throughout the province than others. Negotiators should be familiar with several basic provincial statutes as they affect native land use interests. Legislation of particular interest includes the Environmental Assessment Act, the Environmental Protection Act, the Game and Fish Act, the Ontario Water Resources Act, the Crown Timber Act and the Public Lands Act. The environmental assessment process, MNR's planning,licensing and approval processes for a variety of resources and Ontario Hydro's development and waste disposal programs may also be of general interest.

The operations of provincial agencies directly involved in resource policy aspects of native affairs should be understood and a thorough review of the work of the Royal Commission on the Northern Environment (including government and native reaction to the report) would appear to be very worthwhile.

3.3 Mechanisms for Native Involvement in Environmental Resource Management

We have 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:

3.3.1 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 in part 2.1.3 and the preceding paragraphs of this section, 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. As canvassed above in part 2.3 there are also negotiated arrangements which provide by agreement for certain forms of native participation in decisions affecting their environmental and resource interests.

3.3.2 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? These issues are addressed for the Ontario Environmental Assessment Process in the Rules of Practice and Procedure. The Porter Royal Commission on Electric Power Planning held meetings in northern Ontario and explained its reasons for doing so as follows:

> The purpose of the meetings was to provide the Commission with opportunities to see (and to hear) with its own eyes (and ears) 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 peoples about how these life-styles might be affected if certain river systems of northern Ontario were used for the generation of electric power. (Royal Commission on Electric Power Planning, The Meetings in the North)

3.3.3 Resources to Support Participation

Are financial resources and research or scientific facilities available 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? Do prospective participants have the resources and inclination to be involved? (See Michael I. Jeffrey and David Estrin, The Role of Intervenor Funding in Project Approval, International Business Lawyer, Vol 14, 1986,pp. 371)

3.3.4 Level of Participation

Who should participate on behalf of native interests? In connection with the issue of native participation, it is also important to recognize the significance of participation at various levels. Several commentators on the future of self-government discussions have identified the need to deal with certain issues at a regional or sub-regional level rather than at the level of the local community. (C.E.S. Franks, Public Administration Questions Relating to Aboriginal Self-Government, Queens University, Institute of Intergovernmental Relations, 1987, pp.75-80)

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.

> Need: Procedures for native participation in the normal course of environmental decision-making and the availability of scientific and financial resources to support such participation should be examined thoroughly. It will also be worthwhile to understand existing native involvement in environmental issues at the national, regional and local levels. This subject is significant in relation to the administrative needs and capabilities of native communities to participate effectively in environmental management and in relation to appropriate levels of participation and decision- making from an environmental and resource perspective.

4. CONCLUSION

Despite the possibility that strong pressure will exist to compartmentalize and simplify environmental and resource management decisions in self-government negotiations across Canada, there are several reasons for emphasizing that the complexity of the subject should not be under-estimated.

- From a scientific perspective we are at a comparatively early stage in understanding human impact on the environment and the resilience of ecosystems to human intervention is poorly understood.

- From a socio-economic perspective, reliable knowledge is even more limited. There is little agreement on the extent of native use of the resources of the environment, and a general tendency either not to recognize or greatly undervalue such use.

- From an institutional perspective environmental and resource management decision-making is typically complicated by the fact that it is multi-party and often inter-jurisdictional.

Nevertheless, preparatory work can be organized in such a way as to provide basic foundations for intelligent and coherent negotiations. The areas which are discussed in the following sections would offer worthwhile returns from further investigation by departmental personnel with or without external assistance.

4.1 Nature of Environmental Management

In order to reduce the possibilities for confusion about terminology and to align expectations as much as possible, there is considerable merit in developing a clear understanding of the functions and limitations of environmental management in advance of detailed negotiations.

4.2 Native Interest in Environmental Management

As indicated in section 2.2.1 native communities will differ in terms of their expectations for environmental and resource management powers. The native interest in these matters should be analysed on the basis of self-government proposals

already received and on the basis of other existing statements of native aspirations and concerns.

4.3 The Legal Regime

Existing entitlements and contemporary constitutional arrangements will provide the framework for discussions. Research possibilities are virtually unlimited in light of the diversity of treaty arrangements and provincial regulatory measures across Canada. Initially however it would appear essential to examine environmental management possibilities (a) in the context of aboriginal rights (b) in the context of the Indian Act and (c) in the context of opportunities for participation in environmental decision-making available to the public generally.

4.4 Provincial and Territorial Policies on Environmental and Resource Management

Existing provincial and territorial policies will require analysis to determine the scope of possible arrangements for native involvement in management. In Ontario, for example, it would appear worthwhile to study carefully the views of the Office of Native Affairs, the Ministry of Natural Resources, (especially the office of Indian Resource Policy), the Environmental Assessment Board and Ontario Hydro on native participation in resource planning and environmental management.

4.5 Resource Development and Management Programs

On a sectoral basis within each relevant province and territory, existing programs regarding forest, water, minerals, fur, game and fish should be analysed. Public opinion as a factor influencing provincial policy might also be examined on a selective basis.

In Ontario, wild rice production and harvesting programs would also be of interest from the perspective of some native communities. The attempts at negotiations with the Treaty 3 and Treaty 9 areas concerning wildlife and renewable resources management programs would be important case studies. Certain controversial but highly complex issues such as nuclear waste disposal facilities in the Canadian Shield may eventually require investigation.

4.6 Current Arrangements for Native Environmental Management

Several of the arrangements described in section 2.3 now merit evaluation in terms of their effectiveness from the viewpoint of native communities and governments. These schemes might be compared, for example, on the basis of criteria such as those listed in section 2.2. The objective of the inquiry would be to identify successful models and the circumstances in which each is most appropriate for further use. If particular difficulties or shortcomings are found, efforts would naturally be made to avoid repetition in future self-government discussions. Alternative Dispute Resolution

4.7 Alternative Dispute Resolution

Dispute resolution arrangements have not been examined in this paper. 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. In addition, the Law Reform Commission of Canada has begun work on alternative dispute resolution in several contexts, including environmental conflicts. (See Mr. Justice A.M.Linden, "Dispute Resolution in Canada", presentation to the ABA, 30-31 January, 1987) A review of the Canadian situation and the far more extensive American experience could also contribute to understanding of the problems of structuring native involvement in environmental and resource management.

5. RECOMMENDATIONS

It makes sense to continue to concentrate further study in detail on Ontario because:

- A considerable proportion of the native population lives in Ontario, and because of numbers proposals for self-government are likely to arise more frequently in Ontario than in other jurisdictions.
- The attitude of the Government of Ontario toward native issues is relatively flexible and arrangements struck in Ontario may provide precedents for other jurisdictions.
- A diversity of resource management issues is likely to arise in the province.

The following specific steps are therefore proposed:

1. A memorandum establishing a working definition of environmental management for purposes of self-government.
2. An analysis of native objectives for environmental management on and off reserve lands.
3. Legal analysis of existing environmental and wildlife management powers of native communities (a) under the doctrine of aboriginal rights, and (b) under the Indian Act and appropriate regulations.
4. Legal analysis of existing opportunities for participation in public environmental decision-making processes under existing environmental legislation. This research should include a discussion of procedural arrangements applicable to environmental decision-making, with an emphasis on the Environmental Assessment Process.
5. Assessment of the scope and limitations of the existing municipal government structure from the perspective of environmental management.
6. Formulation of legal, functional, financial and administrative criteria for evaluating environmental measures within self-government
7. Description of provincial policy regarding environmental and resource use; special attention in Ontario to the

on-reserve, variations by province. what common elements.

work of the Royal Commission on the Northern Environment.

8. Description of existing resource management and environmental programs, including departmental approaches to native interests (MNR, Ontario Hydro).

9. Research on public attitudes to the native interest in resource use and environmental management; interviews with other interest groups, notably the Ontario Federation of Anglers and Hunters, Federation of Ontario Naturalists and so on.

10. Comparative analysis and in-depth evaluation of current arrangements for native involvement in environmental and resource management under self-government structures now in place. This would include operational experience.

11. Comparative review of case studies of recent experience with alternative dispute resolution in the environmental context, especially where native interests have arisen.

Once a work program for Ontario has achieved some progress, steps can be taken to implement a similar program for other jurisdictions.

Appendix List

1. Environmental Management Goals of Selected Native Communities

2.Categories of Land under the James Bay Agreement

3.Heritage Northwest

4.Federal Legislation regarding Environmental Management

5.Ontario Environmental Statutes

6.Ontario Ministry of Environment Organization

7.Examples of Environmental Protection, Planning and Assessment Statutes

8.Royal Commission on the Northern Environment, Recommendations on Indians in the North

9.Temagami Area Working Group, Request for Submissions

Appendix 1

Environmental Management Goals of Selected Indian Communities

Specific native goals with respect to environmental interests and management will obviously vary greatly from group to group. Based on an unsigned, undated internal document made available by the Self-Government Sector, DIAND, there follows a brief review of goals that various native groups have recently put forward.

Alexander Band (Alberta)

Subjects relevent to the environment have fallen into four groups:

- Renewable resources: the Band wants to manage hunting, fishing, trapping and forestry.
- Non-renewable resources: not made specific.
- Waters: With the prime concern being potable water, the Band wants a survey of its rights to a lake adjacent to the reserve in order to enter into negotiations with other user with respect to the control of pollution.
- Environment: The Band is researching its powers with respect to environmental impacts. A particular concern is the control of overflying aircraft from an airport which may be built next to the reserve.

Sandy Bay (Manitoba)

The Band is looking into the general nature of present and possible powers with respect to environmental management, both on and off the reserve, with particular emphasis on wildlands and wetlands. It is exploring the possibility of cooperative approaches to common ecological problems with neighbouring municipalities.

Akwesasne (Ontario)

This Band is interested in two distinct but inter-related questions:

- The improvement and protection of the environment of the reserve. Specifically, the Band is looking into research, management, and the applicability of statutes.
- Conservation agency: After several attempts, the Band established administrative by-laws with respect to conservation. For a variety of reasons, including the primacy of the Indian Act, several of these were disallowed, including one which would have created

conservation officers. The Band unsuccessfully approached the Province of Ontario on these matters.

Grassy Narrows (Ontario)

Because of its experience with mercury contamination during recent decades, this Band has an understandably high interest in environmental matters. Specifically, it is interested in:

- Jurisdiction over environmental management both on and off the reserve.
- Control of access to lands both on and off the reserve.
- Control over access to renewable and non-renewable resources (surface and sub-surface) both on and off the reserve.
- Zoning, land transfers, royalties, fees, etc.

United Indian Council of the Mississauga and Chipawa Nations (Ontario)

At the head of this group's list are subsistence hunting and fishing rights. Without specifying what it meant, the group is also interested in powers with respect to natural resources over and above those confered by the Indian Act.

Shoal Lake Band (Ontario)

The priority of this Band is jurisdiction over its natural resources, and in particular wild rice, fish, wildlife, forests and minerals. In addition, it has made the following points:

- Development of tourism utilizing fish and wildlife resources.
- Taxes and royalties from the exploitation of natural resources.
- Mechanisms for resolving conflicts arising out of the utilization of natural resources.
- Rights with respect to the exploitation of wildlife resources.
- Control over waters and waterways affecting reserve resources.
- Self-sufficiency through the development of all of the Band's resources.

Whitefish Bay (Ontario)

The concern of this Band is its power with regard to natural resources on the reserve and wildlife resources off the reserve. Its position is that powers on the reserve should be exclusive, whereas off the reserve they are primarily

related to environmental impact assessment. They have stated their positions with considerable precision:

- Exclusive rights over all renewable and non-renewable resources on the reserve, including hydro-electric power, all metals and minerals, oil and gas, and granular materials.
- Off the reserve, participation with the Province of Ontario and the Federal Government in the management of their subsistence (traditional) resources within the territory covered by treaty.
- Exclusive right to manage the environment on the reserve.
- Tripartite management of the environment in traditional lands under treaty off the reserve. The establishment by special statute of an impact assessment process.

Nishnawbe-Aski Nation (Ontario)

This group suggests a global approach to the management of the environment. The resources of their traditional territory and their economy form an inseperable whole. The Band wants to determine how its territory, and surface, subsurface and aquatic resources will be developed. Specifically, it makes the following points:

- Subsistence activities: Members of the NAN can engage in these without restriction.
- Evaluation of environmental options: Participation but with the right to veto.
- Tourism: Pre-emption of existing powers; control by NAN of activities by non-NAN.
- Forests: Exclusive use with no longing rights and approval of third party activity.
- Mines: Authorization of exploration; control and participation with regard to exploitation.

APPENDIX 4

1. Government Organization act 1970 1979
2. Canadian Environmental Week Act 1970
3. Income Tax Act 1966, 1977
4. National Museums Act 1967
5. Criminal Code 1970, 1972
6. Motor Vehicle Safety Act 1970, 1980
7. Weather Modification Information Act 1970, 1974
8. Clean Air Act 1971, 1985
9. Boundary Waters Treaty 1909
10. International River Improvements Act 1955
11. Canada Water Act 1970, 1985
12. Arctic Waters Pollution Prevention act 1970
13. Northern Inland Waters Act 1970, 1985
14. Canada Shipping Act 1970, 1985
15. Navigable Waters Protection Act 1970
16. National Energy Board Act 1970
17. Oil and Gas Production & Conservation Act 1968
18. National Housing Act 1970
19. National Battlefields at Quebec Act 1907, 1953
20. National Parks Act 1930, 1985
21. Waterton Glacier International Peace Park Act 1932
22. Historic Sites and Monuments Act 1953
23. Newfoundland National Park 1955
24. Territorial Lands Act 1970, 1972

25. Canada Land Surveys Act 1970
26. Indian Act 1970, 1979
27. Northern Pipeline Act 1978, 1981
28. Atomic Energy Control Act 1946, 1976
29. Food and Drugs act 1954, 1985
30. Hazardous Products Act 1969, 1983
31. Radiation Emitting Devices Act 1970, 1982
32. Railway Act 1970, 1978
33. National Transportation Act 1970, 1978
34. Nuclear Liability Act 1970
35. Pest Control Products Act 1972, 1985
36. Environmental Contaminants Act 1975, 1985
37. Ocean Dumping Control Act 1975
38. Transportation of Dangerous Goods Act 1980
39. Canada Oil and Gas Act 1982
40. Aeronautics Act 1970
41. Fertilizers Act 1957, 1970
42. Agriculture and Rural Development Act 1966
43. Prairie Farm Rehabilitation Act 1970, 1983
44. Pesticide Residue Compensation Act 1970
45. Animal Disease and Protection Act 1975
46. Fisheries Act 1970, 1985
47. Territorial Sea and Fishing Zone Act 1970
48. Coastal Fisheries Protection Act 1979
49. Eastern Rocky Mountain Forest Conservation act 1947

50. Forest Development and Research Act 1966,1970

51. Migratory Birds Convention Act 1917, 1985

52. Game Export Act 1970

53. National Wildlife Week Act 1970

54. Canada Wildlife Act 1973

55. Environmental Protection Act (presently in Bill form - 2nd reading has taken place)

APPENDIX 5

Heritage Northwest states points that must be recognized in the Treaty Three fishing agreement

1. Insure the protection of the future economic viability of the Business Community in North West Ontario.

2. Recommend that the Ontario Government revise the negotiation process to add a 4th seat at the negotiation table to fully represent the views of the Non-Native Residents of Treaty Three area.

3. Any negotiations that propose exclusive or special rights to any group, set precedents so broad as to infringe on our Constitutional Rights as Canadian Citizens.

4. Insure the protection of the Fishery Resource.

5. Insure and protect the equal rights of all Ontario Residents to the utilization of the Fisheries Resource.

6. That the Ministry of Natural Resource, be recognized as the ultimate authority in Fish Management in North West Ontario.

7. The Resource of the Province, belongs to the People of the Province, and should be managed for the best economic benefit of ALL Citizens of Ontario.

8. Governments come and go, but once citizens rights to the Provinces Natural Resources are negotiated away, THEY WILL BE GONE FOREVER!

APPENDIX 5

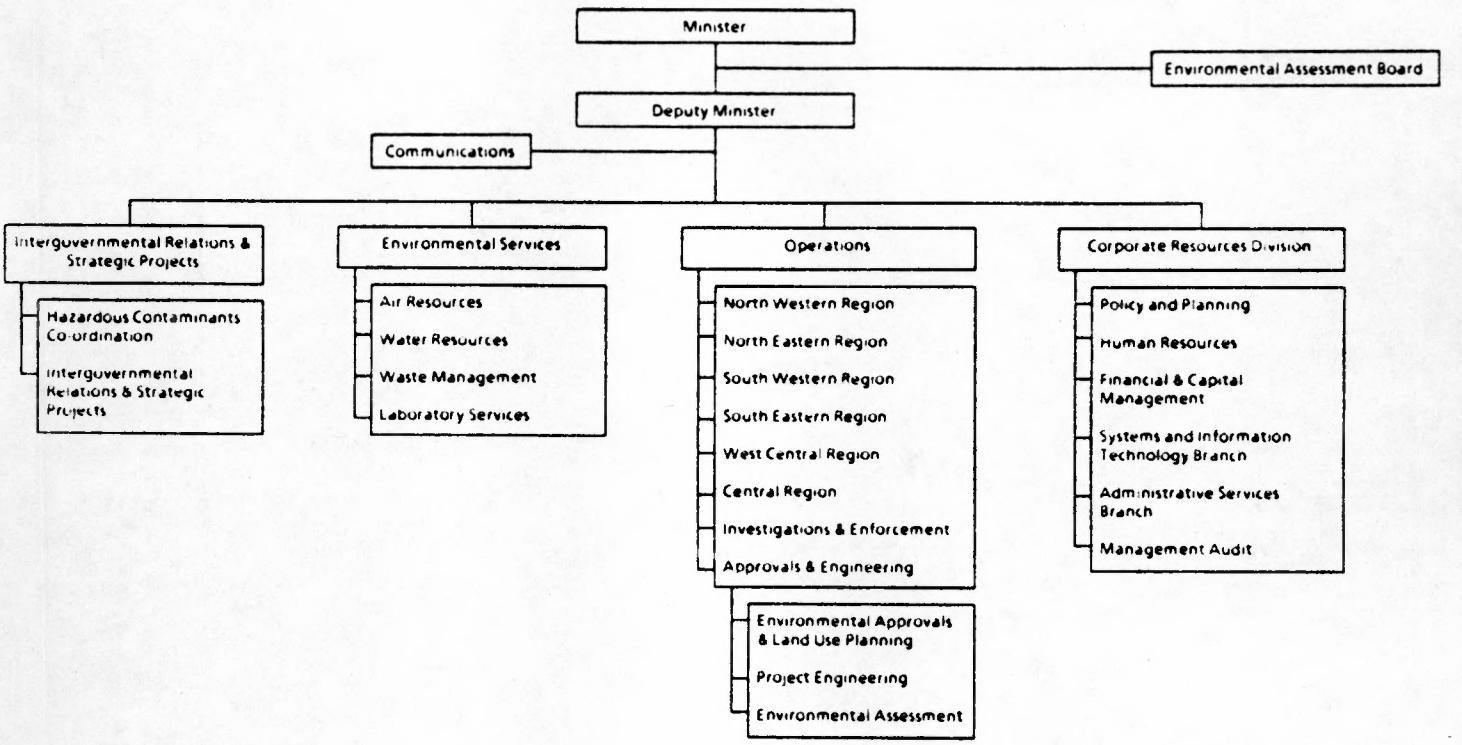
APPENDIX "B"
ONTARIO ENVIRONMENTAL STATUTES

1. Beach Protection Act
2. Cemetaries Act
3. Conservation Authorities Act
4. Consolidated Hearings Act
5. Drainage Act
6. Endangered Species Act
7. Environmental Assessment Act
8. Environmental Protection Act
9. Expropriations Act
10. Fire Marshall's Act
11. Gasoline Handling Act
12. Lakes and Rivers Improvement Act
13. Mining Act
14. Ministry of the Environment Act
15. Municipal Act
16. Niagara Escarpment Planning and Development Act
17. Ontario Planning and Development Act
18. Ontario Water Resources Act
19. Pesticides Act
20. Petroleum Resources Act
21. Pits and Quarries Control Act
22. Planning Act
23. Provincial Parks Act
24. Public Authorities Protection Act
25. Public Health Act
26. Public Utilities Act

Source: Poch, "The Constitution and Environmental Law" in Canadian Bar Association - Ontario, Environmental Law 1984 Annual Institute on Continuing Legal Education

APPENDIX 6

MINISTRY OF THE ENVIRONMENT



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

APPENDIX 7

TABLE 2-1 Examples of Provincial and Federal Environmental Protection, Planning and Assessment Statutes

	Pollutant or Problem Specific	Provincial (Ontario)[a]	Federal
Residual Control Legislation Reactive, regulatory and on a residual-by-residual basis	Water	*Ontario Water Resources Act*, R.S.O. 1980, c. 361; *Lakes and Rivers Improvement Act*, R.S.O. 1980, c. 229	*Fisheries Act*, R.S.C. 1970, c.F. 14 as amended; *Ocean Dumping Control Act* S.C. 1974-75-76, c. 55
	Air	*Air Pollution Control Act*, R.S.O. 1970, c. 16 (repealed)	*Clean Air Act*, S.C. 1970–71–72, c. 47
	Land	*Waste Management Act*, R.S.O. 1970, c. 491 (repealed)	No federal legislation directly on this point
	Pesticides	*Pesticides Act*, R.S.O. 1980, c. 376	*Pest Control Products Act*, R.S.C. 1970, c. P-10
Comprehensive Residuals Control Legislation As above, although on a comprehensive basis; legislation attemps to anticipate problems before they arise		*Environmental Protection Act*, R.S.O. 1980, c. 141	*Environmental Contaminants Act*, S.C. 1974–75 c. 72. *Canada Water Act*, 1970 (1st Supp.) c. C-5
Planning and Assessment Anticipatory and pro-active, designed to anticipate future problems and take the appropriate preventive actions		*Niagara Escarpment Protection Act* R.S.O. 1980, c. 297; Planning Act S.O. 1983, c. 1[a]; *Environmental Assessment Act*, R.S.O. 1980, c. 141	E.A.R.P. Environmental Assessment and Review Process (established by Cabinet directive 1973, modified 1977 and 1984); S.E.P.A., Social Economic Impact Analysis Process (1977)

a. Ontario is used as the legislative model. All provinces follow more or less the same approach.

Source: Emond, "Environmental Law and Policy" in Bernier and Lajoie eds., Consumer Protection, Environmental Law and Corporate Power, (Toronto, 1985)

APPENDIX 8

The Indian People in the North of Ontario

4.1 Recommendation

That the Government of Ontario recommend to the federal Government that the Indian Act be amended to give full status as legal persons to band councils and bands.

4.2 Recommendation:

That the Government of Ontario grant Crown land to Indian communities located north of 50, pursuant to procedures outlined in Recommendation 4.3.

4.3 Recommendation:

That the Government of Ontario appoint a Northern Land Commissioner under the Public Inquiries Act to identify and report to the Government on Crown lands to be granted to and for the use, benefit and eventual ownership of Indian communities north of 50 for the settlement of; these communities, their present and future residents, and the surrounding environment.

4.4 Recommendation:

That the Northern Land Commissioner, in identifying and recommending Crown land for grant to northern Indian communities, consider:

- the adequacy of existing reserves for community needs;
- current and future populations;
- present and future community requirements for food gathering, housing, community facilities, water supply, energy, fuel, building materials, transportation and communications:
- existing surface and subsurface rights;
- the needs of existing, contemplated or likely local businesses or economic development projects;
- the views of the Indian community affected;
- the need for buffer zones to shelter the community from adjacent resource development impacts.

4.5 Recommendation:

That on receipt by the Government of Ontario of the report of the Northern Land Commissioner, the Government of Ontario unconditionally grant all rights in the lands identified by the Commissioner to the Government of Canada in trust for the use, benefit and eventual ownership of the indicated Indian communities; and that after such grants have been made, the Government of Ontario be prepared to negotiate the unconditional granting of additional or alternative land if and when petitioned by representatives of northern Indian communities.

4.6 Recommendation:

That all income earned by residents and businesses living or located on land granted by the Government of Ontario to Indian communities in the north be exempt from taxation until such time as the federal and provincial Governments agree, after consultation with affected Indian communities, that taxation if imposed would not discourage or lessen business or other economic development activities.

4.7 Recommendation:

That the Government of Ontario introduce legislation to require that those persons undertaking prospecting or mineral exploration on lands occupied by Indian communities give reasonable advance notice to the communities affected of the nature and timing of such activities.

4.8 Recommendation:

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

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.

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.

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.

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.

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.

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 reource use area, that a precondition of such use be the negotiation of a resource-use agreement between the developer and the Northern Development Authority.

4.15 Recommendation:

That elected school boards be established in each Indian community to be responsible for the administration and delivery of educational services at the local level.

4.16 Recommendation:

That the Indian community school boards, in conjunction with the Ministry of Education and native parents, establish a special curriculum for community schools which is on a par with provincial standards but which also accommodates the traditional culture.

4.17 Recommendation:

That Indian Community school boards and the Ministry of Education recruit teachers from qualified members of the community.

4.18 Recommendation:

That Indian community school boards in northern communites provide Grade 9 and 10 within the community.

4.19 Recommendation:

That the Province of Ontario move immediately to approve the construction of a first-class high school with technical and vocational options at a remote location selected by representatives of Indian community school boards.

Source: Ontario, Royal Commission on the Northern Environment, Report, June 1985.

APPENDIX 9

GROUPE DE TRAVAIL DE LA RÉGION DE TEMAGAMI

DEMANDE DE SOUMISSIONS ÉCRITES SUR LES QUESTIONS RELATIVES A LA RÉGION DE TEMAGAMI

Le groupe de travail de Temagami est un groupe consultatif au service du public dont le rôle est d'étudier les questions relatives à l'utilisation des ressources de la région de Temagami, et de formuler des recommandations à cet effet.

A la fin de son mandat, ce groupe de travail autonome soumettra un rapport au ministre desRichesses naturelles.

Dans le cadre de son mandat, le groupe tiendra un certain nombre de réunions publiques dans différentes communautés afin de recueillir les commentaires des personnes intéressées.

Ces réunions sont prévues à partir de janvier prochain. Toute personne ou tout groupe désirant présenter une soumission lors de ces réunions publiques doivent d'abord le faire par écrit avant le **5 janvier 1988.** Nous pourrons ainsi preparer des exemplaires de chaque présentation entemps pour les réunions. Nous vous prions d'adresser vos soumissions écrites à:

M. John Daniel
Président,
Groupe de travail de Temagami
A l'attention de l/I.N.O.R.D.
Université Laurentienne
Sudbury (Ontario) P3E 2C6

TEMAGAMI AREA WORKING GROUP

REQUEST FOR WRITTEN SUBMISSIONS ON ISSUES RELATING TO THE TEMAGAMI AREA

The Temagami area Working Group is a Citizen's Advisory Group established to review and make recommendations on the land use questions in the Temagami Area.

This independent Working Group will submit its report to the Minister of Natural Resources.

As part of its mandate, the Working Group will be holding a series of public meetings in various communities to obtain input from all interested persons.

These public meetings are anticipated to start in early January. Any individuals and groups wishing to make presentations at these public meetings are requested to submit their presentations in written form by **January 5, 1988.** This will enable copies of all presentations to be available for circulation at the public meetings. Please direct written submissions to:

Mr. John Daniel
Chairperson
Temagami Area Working Group
c/o I.N.O.R.D.
Laurentian University
Sudbury, Ontario
P3E 2C6