(Expanded Version)

THE POLITICS OF SLOW PROGRESS: FEDERAL ABORIGINAL POLICY PROCESSES

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PREFACE

The research for this study was carried out during the period between May, 1993 and the fall of 1994. The sources for the research include published literature, governmental and aboriginal reports and papers, and approximately 40 interviews conducted by the author with federal officials and with aboriginal persons actively involved in the federal policy process. The interviews were conducted on a confidential basis with the assurance given by me that those interviewed would not be directly quoted.

Thanks are due to all those persons interviewed, some of whom, in addition, read and offered constructive comments on earlier drafts of the manuscript. Three anonymous referees also offered many constructive comments. A special gratitude is owed to Aideen Nabigon who served with great skill as a research assistant on the project. Special debts are also owed to my colleagues, Katherine Graham, Harold Bherer, David Hawkes, and Jill Wherrett for commentary, encouragement, and always cheerful help along the way.

None of the above are responsible for any remaining weaknesses in the study. These are my responsibility alone.

Bruce Doern
Ottawa, November 1994

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INTRODUCTION

The purpose of this study is to describe and critically examine the dynamics of the federal aboriginal policy process. The focus is primarily on developments since the early 1980s but but with frequent reference to the 1960s and 1970s as well. The larger history of many centuries is not examined though many of its benchmark events and features clearly set the context for the contemporary federal policy process. More particularly, the study examines how the federal aboriginal policy process has changed and how and why federal involvement in aboriginal matters has changed. The analysis also deals with how federal policies have changed in the light of changes in aboriginal governance. Governance issues focus mainly on the role of national aboriginal organizations but, in so doing, they also allow us to examine how aboriginal women, youth, and urban residents have been involved in, and affected by, the policy process. This introduction deals with three essential tasks. First, it introduces the structure of the study. Second, it supplies a brief historical context for the analysis. And finally, it sets out a basic chronology of aboriginal policy events which is used throughout the study.

STRUCTURE AND ORGANIZATION

The structure of the study reflects the need to take three analytical portraits of the aboriginal policy process (more accurately, policy and decision processes). The first portrait in Chapters 1 and 2 deals with the macro aboriginal policy process set in the overall terrain of how policy is made within the federal government and in the context the values, pressures and concerns of the major national aboriginal organizations. The second portrait of policy dynamics in Chapters 3 and 4 presents a closer micro level look centred on the Department of Indian Affairs and Northern Development (DIAND) and the role of DIAND ministers, and on the dynamics involved in three

illustrative policy case studies dealing with governance: community self-government policy; Indian Act Alternatives policy; and policies on specific and comprehensive claims.

The third slice of the aboriginal policy world in Chapters 5 and 6 is basically a middle-level one in the sense that it embraces some of the aboriginal policy and decision processes that wend their way through other departments and agencies in the federal policy process. It is a middle-level realm as well in that it affords several points of potential access to aboriginal organizations, and thus is a stark contrast to the micro policy world centred on DIAND and the Indian Act, and the macro policy arena where access is episodic. Aboriginal organizations often seek out this middle realm either because it may be more hospitable than the other two realms or simply because there are opportunities for policy and program gains to be found there. Several policy mini-cases and processes are profiled in these two chapters, the first grouped around social policy issues and the second around economic policy concerns. In the social realm, broadly defined, we look at policy dynamics regarding the Department of Justice, Environment Canada, Health Canada, and Fisheries and Oceans Canada. In the economic realm, the focus is on Industry Canada and Human Resources Canada.

A key reason for this three level approach is that the dynamics of each are different. Thus, aboriginal policy in the context of Chapter 1 must in part be seen as evolving out of both the intended and unintended operation of the overall federal policy process. It is one of many policy fields encapsulated in the structure, dynamics and priorities of a far larger process. In this context, the adequacy of the aboriginal policy process can be compared to other policy fields and their set of interest groups. And yet it is evident that aboriginal policy is about a founding people, aboriginal first nations, and Canadian citizens, who are seeking constitutional recognition of their rights and

forms of self-government. Accordingly, as we will see in Chapter 2, aboriginal organizations strongly object to even being called "interest groups".

In Chapters 3 and 4, we are explicitly entering a world of directly intended aboriginal policy and hence a complex realm of programs and bureaucratic delivery mechanisms centred on the Indian Act. Moroever, DIAND is a department with an Indian policy mandate, a northern policy mandate, and a far less well defined aboriginal policy mandate. The three mandates, while related, are not the same and each moves at different speeds and engages different configurations of aboriginal peoples and organizations. The main group for which the federal government, through DIAND, has established policy are the Indians who now refer to themselves as First Nations but who also function under the Indian Act through over 600 Indian Bands. Laws relating to Indians predate Confederation and after Confederation the federal government passed laws under its section 91(24) consitutional authority. It is mainly with Indians that treaties were signed. It cannot be said therefore that there is equality among the three aboriginal groups recognized in 1982 in the Constitution-- Indians, Metis, and Inuit. The Inuit were only recognized as Indians in 1939 because of a court case and became bound up in federal policy on the north in general. The Metis were historically and initially dealt with in the federal view through the issuance of scrip. DIAND has consistently avoided any real responsibility for Metis peoples.

Finally, in Chapters 5 and 6, we encounter the middle realm of aboriginal policy making. It is a realm, however, in which aboriginal programs and decision processes are parts of larger departmental program structures and have to interact with numerous instruments of policy: expenditure, regulatory and tax-based. Moreover, the broader array of non-aboriginal interest groups and policy communities, which these departments serve and interact with, are different and

complex.

If we could confine ourselves to the above macro, micro and middle-level arenas, it would be convenient. Alas, aboriginal policy since the early 1980s is not so easily divided. And this fact presents analytical problems for this study which the reader must take as a given or as a limitation of the analysis. Slicing through the aboriginal policy process is the compelling reality that key aboriginal organizations and peoples see their main policy goal as being that of constitutional change and recognition. In a sense this suggests that policies, the normal focus of interest group politics, is not what the recent aboriginal policy process is about. On the other hand, the federal government (and the provinces) have often responded by offering various policy improvements in various areas and changes in the delivery of programs. A key issue therefore is whether the two overall main players in this study, the federal government and aboriginal groups, are even playing the same game, given that the former seems to view the process as a pluralist interest group process and the latter as a process involving the recognition of rights for First Nations and aboriginal peoples.

This leads to a further constraint on the nature of the study. The study must deal with constitutional issues as a key factor in the policy process but it is not a full study of aboriginal constitutional issues or negotiations during the 1982, 1990 Meech Lake or 1992 Charlottetown constitutional episodes. Similarly, federal-provincial relations must be treated as a vital factor in the aboriginal policy process in explaining action or inaction but there is no full treatment in this study of the complex array of such relations or of the positions of each province.

A final caveat also applies to the discussion of programs and case studies. Programs are often the main institutional and practical expression of policy intentions (and of unintended effects

as well). But our description of such programs, and of how they came into being (especially in Chapters 4, 5 and 6) must, of necessity, be brief. Nonetheless, it is important, through illustrative reference to programs and mini-case studies of decisions, to show the multi-faceted nature of aboriginal policy formation. Thus, as many as eleven policies and their processes, spanning the last decade, are examined in one form or another.

In short, the essence of the book is to convey as accurately as possible how the federal aboriginal policy process has evolved since the early 1980s both in general and in selected progam or case areas.

THE CONTEXT OF FEDERAL ABORIGINAL POLICY FORMATION

There are essentially five features or imperatives which set the historical context for federal aboriginal policy formation in the early 1980s to early 1990s period. Briefly profiled below are: the composition and socio-economic conditions of the aboriginal population; the historical and dismal policy legacy of the Indian Act; the failure of earlier policy reform attempts; the post-1982 constitutional setting; and built-in federal-provincial tensions. While each is described quickly, the continuing importance of this historical policy environment cannot be underestimated and will be evident throughout the analysis.

The composition of Canada's aboriginal population is partly a function of original settlement patterns from time immemorial and partly a function of the impact of the Indian Act (Crossley, 1992). Aboriginal policy formation must encompass and interact with: status or registered Indians (within which are treaty and non-treaty Indians and reserve and non-reserve Indians); non-status Indians; Metis; and Inuit.

As Table 1 shows, according to 1991 census data, there were just over 166,000 North American Indians living on reserve (26.5 percent of the total aboriginal population). Over 294,000 North American Indians or 47.1 percent were living off reserve. The Metis population in 1991 was just over 135,000 persons (21.6 percent of the aboriginal population. The Inuit peoples comprise 5.8 percent of the total or just over 36,000 people.

Distinctions within the North American Indian category must also be made between status and non-status Indians. The former are largely on-reserve Indians who are governed by and subject to the Indian Act. Non-status Indians are persons of Indian ancestry who are also legally citizens of Canada but who are not recognized under the Indian Act. They include most off-reserve Indians but their exact number has been difficult to determine with some estimates by aboriginal organizations exceeding one million people, three times the official census data. There has also been, until quite recently, a tendency to treat the Metis as being simply non-status Indians but this has changed with the Metis' separate constitutional recognition as a distinct aboriginal nation which formed primarily on the Canadian prairies through the mixture of Indian and European, mainly French, people. Estimates of the Metis population by Metis organizations exceed 175,000.

The Inuit are the smallest part of the Canadian aboriginal population. Most of the 36,000 Inuit reside in the Northwest Territories, where they form the majority and where their political and policy roles are intertwined with "north of 60" territorial democracy and governance and hence with combined aspects of both aboriginal policy and northern policy (Whittington, 1985).

These are the core configurations of the aboriginal population except that they leave out two other compelling factors. The first factor is the often appalling social and economic circumstances in which many aboriginal peoples have to live, far worse than most other Canadians have to deal

with, and a direct consequence of past policy legacies (Canada, DIAND 1991). The second is the geographic dispersal of aboriginal peoples across Canada and within provinces, in inner cities, and in isolated communities. For example, Chart 1 shows the total aboriginal population in each province and territory as a percentage of the total aboriginal population in Canada. Almost a fifth of the population resides in Ontario but significant percentages reside in the four Western provinces. Atlantic Canada's component is quite small. Clearly, the basic political positions taken by various provinces are conditioned by the inherent importance of such population distributions as well as by the particular provisions of various treaty and non-treaty situations. Like Canada itself, regional variations also set up the basis for inevitable divisions of interest in political organization and structure, including the nature of aboriginal political organizations and associations (see Chapter 2).

The second contextual reality is the Indian Act itself. The legislation is still the legal centre-piece of federal policy not only because it is the basis for the status versus non-status distinctions but also because it symbolizes the past where Indian policy pursued assimilative goals in a draconian and undemocratic way (Weaver, 1978; Cardinal, 1969). The aboriginal policy process since the early 1980s is in many ways a paradox in which all players in principle find the Indian Act to be intolerable but do not agree on what to replace it with or how to phase replacements in. We do not describe the Indian Act in any great detail but we clearly will revisit it in the discussion in Chapter 3 of DIAND and in Chapter 4 of policies on community self-government, program decentralization and Indian Act alternatives.

A further vital context for the policy process, also fixed in the memory of current policy makers in aboriginal organizations, is the failed effort at reform that centred around the 1969 Trudeau era White Paper on Indian Policy. The White Paper set out a policy in which the federal

government would basically abandon a continued federal role and devolve services and programs to the provinces where Indians would be citizens like any other Canadians (Weaver, 1978; Doerr, 1974). The Indian community rallied fiercely against this policy arguing that they were "citizens plus". They had normal rights but they also had rights emanating from treaties and aboriginal rights. The White Paper process and the production of a counter Red Paper simultaneously further fuelled the mistrust that aboriginal peoples felt and also mobilized them into a higher and more cohesive plane of national political organization (Cardinal, 1977). As we show in Chapter 1, the federal White Paper policy was also almost immediately challenged by the Supreme Court in the Calder decision of 1973. The court ruled that aboriginal rights do exist in Canadian law.

The fourth contextual issue centres around the 1982 Constitutional changes. Only after intense last minute pressure on First Ministers were aboriginal peoples able to achieve some initial constitutional recognition of their rights (Hawkes, 1989; Rudnicki, 1987). Thus, the 1982 constitutional process is both a further example of policy disappointment and stuggle but also the beginning point for additional leverage and political mobilization by aboriginal groups in national politics (Boldt and Long, 1985).

Three parts of the Constitution Act of 1982, later amended in 1983, are a part of the context for aboriginal policy formation in the 1980s as a whole (Greene, 1989). First, section 35 recognizes "existing" aboriginal rights, albeit without defining these rights. Metis, Inuit, and non-status and status Indians are all recognized as aboriginal peoples with rights (Morse, 1985; Boldt and Long, 1985). Second, the promise of a future constitutional conference involving first ministers and aboriginal leaders was included. And third, section 25 directs judges not to interpret the Charter of Rights and Freedoms so as to abrogate or derogate from any aboriginal, treaty or other rights or

freedoms that pertain to the aboriginal peoples of Canada.

The constitutional provisions triggered a series of federal-provincial and aboriginal discussions and negotiations (see more below) but the difficult and begrudging nature of the 1982 recognitions is also fully reflective of the fifth and final contextual factor in federal aboriginal policy formation, namely, the tension between Ottawa and the provinces. This tension was reflected in the often outright avoidance of responsibility for all or parts of the aboriginal population (Hawkes, 1989; Boldt, 1993). Ottawa would take responsibility for status Indians but for no one else. The provinces would eschew responsibility for non-status Indians and Metis either in total or unless Ottawa put up the money to provide for programs, but not necessarily even then. Both levels of government for decades violated or ignored treaty rights.

Each of the above contextual factors have richer and far more complex histories than space allows us to discuss. The focus of the book, however, is on the period since the early 1980s and it is to this period that we now turn.

AN OVERVIEW OF ABORIGINAL POLICY EVENTS SINCE THE EARLY 1980S

In addition to the policy context, it is vital to have an initial capsule view of the basic chronology of key aboriginal policy events since the early 1980s and of overall federal policy towards aboriginal peoples. Table 2 serves as a visual guide for both the Trudeau Liberal years of the early 1980s and the longer period of the Mulroney Conservatives. The policies of the Chretien Liberal Government since 1993 are noted but the study as a whole basically ends with the Mulroney era. The reference to policy "events" rather than just policies is necessary because not all events mark the enunciation of a policy. The chronology includes legislative bills that succeed and those

that lapse, and studies, reports, and consultative exercises that both advance and postpone action. The Table 2 chronology is reasonably self-explanatory and thus will not be repeated with a full narrative here. The analysis will refer to these events throughout the study but at this stage four features about the pattern of policies and events warrant initial emphasis.

First, federal aboriginal policy as a whole during this period has been characterized by only episodic attention to aboriginal needs and by a slow recognition that both policies, and approaches to how policy was made, had to change and become more integrated.

The chronology also shows that in April, 1985 the Mulroney Conservatives formally adopted what was initially labelled a "two-track" approach to aboriginal policy making with both tracks being an alternative and/or complement to constitutional development. One track was centred on DIAND and focussed on Indian community self-government. Through the entire period, this track can be seen, with hindsight, as a process leading to the Lands, Revenues and Trusts (LRT) review and eventually to the Indian Act Alternatives process examined in Chapter 3. The second track involved the Tripartite Process which Ottawa set up to deal with off-reserve and Metis aboriginal peoples. This process sought to involve the provinces, Ottawa and off-reserve and Metis organizations and included the establishment of an Interlocutor, the name given to the Cabinet Minister who was designated as the new point of contact and coordination for off-reserve and Metis issues. A defacto third track also emerged which effectively involved a separate process for dealing with northern and Inuit issues. It was centred in DIAND.

The period covered does show, however, that federal policy makers now employ a much more consultative approach to policy formation and the management of some aboriginal programs than was the case in the 1960s and 1970s. This will be evident in many of the governance and

sectoral policy issues examined in Chapters 4, 5, and 6, including the community self-government process, the Indian Act Alternatives process, aboriginal economic development policy and some aspects of aboriginal social policy. Administrative devolution has also demonstrated this tendency. The genuineness of consultation and the efficacy of policy in various consultative fora are of course subject to intense dispute but later chapters will show that there is much more constructive consultation than there used to be. The analysis also will show that aboriginal issues are seen far more than before as a Government of Canada-wide issue rather than a "leave it to DIAND" issue.

A further feature of the chronology, and hence of federal policy as a whole, is that there is a continuous tactical interplay between policy seen as a constitutional and rights-oriented issue (the aboriginal perspective, which Ottawa largely sought to deflect); policy seen as the development of self-government (which the federal government encouraged but without much real follow-through); policy seen as fulfilling agreements on treaties and specific and comprehensive land claims (which again aboriginal peoples saw as rights and the federal government gave only slow recognition to); and policy seen as administrative devolution (which the federal government gradually supported and which aboriginal peoples saw as long overdue); It is rarer for policy events in the above tactical interplay to be expressed in terms of conventional policy fields such as economic, social, educational, or environmental policy. These latter fields are certainly present and clearly underlie the larger concerns (and will be more evident in Chapters 4, 5, and 6) but it is of no small import to note that the discourse for policy is expressed primarily in terms of rights and modes of governance. Partly because it was episodic, but also partly because it was deliberate federal strategy, federal policy never took a wholistic approach to aboriginal peoples. For example, federal policy on land claims did not allow a simultaneous negotiation of self-government. And each departmental realm

of social or economic policy proceeded at its own pace in the slow recognition of aboriginal concerns.

A third feature of the chronology is that virtually the entire Trudeau Liberal era was one of mainly symbolic actions. The debacle of the 1969 White Paper was followed only by modest slow moving policies on land claims and then the more important but still begrudging constitutional initiatives of 1982 and 1983. Arguably, the most important Liberal-era event was the tabling of the Penner report (see Chapter 1). But even this was followed by the rushed and ill-considered Bill C-52, an effort to create a legislative framework for community or band self-government which some Indian groups strongly opposed and which others simply did not take seriously because it was seen as being almost like a White Paper being presented in legislative form by a Liberal Government in the run-up to an election it would lose. The Liberal period ended with one concrete achievement, the passage of the Cree-Naskapi Act which established local and regional government agreements emerging out of the James Bay comprehensive claim settlement of the 1970s.

The fourth feature of the chronology concerns the record of the Mulroney Conservative Government. It is a more substantial set of actions but also displays numerous hesitations and intense institutionalized caution. The Mulroney era began with the debacle of the Nielsen Task Force episode in which a proposed massive aboriginal expenditure unloading by Ottawa elicited an eery replay of the 1969 White Paper process (Weaver, 1986a; Graham, 1987). It was done without consultation with aboriginal groups and was done, moreover, by a Cabinet minister, Erik Nielsen, whose political base was "north of 60" and who was Mulroney's Deputy Prime Minister. The Conservatives recovered from this inauspicious debut and then moved with several different kinds of initiatives. These ranged from quite substantial achievements in areas such as the legislative

ending in 1985 of discrimination against Indian women under the Indian Act, the development of policies that allowed for alternative funding arrangements, and the passage in 1986 of the Sechelt Indian Band Self-Government Act (Abele and Graham, 1988).

But much of the remaining Conservative policy outputs consisted of studies, statements, some program improvements, and several program cuts. The Mulroney era ended with the defeat of the Meech Lake Accord from which aboriginals were excluded, the long

trauma of the Oka standoff in the summer and early autumn of 1990 (and, in its wake, the Prime Minister's announcement of the Native Agenda) and the 1993 referendum defeat of the Charlottetown Accord in which aboriginal peoples were included but which on reserve aboriginal peoples joined with a majority of their fellow Canadians in rejecting (Smith, 1993).

Two final points about chronologies are worth noting. First, it is in the nature of capsule summaries to attribute success or failure to governments in power. But clearly there is more to the aboriginal policy process than this. Context and chronology are bare beginnings. They do not allow us to explain policy behaviour or ultimately how we should apportion credit or blame. Second, one must also be wary of the seeming clarity of chronologies. For us as observers, the chronology is fairly clear. For policy participants, however, policy is always made in the context of quite specific pressures and personalities as well as large future uncertainties. The future is not clear at any given point along the chronology nor is it clear how interests will react or behave, support or oppose. In this sense all policies, including aboriginal policies, are hypotheses waiting to be tested.

Table 2.

CHRONOLOGY OF FEDERAL ABORIGINAL POLICY EVENTS

1969 – Federal White Paper on Indian Policy published by Trudeau Liberal Government with strong reaction against it by Indian organizations.

1971 – Federal decision to fund national, provincial and some regional aboriginal political organizations.

1973 – The Calder case is decided in which the Supreme Court declares that aboriginal rights do exist in Canadian law.

1973 – Federal policy on Aboriginal Land Claims announced.

1979 – Len Marchand becomes the first Indian to be named to the Cabinet. Appointed as Minister of Environment.

1979 – Clark Government Health Minister, David Crombie announces Non-Insured Health Benefits Program which will extend benefits to off-reserve Indians and Inuits.

1981 – Federal policy on Land Claims modified to allow for discussion of local government structures at the negotiating table.

1982 – Constitution Act of 1982 passed including three sections relating directly to Aboriginal peoples (sections 25, 35, and 37), the last of these providing for the convening of a First Ministers' Conference on Aboriginal Constitutional Matters by April 17, 1983.

1983 – $365 million Native Economic Development Program begins with funds garnered from special Western Canada Development Fund.

March 1983 – First Ministers' Conference agrees on an accord covering: a process for negotiating the definition of Aboriginal and treaty rights; an agenda for these discussions; and three amendments to the Constitution.

November 1983 – Report published by the House of Commons Special Committee on Indian Self-Government (the Penner Report).

1984 – Bill C-52 tabled, an Act relating to self-government for Indian nations. Bill C-52 is opposed by some aboriginal groups. It dies on the order paper prior to the 1984 general election.

1984 – The Guerin case is decided in which the Supreme Court of Canada ruled that the federal government had to carry out its treaty and trustee roles fairly and generously, in effect giving a broad liberal interpretation to its obligations and to the content of these rights.

July, 1984 – The Cree-Naskapi Act passes encompassing local and regional government agreements arising out of the James Bay comprehensive claim settlement of the 1970s.

March, 1985 – Federal Government adopts "two-track" policy approach as alternative and/or complement to constitutional negotiations: a) a DIAND-based community self-government track; and b) a Tripartite approach (federal, provincial, and Metis and off-reserve) for Metis and off reserve aboriginal peoples. The second track included establishing the Interlocultor, a Cabinet minister designated as lead minister for Metis and off reserve aboriginal peoples.

April 1985 – Deputy Prime Minister, Eric Nielsen, in wake of his Task Force on Program Review recommendations, recommends a four part approach to reducing federal expenditures for Native programs. His leaked memo to Cabinet creates angry response from Aboriginal groups and from David Crombie, the Minister of Indian Affairs and Northern Development.

June 1985 – Bill C-31 passed which eliminated most provisions in the Indian Act which discriminated against Indian women who had married non-Indians.

1985 – Alternative Funding Arrangements Policy announced giving more autonomy for program spending but also strict controls on the total federal money available during the term of the funding agreement.

Dec. 1985 – Report of the Task Force on Comprehensive Claims (the Coolican Report) is submitted to the minister and made public in March 1986. Its report, Living Treaties: Lasting Agreements is warmly endorsed by aboriginal groups.

Dec., 1985 – Report of the Task Force on Indian Economic Development published (the Allan Report).

Feb., 1986 – Bill C-93, the Sechelt Indian Band Self-Government Act introduced and passed by late spring.

April, 1986 – Policy Statement on Indian Self-Government released by DIAND Minister, David Crombie. It provides for legislatively mandated self-government agreements to be negotiated beyond the limits of the Indian Act.

Dec., 1986 – Federal Comprehensive Land Claims Policy announced.

1983-1987 – Three First Ministers Conferences focussing on Aboriginal Self-Government are held but produce no overall accord.

1987 – Task Force Review on Native Economic Development Programs conducted, headed by aboriginal Lawrence Gladue. Review is for ISTC economic programs.

1987 – Federal Government controls rate of expenditure growth for support of Indian Post-Secondary Education by stopping the previous practice of supplementing the budget during the year to meet demand.

April 1987 – Meech Lake Constitutional Accord agreed to but fails to recognize Aboriginal peoples and makes northern provincehood more difficult. Aboriginal peoples'anger and opposition is strong.

1987 – AFN initiated National Indian Health Transfer Conference held following 1986 indication that Federal Government would consult about how to devolve control.

1988 – Health Minister, Jake Epp, announces committment to Health Services Transfer Initiative to devolve control of health service delivery to Indian bands south of 60.

1989 – Canadian Aboriginal Economic Development Strategy (CAEDS) is established after Gladue review process and after development as joint proposal to Cabinet by ISTC, DIAND and CEIC ministers.

1989 – Aboriginal Employment and Training Working Group (AETWG) is established to address issues surrounding Employment and Immigration Canada's new Labour Force Development Strategy.

June 1990 – Meech Lake agreement fails to be ratified, in part because of the stand taken by Elijah Harper in the Manitoba Legislature. His stand garners large support in public opinion among Canadians, Aboriginal and non-Aboriginal.

June 1990 – The Pathways To Success Policy and Implementation Paper contains principles of new consultative and partnership approach developed six national aboriginal organizations.

July 1990 – Oka stand-off begins and extends to autumn months.

1990 – The Sparrow case is decided in which the Supreme Court of Canada rules and implies a broadening interpretation of "existing rights" as set out in the 1982 Constitution Act.

September 1990 – Federal Native Agenda announced by Prime Minister Brian Mulroney.

1991 – New Specific Claims Policy announced including fast track process.

1991 – Federal Indian Policing Policy announced.

1991 – Royal Commission on Aboriginal Peoples established.

1991 – Tripartite Working Group on Aboriginal Health formed by Health and Welfare Canada.

1991 – Aboriginal Fishing Strategy announced by Fisheries and Oceans Canada in direct response to Sparrow case.

November 1992 – Charlottetowne Constitutional Accord, which includes further aboriginal constitutional rights, is defeated in a referendum by a majority of Canadian voters and by on-reserve aboriginal voters.

Chapter 1

FEDERAL POLICY PROCESSES AND ABORIGINAL ISSUES, AGENDAS, AND PRESSURES

Our first look at the federal aboriginal policy process must be situated in the larger setting of the overall federal policy process. No policy field functions in isolation. Policies and decisions, and approaches taken to the making of policy, involve a constant struggle over ideas, resources, and political and voter attention, all embedded in the overall federal policy process (Doern and Phidd, 1992). Aboriginal policy making can no more escape these realities than any other policy field, be it industrial policy, immigration policy and environmental policy or be it multiculturalism or policies toward Quebec or Western Canada.

The chapter seeks to examine this macro world of aboriginal policy dynamics and institutions in two steps. First, it profiles two of the main institutional players and pressure points for change coming from outside the executive cabinet-bureaucratic arena of politics, namely Parliament and the courts (national aboriginal organizations are examined in Chapter 2). Second, the chapter examines internal cabinet and bureaucratic dynamics as seen initially through the basic internal rhythms or cycles of executive decision making such as the priority-setting, expenditure, taxation, and regulatory processes as well as through the dynamics of project-based decisions and crises such as those that led to the 1990 Native Agenda.

PARLIAMENT AND THE COURTS AS INSTITUTIONAL PLAYERS AND PRESSURE POINTS

Public policies are nominally and legally made by governments and elected bodies which, in Canadian Cabinet-Parliamentary government, means primarily the Cabinet and ministers, closely advised by the senior bureaucracy. But the broader or non-executive institutional players in the federal aboriginal policy process must be our starting point for analysis, particularly since they are the most vital and continuous sources of political pressure for reform.

Conventional institutional policy analysis usually suggests the need to identify the "policy community" in a policy field (Coleman and Skogstad, 1991). By this is meant a set of institutions (government agencies, interest groups, international entities, and knowledge groups in educational and research institutions) that share a continuing interest in a field and even a commitment to common values and ideas. Such a policy community can certainly be identified in aboriginal policy formation but it must be constantly juxtaposed against a larger view that sees aboriginal policy as rights-oriented politics and the politics of a people and political movement seeking constitutional recognition (Cairns and Williams, 1985; Pal, 1993). The notion of policy communities is also an important feature of Chapter 4, 5 and 6 where it is applied to other policy fields (e.g. fisheries, industry, health) and their home departments and interests.

Parliament

The role of Parliament (the House of Commons and the Senate) in the federal aboriginal policy process starts from the bald fact that there are few elected aboriginal representatives in the Commons and few appointees in the Senate. Since Confederation, only 12 of the approximately

11,000 available seats in Parliament have been occupied by aboriginal people (Royal Commission on Electoral Reform and Party Financing, 1991). If aboriginal people were represented in proportion to their population, they would be entitled to approximately 12 members or 4% of the 295 members. However, there are currently only three aboriginal MPs. (Library of Parliament, 1992).

Louis Riel, elected in 1873 in Manitoba when Metis electors were the majority, was the first aboriginal to hold a seat in Parliament. Two other Metis were also elected in Manitoba in the 1870's. The first Indian person to be elected to Parliament was Len Marchand from British Columbia in 1968. Until 1960, status Indians living on reserves could not vote unless they surrendered their status (Committee for Aboriginal Electoral Reform, 1991)

Only three of the 9 aboriginal people elected in the 20th century were elected in districts where aboriginal people do not form a majority. The remaining six have been from the Northwest Territories where aboriginal people constitute a majority in the constituency.

	ABORIGINAL MEMBERS OF PARLIAMENT SINCE CONFEDERATION		
	Inuit	**Party**	**Date of Appointment or First Election**
SENATE	* Willie Adams	Liberal	1977
	* Charlie Watt	Liberal	1984
HOUSE OF COMMONS	Peter Ittinuar	Liberal	1979
	Thomas Suluk	P.C.	1984
	* Jack I. Anawak	Liberal	1988

	Indians		
SENATE	James Gladstone		1958
	Guy R. Williams	Liberal	1971
	* Leonard Marchand	Liberal	1984
HOUSE OF COMMONS	Leonard Marchand	Liberal	1968
	* Ethel Blondin	Liberal	1988
	Willie Littlechild	P.C.	1988
	Métis		
HOUSE OF COMMONS	Louis Riel		1873
	Eugene Rheaume	P.C.	1963
	Wally Firth	NDP	1972
	Cyril Keeper	NDP	1980

* Indicates Current Member Source: Library of Parliament, 1992.

Accordingly, Parliamentary pressure, while representing increasingly genuine concern, is sporadic. Partisan politics and opposition party criticism is certainly present and aboriginal groups work the opposition parties and MPs to keep pressure on the government and to advance the overall aboriginal agenda. This agenda could be a single visible issue such as the Haida and South Moresby Park in the mid-1980s or the constitutional debates of the early 1980s and early 1990s. But for the most part, over the whole period covered in this analysis, it would not be difficult to agree with Keith Penner's observations in the late 1980s that "in Parliament, aboriginal affairs are just about the bottom of the Order Paper" (Penner, 1990, p. 174).

A further reason for this low interest arises from the simple fact that public opinion in Canada has rarely viewed aboriginal issues as a major national priority. Indeed, even DIAND only

began commissioning polls on the issue on a regular basis in the late 1980s, in itself a testimony to low priority ranking since most departments have been polling throughout the 1980s.

The plain fact is that before the Oka crisis in the summer of 1990 (see more below) aboriginal issues were of little concerted interest to the Canadian public. The conflict between the Mohawk Indians of Kanesatake, the Surete du Quebec and the Canadian Army helped bring Native concerns to the forefront. In 1993, Angus Reid conducted a survey to examine public opinions on Aboriginal issues following the failure of the Charlottetown agreement (Angus Reid Group, Inc., 1993). A comparison of the results of this survey with those of a survey conducted in 1986 by Decima Research Ltd. for the University of Calgary and one by Angus Reid in 1989, show that there has been a steady increase in public support for aboriginal concerns but from a very low base.

In 1986, 41% of those surveyed said they agreed with the idea of aboriginal self-government. In 1989, this figure rose to 56% and in 1993, 57% expressed support for the aboriginal self-government provisions in the failed Charlottetown accord. When asked whether they felt Native governments should have powers equivalent to those of provincial governments, 18% of respondents in 1986 agreed that they should compared with 35% in 1993. With regard to land claims, in 1986, 21% of the Canadians polled indicated that they felt many Aboriginal land claims are legitimate, rising to 25% in 1993 (Angus Reid Group Inc. 1993; Ponting, 1988; and Ingram, 1989).

Without doubt the most widely praised Parliamentary pressure came in the form of the report of House of Commons Special Committee on Indian Self-Government (the Penner Report, named after its chairman, the above quoted Liberal MP, Keith Penner). This committee's mandate was to look at Indian self-government, not aboriginal self-government, even though three groups of

aboriginal peoples are identified in the Constitution--Indians, Inuit and Metis.

The Committee held 60 public meetings across Canada during which it heard oral presentations from 567 witnesses, including Native individuals and representatives of Native organizations and government officials. Besides oral presentations, it received written submissions and commissioned research projects. The Committee's work was significant in three overall ways. First, the process of its deliberations involved both MPs and aboriginal representatives and interest groups, as well as aboriginals on the committee staff (House of Commons, 1983). Second, the Penner report recommended the recognition of Indian governments through an overall act of Parliament. It also proposed the entrenchment of the right to self-government in the Constitution.

Third, there is little doubt that the Penner report helped raise the profile of native issues. Moreover, it triggered the ill-fated Bill C-52 already referred to, a bill which brought out what the Penner Committee knew only too well from its hearings, namely that among aboriginal peoples there were several conflicting views of what self-government should involve (Penner, 1990). Penner also acknowledged years later that his committee did not "develop one iota of public policy" (Penner, 1990, p. 169). Instead, Penner observed, "we looked at a lot of options and said every single option should be pursued" (Penner, 1990, p.169).

Since the Penner Report, the main formal Parliamentary input to the policy process has been of a similar option-suggesting nature. The Standing Committee on Aboriginal Affairs has issued several reports, each suggesting reform in various aspects of aboriginal policy or governance. It has also simply functioned as a forum of representation, thus generating further pressure on the federal government.

For example, in 1988, at an appearance before the committee by the DIAND minister in which the minister claimed that increased spending was occuring on native issues, Keith Penner argued that the Minister's estimate of additional monies spent on Indian Affairs was exaggerated. Penner argued that, taking inflation into account, the increase in the past four years had only been 22%. This 22% increase included the additional funding incurred as a result of Bill C-31. When Bill C-31 was passed, there was a commitment made by the government that any obligations incurred as a result of its implementation would be met over and above regular programs. Therefore, Bill C-31 dollars should not, in Penner's view, be included as an increase in funding.

Aside from new entrants due to Bill C-31, the native population has been increasing through natural growth. This growth, argued Penner and key aboriginal organizations, should be discounted since dollars spent because of increased population do not mean improved services. Taking these factors into account, Penner claimed that there had been in fact no increase in funding for Indian Affairs. He had his analysis checked out by Norman D. Hawkins & Associates Inc. of Montreal and it was found that, on the non-capital side, after discounting these factors, there has actually been a 10.2% decrease. On the capital side, taking into account inflation and population growth, there was a greater than 14% decrease.

It was pointed out, moreover, that since the previous year's estimates, there have been cuts of $2.3 million on self-government, $4.8 million on comprehensive claims, $15.9 million on economic development, $7.1 million on lands, revenues and trusts, and $29 million from funding for the settlement of specific claims.

In May, 1991, the Standing Committee released a report entitled The Summer of 1990 which focused on events surrounding the confrontation at Oka. Although the Committee was

unable to come up with answers to all questions arising from these events, they did draw some conclusions from the facts that were presented to them. Evidence was presented that armed warriors arrived at the barricade in The Pines possibly weeks before July 11, 1990, when Corporal Marcel Lemay was killed during an exchange of gunfire between the provincial police, the Surete du Quebec, and armed persons behind the barricade. Other witnesses testified that there were no arms around the barricade before that date. It seems evident that during the exchange of gunfire, some people behind the barricades were in a position to respond, but is unclear when these armed persons arrived or to what degree the community was involved in the decision to enter into an armed confrontation. It is apparent, however, that the decision to arm persons at the barricade and to convert the peaceful blockade into a barricade defended by armed persons was not a unanimous one. Both the use of arms and the role of the Warrior Society remain controversial issues.

The Committee found that several of the key parties involved have indicated that, faced with the same situation again, they would not do things differently. No responsibility has been taken by any level of government for ordering the police assault and little responsibility has been taken for ensuring the crisis does not happen again. The Committee concluded that this tragedy was avoidable and that:

> all parties involved must take responsibility for allowing this dispute to be converted into a military and criminal law issue. Action must be taken by First Nations leadership and government at all levels to avoid this from happening again (The Summer of 1990, p.30).

By the late 1980s and early 1990s a further manifestation of an institutionalized Parliamentary policy process was evident in the party caucuses of each party. Direct aboriginal representation was structured into this process, especially in the Liberal Party caucus.

In summary, it can certainly be said that Parliament, pressured by aboriginal peoples, has served as a forum that has raised important aboriginal issues. Parliament, across partisan lines, was arguably more sympathetic about the plight of aboriginal peoples than the government but this was in part because it chose to avoid any sense of responsibility for actual resource allocation. But when seen against the larger backdrop of public opinion and very limited aboriginal representation in the House of Commons and Senate, it is not surpising that Parliamentary attention was sporadic and not a high priority concern in the larger national political picture.

The Courts

In a rights-oriented policy field it is vital to deal with the role of the courts or, more particularly, with the role of key court decisions. Such decisions involve cases initiated by aboriginal groups, nations or individuals. If the courts decide in favour of aboriginal peoples then the decisions serve both to increase political leverage for aboriginal peoples but at the same time create uncertainty as to just what the decisions might mean for the practical design of policy. Three such relatively recent cases are important in this context: the Calder case; the Guerin decision and the Sparrow case.

In the Calder case in 1973, the Nishga Nation in BC sought a declaration that it had aboriginal title (Macklem and Townshend, 1992). The Supreme Court ruled against the Nishga on a technicality but six of the judges, contrary to then existing federal policy interpretations, said that aboriginal title did exist in Canadian law. And three judges argued that Nishga title still existed. An immediate impact of the court case, in contrast to years of aboriginal lobbying, was that a federal policy on land claims was announced in 1973.

But the larger import of the Calder case was that it effectively reversed the policy in the 1969 White Paper which had sought to act on the view that there were special rights for Indians.

In the Guerin case of 1984, the Supreme Court reversed a lower court's decision which had upheld the federal government's right to lease land which the Musqueam Indian Band in BC had surrendered to be leased by the federal government with proceeds going to the band (Macklem and Townshend, 1992). The federal government did not get terms that were as favourable as before. The Supreme Court advanced aboriginal rights in part because it argued that the federal government had to act as an honourable and fair trustee but also cited arguments that simply sighted normal fair play as would apply to any such transaction, aboriginal or not. In other decisions, the courts began to argue that treaties had to be given a broad and liberal interpretation. But precisely how broad still remains to be seen. Aboriginal organizations saw the Guerin and related cases as decisions that were finally forcing the federal government to cease acting as if it could do whatever it liked and instead begin behaving like the trustee-like entity that it should have been for decades.

The third case of recent import is the Sparrow case of 1990.

The Supreme Court had to deal with the 1982 Constitutional provisions regarding "existing aboriginal rights" as revealed by the case at hand which dealt with aboriginal fishing rights (McCorquodale, 1993). Under Fisheries Act regulations, aboriginal rights to fish were restricted by regulations regarding the length of net that could be used. Moreover, the regulations (in British Columbia) applied only to status Indians. The court ruled that extinguishing a right through regulation was not a clear enough way to extinguish a right. Among other issues in a complex ruling the court also ruled that regulations when they are used had to give priority to the aboriginal (not just status Indian) fishing rights over all other objectives except for conservation objectives

(See more in Chapter 3). Again, the effect of this case has been to broaden considerably the existence of aboriginal rights. It has increased leverage for aboriginal groups but does not yet provide clear guidelines as to how to proceed with fisheries policy or broader governance issues (McCorquodale, 1993).

To these two non-executive institutional players, which are pressured by national aboriginal organizations (see Chapter 2) the driving force behind aboriginal policy, one can add other institutional pressures and players which space does not allow us to discuss. These include international agencies such as the World Council of Indigenous Peoples and the Inuit Circumpolar Conference. They include as well inquiries and royal commissions which, while established by Cabinets, quickly take on a life of their own and become pressure points and lightening rods. For example, in the 1970s, the Berger Commission offered unexpected but important opportunities for aboriginal participation on issues of pipeline and northern development (Bregha, 1978; Berger, 1990). And presently, the Royal Commission on Aboriginal Peoples has become a source for both renewed protest and policy ideas.

EXECUTIVE-BUREAUCRATIC POLICY PROCESSES AND DYNAMICS

The macro aboriginal policy process is centred in the internal executive-bureaucratic structures and decision processes of the Government of Canada. Four such processes interact, sometimes in coordinated ways but often in ways which suggest that each process has a dynamic and life of its own. In fact, each does, precisely because each process is government wide and is broader than aboriginal policy formation per se. These structures and processes include: the Prime Minister and the Cabinet (including its shifting policy arenas and its priority-setting process); the expenditure, tax, and regulatory processes; project based or triggered processes; and periodic crises.

The Prime Minister, The Cabinet and The Priority-Setting Process

The main point to stress about the first internal process is that aboriginal policy has to operate in frequently shifting executive arenas of decision making. These arenas change far more often than not for reasons that have nothing to do with aboriginal policy. They deal with larger prime ministerial structural and substantive priorities. Nonetheless, the reality of shifting arenas is clear.

Sally Weaver's research on aboriginal policy formation shows that the 1969 White Paper process involved a triple arena: a junior ministerial arena lead by Robert Andras that was reformist and encouraging to Indian goals; a moderating ministerial arena occupied by the Indian Affairs minister of the day, Jean Chretien, which acted as a break on such excesses; and a Prime Ministerial- Privy Council Office-led arena which sought a termination strategy for the notion of special Indian rights and whose views ultimately carried the day in the White Paper (Weaver, 1978).

In the early 1970s, the Cabinet experimented with an approach through ministers on its Social Policy Committee which would allow more direct contact between ministers and native groups. A two-level series of consultations emerged, one ministerial and one bureaucratic. After Indian criticism of this process and after the Native Caravan protest on Parliament Hill in 1974, the Cabinet established a formal Joint Cabinet-National Indian Brotherhood (NIB) Committee with its own secretariat. By February 1978, the NIB (the predecessor body to the AFN) had withdrawn from the committee with its leader labelling it a farce largely because it was consultative and did not involve real decision making. Between 1978 and 1981 a Joint Cabinet Committee-Native Council of Canada forum was established. It had some similar frustrations.

In the early 1980s, the main arena for Cabinet deliberations on aboriginal issues was the Cabinet Committee on Social Development but this time with the added overlay of the Ministry of State for Social Development and its analytical overview of several social departments and their budgets. Under the then functioning envelope budgeting system, the committee had a real budgetary allocation role. Programs in DIAND and elsewhere had to compete quite openly in Cabinet ministerial horsetrading over budgets. It was not a system especially conducive to aboriginal gains, especially since it was micro program and expenditure driven. DIAND, however, did not do badly during this period since, as Chapter 3 will show, its minister, John Munro, was a good brokerage politician. Meanwhile, in the early 1980s, aboriginal issues were also operating in vital ways through the constitutional arena which was lodged in the PMO and PCO in 1980-81 and eventually, by late 1983, in the Federal Provincial Relations Office.

In the mid- to late-1980s, the series of constitutional conferences necessitated the establishment of an Office of Aboriginal Constitutional Affairs within FPRO. As mentioned in the Introduction's chronology, when the constitutional meetings failed to advance matters, the Mulroney Government launched its two-track alternative: community self-government and the Trilateral Negotiation Process. The latter was to involve negotiations among off reserve and Metis groups, the provinces, and the federal government. The previously mentioned Interlocutor was also established whereby a Cabinet Minister was the designated link to the Metis and off reserve Indians who were now constitutionally recognized but for whom the federal government claimed no legal program responsibility. From 1985 to the present there has been virtually a new ministerial Interlocutor appointed every year. Initially they were Ministers of Justice. In the first Kim Campbell Cabinet, the interlocutor is the President of the Treasury Board.

Meanwhile, in the Mulroney years, there was no longer an envelope system and thus budgetary politics reverted back to the heavier hand of the Department of Finance and the Treasury Board but this time aided and abetted by the daily power of the Operations Committee (the Ops Committee) headed for most of this period by the "Minister of Everything", Deputy Prime Minister, Don Mazankowski. For most of the post-1988 period, there were also annual budget-cutting exercises orchestrated by the Cabinet's Expenditure Review Committee chaired by the Prime Minister (Savoie, 1991).

During the 1991-92 period the constitutional issues were again in the hands of agencies such as the FPRO working under the Minister of Constitutional Affairs, Joe Clark. DIAND meanwhile was only one of several federal players in these negotiations. During the Oka crisis, and in the forging of the 1990 Native Agenda in 1989-90, it was the PCO and DIAND which were the key players aided by a special group of Cabinet ministers all but one of whom had been former DIAND ministers (see below).

Thus the central executive arenas and the machinery for aboriginal policy shifted and changed and certainly did not constitute a one-stop arena for aboriginal groups. Nor did aboriginal groups necessarily want one-stop shopping. While mistrustful of all of the arenas, they had their own preferred routes as later chapters will show.

The one thing that these shifts in arenas do not accurately reveal is where aboriginal issues resided in overall prime ministerial and governmental priorities during the past decade or more. No outcomes in any policy field can ever be satisfactorily explained without reference to where that field resided in the priority list. And the truth is quite simply, that for virtually all of this period aboriginal issues, even at their highest moments in the political sun, were still a moderate to low

priority.

A perusal of Throne Speeches and Budget Speeches, the main vehicles for expressing priorities, shows that for neither the Trudeau or Mulroney years were aboriginal issues a frequently articulated concern. In the 1980 to 1984 period, the key Liberal priorities involved the Constitution, the National Energy Program, and after 1982, both recession and ballooning deficits.

The post-1982 Constitutional process did include aboriginal peoples but for the period as a whole the Liberals were clearly preoccupied with other matters. The Mulroney agenda focussed on deficit reduction; economic renewal through free trade, deregulation and privatization, constitutional change, and then a burst of environmentalism through the 1990 Green Plan (Doern and Phidd, 1992). Again, aboriginal issues were a part of the constitutional priority and hence were elevated politically relative to the early 1980s. But over the Mulroney period as a whole, they were at best in the middle of the priority list.

Aboriginal organizations had to find their way into the nooks and crannies in this larger Mulroney era agenda. As we have seen, and will again, some progress has occurred amidst this otherwise unwelcoming milieu. For example, the fact that DIAND's spending has (according to DIAND's data) increased in real terms during the Mulroney years, may be partly due, first to genuine concern, but also because modest aboriginal program improvements would help improve the Mulroney Government's otherwise bad image as a cut-back social policy government. As long as aboriginal program spending increases were not egregiously expensive, they could help improve the social policy image of the government.

The Expenditure, Tax and Regulatory Processes

Policy and priority-setting processes lead to expenditure, tax and regulatory outputs. But cause and effect work the other way as well. The expenditure process, the tax process, and the regulatory process also yield intended and unintended policies, including aboriginal policy. These processes are recognized as partially separate processes within the government's decision making systems and they deal, moreover, with the basic instruments of policy making, each with their own systems of accountability (Doern and Phidd, 1992). The broad nature of these processes is discussed elsewhere but their import for aboriginal policy formation needs an explicit discussion, albeit illustratively and selectively.

The expenditure process refers to the broad cycle of events and pressures whereby the annual expenditure budget of the Government of Canada is fought over, debated and agreed upon. It is a multi-minister interdepartmental inter-interest group bargaining and haggling process that starts with the government's annual priority-setting meetings in the early fall, proceeds to the tabling of the Estimates in Parliament in February, and ends ultimately with the audit of public spending by Parliament's watchdog, the Auditor General of Canada. Thus, in any given year or in a short two or three year set of budgetary cycles, the same expenditure process can (and has) produced any or all of the following aboriginal-related expenditure policy outputs or effects: a) an average of 6 percent real increases in DIAND program spending; b) cuts in Secretary of State grants to aboriginal groups; c) increases in grants for aboriginal groups via spending on the Royal Commission on Aboriginal Peoples; d) cuts in actual or potential provincial spending on aboriginals by reducing levels of federal transfer payments to the provinces, including those that help pay for social assistance; e) increases in aboriginal health and environmental programs through the garnering of

money from the $3 billion federal Green Plan fund; and f) deep cuts and then the ending of off reserve rural and native housing programs in the 1991 to 1993 period.

The tax decision process, on the other hand, is one which is controlled overwhelmingly by one minister and agency, the Minister of Finance and the Department of Finance. The tax process is governed by norms of budget secrecy which limits consultation. And the Department of Finance jealously guards its right to make policy and to protect the revenue raising capacity of the Government.

All of the above features tend to conspire to create a situation in which aboriginal policy through taxation is best evidenced by things that do not get done rather than by things that do. Thus, for most of the last decade the entire discussion of self-government, which makes almost no sense unless powers to tax are included, was carried out without any serious chance of even raising these issues. One reason was that the Department of Finance would brook no such interference and moreover, Finance had other economic renewal priorities which aboriginal pressures simply could not penetrate. Another reason is that tax exemption is almost a sacred cow among Indian leaders. Indian leaders are reluctant to endorse the right to tax, particularly their own people.

Finance did cooperate with DIAND and aboriginal initiatives that lead to the formation of a Taxation Advisory Board but these processes largely dealt with local municipal-style tax issues. Beyond these examples, there are of course the general effects on aboriginals of Finance's overall tax decisions. The GST hits most aboriginals like other Canadians as do increased taxes on incomes, cigarettes and alcholol, ameliorated somewhat by tax credits for low income earners.

As for the regulatory process, it is the most hidden of the three federal decision processes

but no less real all the same (Doern and Phidd, 1992). Within the government, the regulatory process usually refers to the set of stages through which regulations (defined as delegated legislation emanating from a parent statute) are changed and approved including publication and notice in the Canada Gazette (Doern and Phidd, 1992). In recent years this has involved in some policy sectors quite elaborate stakeholder consultation processes.

But in real political and policy terms, regulation, understood as "rules and sanctions backed up by the coercive powers of the state" also embraces changes in the law itself. Aboriginal peoples understand regulation in this larger sense for the simple reason that they have been regulatory objects for decades under the Indian Act. Thus changes in 1985 that ended discrimination against women under the Indian Act were profoundly regulatory and proceeded through their own dynamic within the federal decision process in 1984-85.

But traditional delegated regulation has also been vital. The previously mentioned Sparrow case involved a challenge to regulations under the Fisheries Act. Aboriginal groups have also both utilized profitably, and been abused by, environmental regulatory processes. Thus they have often taken advantage of provisions in various environmental assessment processes or in the establishment of parks and recreation areas to defend their rights (see Chapter 3). But they have also been harmed by decisions to proceed without such environmental reviews or in other "forced growth" resource-based economic mega projects.

Project-Based Policy Events, Cycles and Episodes

A further important "process" in normal federal decision making that slices through and around the above mentioned processes are project based decision processes. The best known of

these are so-called mega projects, be they the James Bay hydro projects, the building of pipelines, or the establishment of new parks. These occur with sufficient frequency that they generate their own independent policy concerns. Each project is politically noticeable and visible, is often expensive, has a defined beginning and end, and triggers many areas of policy other than the primary policy of the agency or companies concerned. Aboriginal policy has been triggered and affected by such traditional projects but it is vital to see the "project phenomenon" in another important sense in aboriginal affairs as well.

This centres on the project-like rhythm of both self-government negotiations and comprehensive and specific claims negotiations. As Chapter 4 shows, these areas have been the object of efforts to develop general policies about self-government and about claims and treaty issues. According to any "normal" policy scenario, one should have a situation in which "policy drives cases". In short, general approaches constrain the individual "project" (a self-government negotiation or claims negotiation). But it is also true that "cases drive policy". This is because general policy is often constructively ambiguous or exhibits a deep lack of agreement or because each of the self-governing or claims situations is different or, simply, is being negotiated at a different time. Moreover, each project varies in size and extent of political noticeability, locally, regionally and nationally. Each project therefore has the potential to make new policy or create precedents.

These dynamics, which are normal in numerous policy fields, create the classic problems of defining equity. Does equity involve treating everbody (every project; every Indian Band) equally or treating every project or group differently. The imperatives of this project driven phenomenon are important. Moreover, they invariably involve working through, and disentangling, bundles of the

above mentioned policy instruments and instrument processes (spending, regulatory, and tax provisions) which may, meanwhile, in their general manifestations, be marching to yet a different policy and political drummer.

What is also critical about each of the "instrument" and "project" dynamics sketched above is that things can often go well, or fare badly, for reasons that have little to do with either political will, good intentions, or innovative thinking. This is because there is simply in any policy field a dense underbelly of policy instruments and project rhythms that reflect the diverse specific circumstances of peoples, interests, and organizations each pursuing many good but often contradictory purposes and outcomes.

Policy Crises and Symbolic Occasions

It is an oxymoron to refer to crises as a "regular" part of the policy process. By their nature, crises are irregular. But such crises occur often enough that they must be understood on their own terms, in part because of the symbolism and political images that they create. Such crises can either create genuine opportunities for political and policy learning - education in its best sense- or they can create extreme policy defensiveness and caution. Aboriginal policy has certainly experienced such crises situations such as the hanging of Louis Riel, the standoff at Oka, or Elijah Harper's constitutional stand in the Manitoba Legislature.

Nor do crises have to be wholly national media ones. They can include the Donald Marshall inquiry, the Haida and Lubicon roadblocks, and the local effects of the Berger Commission's visits to northern aboriginal communities in the 1970s. It is not at all difficult to see that from the perspective of aboriginal groups and nations, federal aboriginal policy seem to consist almost only

of crisis-injected responses. In short, no crisis, no policy. In Chapters 3 and 4, the study revisits crisis policy making, partly through the analysis of self-government policy processes in the wake of two constitutional crises in 1982 and 1992.[i]

There is also a connection between such crises and symbolic occasions, with coverage by the mass media, and the fate of aboriginal issues in Canadian public opinion. As we have seen, aboriginal issues have certainly not been high in opinion polling data, although they have in recent years moved to a higher plateau than was the case in the 1960s and 1970s. Nothing illustrates the overall central dynamics more than the events surrounding the announcement of the 1990 Native Agenda.

Priorities, Crises and The Native Agenda of 1990

With the drama and trauma of the Oka standoff still fresh, Prime Minister Brian Mulroney stood up in the House of Commons on September 25, 1990 and announced the Native Agenda. It was presented by the government as "a widesweeping commitment to change for Indians in Canada".[ii] In the Prime Minister's words, the agenda aims to preserve "the special place of our first citizens in this country based on their aboriginal and treaty rights recognized in the Constitution".[iii]

The Native Agenda was described as resting on four pillars: land claims; the economic and social conditions on reserves; the relationship between aboriginal peoples and governments; and concerns of Canada's aboriginal peoples in contemporary Canadian life. Consultation with the aboriginal peoples was promised as was respect for the fiduciary responsibilities of the Crown.

Land claims was accorded the first priority including the commitment (discussed in Chapter 4) to accelerate the settlement of specific claims. Oka itself had exploded out of just such a historic

grievance. The agenda also included a promise to accelerate comprehensive claims resolutions as well, including eliminating the limit of six under negotiation at any one time.

There was also a commitment to consider regional or province-wide claims negotiation processes.

In programmatic terms, the Native Agenda included a commitment for new funding in community based improvements such as water and sewage and housing. Also promised were changes to the Indian Act including changes to the system of Native justice. Further support for aboriginal self-government underpinned the whole agenda.

While the Native Agenda was announced in the context of Oka, its policy journey began a year earlier and involved a process which shows the way in which a central agency such as the Privy Council Office can and does play a vital but also episodic role in the aboriginal policy process. Like the 1969 White Paper and the 1985-86 Neilsen Task Force exercise, the Native Agenda involved basically a unilateral initiative launched from and by the centre with little or no direct aboriginal input except that which was cumulatively being internalized by DIAND's evolving political memory of the late 1980s policy experience. It was therefore different from the White Paper and Neilsen exercises in that this time it was far closer to being supportive of the policy direction in which aboriginals generally wanted to proceed than the other two lightning bolts from the centre.

Nonetheless, the Native Agenda must first be seen in the context of the federal central agencies' efforts to manage priorities and evolve the government's four year mandate. Thus, in the fall of 1989, the Clerk of the Privy Council, Paul Tellier (himself a former deputy minister at DIAND) launched, at the Prime Minister's request, a mandate review process geared for the fall of

1990 when the government would be looking at the second half of its four year term since its free trade election victory of November 1988. All departments were asked to suggest ideas to support a policy agenda that would explicitly include social policy reform; free trade and competitiveness; and aboriginal policy reform. These ideas were first presented to a committee of deputy ministers in March 1990 and then to ministers on the Priorities and Planning Committee of Cabinet in June 1990. Over the summer of 1990, departments whose ideas won reasonable favour were asked to cost them, in concert with PCO, Treasury Board and Finance, in time for the "lakes and lodges" priority meeting of P&P in the early fall of 1990.

The first presentations to deputy ministers, including DIAND's were, in the words of one official, "all sizzle and no steak". There was as yet no Oka to propel it. Moreover, proposals in priority-setting exercises are always quite general at this stage in the policy cycle. Nonetheless, key themes similar to those that appeared in the Native Agenda were a part of the DIAND presentation made by Harry Swain. These simply reflected the current and cummulative agenda on aboriginal matters (in short, much of what we discuss in Chapter 3). At this point, it was not at all clear, nor could it be confidentally predicted, that aboriginal issues would retain their place on the priority list. The PCO was certainly interested. Indeed, the official leading the exercise had also been a former Regional Director-General at DIAND.

If there were any doubts, Oka resolved them unambiguously. At the Planning and Priorities meeting in September at Meech Lake, the Prime Minister turned directly to Harry Swain, the Deputy Minister of DIAND and asked him to give his views to the assembled ministers who were appalled and embarrassed by the Oka situation. Swain, by all accounts, gave a compelling and convincing presentation. Thereafter, the Native Agenda, came to be forged along side the response

to Oka, in a special cabinet committee, all but one of whose ministerial members had been former DIAND ministers. Given the trauma of Oka, this became a very serious and sombre committee. In its few meetings, half the agenda typically was Oka in detail and the other half the Native Agenda.

Oka, therefore, concentrated minds and souls but equally it freed up some funding. The biggest block of funds, however, was in part fortuitous. It came, as we see further in Chapter 5, from the Green Plan which was announced three months later (Canada, 1990). DIAND, in short, got Green Plan money before there was even an announced Green Plan. It was undoubtedly the crisis itself, plus political muscle from the centre, plus the presence of a suitable fund, that led to the Native Agenda.

Throughout this entire period of almost a year there was virtually no direct consultation with aboriginal groups about the agenda per se. The main national associations were not involved. This was because, until the last stages, no one at the centre or at DIAND could be sure that anything would materialize in terms of real resources or political commitment. Regrettably, sometimes a crisis helps in the snakes and ladders game of central priority-setting. But despite the fact that funds were garnered and some improvements occurred, many aboriginal groups saw the agenda as Ottawa's business as usual. They saw Ottawa's four pillars in the Native Agenda as four reminders of past bondage since there were still no constitutional breakthroughs and scarcely any direct consultation over the exact content of the agenda.

CONCLUSIONS

This chapter has presented an initial look at macro aboriginal policy formation by looking at the larger federal policy system. This is an obligatory analytical task to make sense of any policy

field since policy and policy effects arise in intended and unintended ways from these larger political forces.

The chapter has mapped both the broader institutional players and processes involved in federal aboriginal policy formation, starting with those outside of the executive-bureaucratic arena (Parliament and the courts) and then proceeding to the internal workings of the federal Cabinet and bureaucratic arenas of the policy system

The chapter shows that one must look for aboriginal policy formation in many places in the federal government. In short, there simply is no single aboriginal policy process. Rather, like many other policy fields, aboriginal policy emerges from different policy cycles and rhythms and can only be fully explained through an understanding of: the Prime Minister and Cabinet's shifting Cabinet arenas and priority-setting process; the expenditure, tax and regulatory processes; project-based policy dynamics; and crises. The forging of the 1990 Native Agenda showed these dynamics quite concretely as will other policy case studies in the chapters which follow.

Chapter 2

NATIONAL ABORIGINAL ORGANIZATIONS

The main national aboriginal organizations play a pivotal role in the macro federal aboriginal policy process. In the study as a whole, these organizations are examined in two ways. First, in this chapter, they are profiled in a general overall way, sketching out their origins, recent evolution, representative structure and overall positions vis-a-vis the federal government and each other. The nature of their funding relationships with the federal government, particularly through Heritage Canada (formerly, the Department of the Secretary of State) are also examined. Later, in Chapters 4, 5, and 6, the organizations are examined illustratively, in the context of particular policy initiatives or events. But before briefly profiling the five main organizations, several points about the overall nature of these organizations warrant emphasis.

THE POLITICS OF NATIONS VERSUS INTEREST GROUPS

The first point to reiterate about the political mobilization of aboriginal organizations is that the aboriginal organizations see themselves as representatives of nations and peoples holding and seeking rights and recognition (Boldt, 1993). They do not see themselves as "interest groups" or as just another lobby lining up for policy favours and public largesse. This central fact goes to the heart of how political discourse is articulated and viewed. The Assembly of First Nations, for

example, sees itself as an organization that represents the collective interests of political entities that are First Nations communities.

However, the traditional Canadian political and policy process is, far more often than not, likely to regard these national organizations as being interest groups like many others. Moreover, many normal interest group or lobbying tactics are practiced by national aboriginal organizations. Federal policy makers, in short, have not been particularly inclined to view the federal aboriginal policy process as an on-going set of "nation to nation" negotiations. This is true despite the greater use of rights-oriented language in federal policy and constitutional positions. Thus, at a macro level, there is a gulf in the basic language of debate

A second feature of the main national organizations is that they are extremely dependent upon the state for the funding of their activities, funding which in recent years has been severely cut (Phillips, 1991). As we see below, funding comes from both Heritage Canada and DIAND, as well as provincial agencies and can come in the form of general grants as well as contracts for particular studies and the delivery of government programs and services. The extent of such dependence is often quite stark amounting to almost all of the organizations' annual discretionary spending

Third, the national organizations, like many advocacy political entities, are often difficult to accurately describe and research. This is because they are so involved in, and at times submerged by, their day-to-day advocacy tasks that they have little time to even construct a record of themselves. Indeed, their advocacy role is far more reactive in nature than proactive, though the latter has been more evident in the 1990s than earlier. However, what they lack in budgets and time for proactive strategies, they make up for in sheer driving energy, much of it fuelled by a

compelling mixture of anger and valid feelings of injustice. In short, these organizations are not first and foremost policy analysis shops but rather are vehicles of political representation and advocacy. This does not mean that they do not want to do good analysis, or that many of them do not do such analysis. Rather, it is simply to say that they must be looked at as vehicles of vital political expression and pursuers of democratic and constitutional rights.

A further reality is that the diverse structure of overall aboriginal political organization clearly flows from the realities of population distribution across Canada and within provinces and from the nature of their relationship to the Indian Act. In purely electoral terms, it also flows from the fact that Indians, Metis and Inuit are basically sprinkled through numerous electoral ridings and, as shown in Chapter 1, in only a few are they a significant or majority part of the population of Canadian voters.

Concepts of democratic representation also vary widely among the groups and account for a considerable part of the political tensions and divisions among them. The Assembly of First Nations (AFN) is based on collective respresentation of First Nations rather than individual representation. The Congress of Aboriginal Peoples (CAP, formerly the Native Council of Canada) and the Metis National Council (MNC) are stronger supporters of individual electoral-based systems of representation. Representation at the national level is also often structured though a complex layering of local, regional, and provincial organizations where regional norms are strong. Struggling to find their place in this representational array are women, youth and urban aboriginal groups. Also present are what might be called sectoral bases of representation such as the National Aboriginal Forestry Association or groups concerned about health or education. Accordingly, local,

regional or provincial aboriginal organizations, nations and bands do not hesitate to lobby the federal government and do an end-run around the main national organizations. Indeed key debates and disputes among and within aboriginal organizations about self-government often centres on precisely what degrees of power should be allowed for national versus other centres of representation. The federal government in turn will often prefer to work with local or provincial groups.

It is in the context of the above features that the following profiles of the five main aboriginal organizations should be viewed. I look in turn at: the Assembly of First Nations (AFN); the Congress of Aboriginal Peoples (CAP); the Native Women's Association of Canada (NWAC); the Metis National Council (MNC); and the Inuit Tapirisat of Canada (ITC).

The Assembly of First Nations

The Assembly of First Nations (AFN) was established by First Nation Chiefs in 1982. The AFN functions as a forum for constitutional recognition and advocacy, the exchange of information, the strategic planning and harmonizing of approaches where possible among the member Chiefs, and the presentation of positions to the federal government through the National Chief. All First Nations in Canada are entitled to be voting members of the AFN.

The AFN evolved from earlier national Indian organizations.

The National Indian Council was formed in 1954 and became the official representative of status and non-status Indians in 1961. In 1969, it split into two organizations. The National Indian Brotherhood (NIB) was formed as a federation of status Indian provincial and territorial

organizations without direct representation from chiefs or band councils. The Canadian Metis Society represented non-status Native people.

The original purpose of the National Indian Brotherhood was to serve as the voice of status Indians on a variety of issues. It received its authority mainly from member provincial, regional and territorial Indian organizations. By the end of the 1970s changes to the structure of the NIB were sought that would give Band chiefs more direct control over national policies and create an organization that would strengthen traditional Indian governments and respect the diversity of each Indian nation, while, at the same time, encouraging mutual support for common goals.

The principal organs of the AFN are as follows:

The First Nations-in-Assembly is comprised of the Chiefs of all member First Nations and meets at least once annually. It is a forum for discussions and consultations between member First Nations and decisions are made, as much as possible, by consensus. When consensus is impossible, a positive vote of 60% of representatives in attendance constitutes a decision.

The Confederacy of Nations consists of one representative from each region plus one representative for every 10,000 First Nations' citizens of the region. The representatives may be either elected or appointed and can be removed by the Chiefs of each region. The Confederacy of Nations meets every 3 to 4 months and serves as the governing body between assemblies of the First Nations-in-Assembly.

The Executive Committee is composed of the National Chief, the AFN Regional Chiefs and the Chairman of the Council of Elders, who plays an advisory role. The role of the Executive

Committee is to monitor, direct and control the Secretariat, set policy for the internal operations of the Secretariat, select all senior officials and approve all significant personnel or service contracts. The Executive Committee also develops the budget requirements for the AFN for approval by the Confederacy of Nations and secures fiscal resources as well as monitors and controls expenditures of the AFN. It is accountable to the Confederacy of Nations and the First Nations-in-Assembly (Assembly of First Nations, 1985).

The National Chief, who is the main spokesperson for the AFN, is a member of the Executive Committee and must comply with the direction given by the First Nations-in-Assembly, the Confederacy of Nations and the Executive Committee. He or she is elected by the First Nations-in-Assembly every three years by a 60% majority of the registered representatives of First Nations.

The Council of Elders is made up of Elders representative of First Nations and its Chairperson who is associated with the Secretariat. The number of people serving on the Council is determined by the First Nations-in-Assembly and Elders elect their representatives and Chairperson. Any Elder may participate in meetings of the First Nations-in-Assembly or the Confederacy of Nations and the Chairperson of the Council of Elders participates, in an advisory capacity, in meetings of the Executive Committee. The role of the Council of Elders is a non-political, advisory one.

The AFN Secretariat consists of the Executive Committee, the Office of National Chief, and other administrative, technical and support staff as required by the AFN to implement resolutions.

The AFN receives global funding of several million dollars from the Department of Indian Affairs and Northern Development and, until 1990, core funding from the Secretary of State. For purposes of economic development for aboriginal people, financial resources are also provided by Human Resources Canada and Industry Canada. The AFN negotiates other contribution agreements to carry out specific projects, such as from the Department of Communications, to fund First Nations Museums (Assembly of First Nations, 1990).

The AFN's main connection with the federal government is through the Department of Indian Affairs and Northern Development but it clearly also deals with the Prime Minister, Ministers of Consitutional Affairs and other ministers including those who head the departments profiled in Chapter 5 and 6. The core relationship with DIAND, however, has not been a good one over the years. On May 4, 1993, Ovide Mercredi, National Chief of the AFN, told the Standing Committee on Aboriginal Affairs that the Department makes "unilateral declarations of what they're going to do and they expect you to live with it" (Assembly of First Nations, p.42:17). Chief Mercredi stated that aboriginal peoples want increased access to the federal government's decision-making process.

On the other hand, Chief Mercredi told the Standing Committee that the AFN has a very good relationship with the Department of Health and Welfare. Mercredi credits this to its then minister, Benoit Bouchard, being familiar with the issues and the need for action.

The AFN is seen by both federal officials and many of its own participants as an unwieldy and often divided organization and yet simultaneously the most important single political institution for First Nations at the national level. It has been united by its tactical focus on constitutional

solutions and priorities but its habit of making policies through numerous "resolutions" at assembly meetings often makes it seem to federal policy makers as a policy organization that lacks consistent analytical capacity. Indeed, the very words "assembly" and "first nations" evoke a loose aggregation of Indian Bands and peoples. And, as stressed above, the AFN does not see itself as being just a policy advocating "interest group". The unwieldiness of the AFN has also been reflected in leadership disputes and, following the defeat of the Charlottetown Accord primarily by on reserve Indian peoples, by divisions between leaders and on reserve Indians themselves. While there was a low voter turnout in the vote, there is little doubt that its outcome represented a significant challenge to the Chief-dominated AFN.

AFN spokespersons usually totally reject the explicit or implicit use of the pluralist interest group model to characterize the AFN and what it seeks. They do not seek to represent individual aboriginal Canadians who are trying to influence federal government policy as interest groups. Rather they are seeking to obtain political power to gain control over collective rights, lives and destinies. In short, they characterize the AFN role as one of seeking equal status with Canada as political entities so that, once recognized, First Nations can then make their own policy.

The Congress of Aboriginal Peoples

In 1970, existing Metis and non-status associations on the prairies joined with non-status Indians and Metis of British Columbia to establish the Native Council of Canada (NCC). In 1994, the NCC was transformed into the Congress of Aboriginal Peoples. The NCC was incorporated in 1971 with the objective of representing the interests of non-status Indians and Metis and of achieving core funding for these peoples since they were not covered by the Indian Act. Over the

years, the NCC grew to include 15 provincial and territorial associations from all of Canada. In 1983, prairie-based Metis formed their own organization, the Metis National Council.

The split between the NCC and MNC had been festering for years and earlier efforts by Metis in 1981 and 1982 to break away had been forestalled. By 1983, the triggering event was that of how many seats there would be at the constitutional negotiating table but there were also significant philosophical differences as well. These included the view among some Metis leaders that they were a nation in a more European sense, in short, a national minority, rather than one endowed with tribal or aboriginal rights.

Thus, the constituency of the present Congress of Aboriginal Peoples in the mid 1990s consists of its own estimate of 600,000 aboriginal people, namely Indian people in Canada who do not reside on reserves and Metis people outside of the Prairies. This population includes status off-reserve, Bill C-31, and non-status Indians, and Metis, some with treaty rights and others with aboriginal title. The CAP lobbies on the central principle that all aboriginal people in Canada, regardless of their status and where they live, should have "equity of access" to benefit from aboriginal or treaty rights (Wherrett and Brown).

The CAP is often at loggerheads with the AFN over self-government issues. This is because the issue of aboriginal self-government typically centres around Indian Bands living on existing reserves and on the creation of a new territory in the North to be governed by a government dominated by the Inuit. In other words, self-government is associated with a defined land base, resulting in the exclusion of the large segment of aboriginal peoples not living on reserves. The NCC consistently challenges this view.

The CAP is also quite often at loggerheads with the AFN over the available supply of federal money and programming. This is not only because of normal zero-sum politics but also because the CAP argues that the AFN often includes off-reserve Indians as a part of their data when seeking total amounts of funding but then delivers the resulting programs only to on reserve Indians.

The CAP also has to press continuously for its own points of entry into the federal policy process since it regards DIAND as being mainly a vehicle for AFN concerns. Paradoxically, many DIAND officials regard the CAP as having better policy and analytical capacity than the AFN and that the CAP produces good policy work at a much lower price in terms of funding and contracts.

In the past decade, the CAP points to several policy and political achievements including: the partial elimination of sexual discrimination under the Indian Act with the passage of Bill C-31; the inclusion of many previously non-status Indians under the Indian Act; achievement of a high degree of international recognition for off-reserve aboriginal peoples; the inclusion of <u>all</u> aboriginal people, Indian, Inuit and Metis, in constitutional reform talks; the establishment of a Justice Consulate relating to off-reserve justice initiatives; and the signing of a Federal/NCC Bilateral Protocol to address social and economic policy concerns at a ministerial and departmental level (Native Council of Canada, 1993).

The Native Women's Association of Canada

The idea for a national body to represent Canadian Native women emerged at a 1970 International Native Women's Conference in Albequerque, New Mexico. The Conference was

attended by members of local, provincial and territorial member associations for native women. In March 1971, the first National Native Women's Conference was held in Canada.

In 1972, a Native Women's Program was launched by the Department of the Secretary of State. In August, 1974, the Native Women's Association of Canada (NWAC) held its first Annual Assembly in Thunder Bay, Ontario, and the National office became incorporated in October, 1974 (Native Women's Association of Canada, 1985).

NWAC is a registered non-profit organization with the purpose of representing all aboriginal women--status, non-status, former status, Metis, Inuit, on-reserve, off-reserve, rural and urban. It seeks to be the voice for all aboriginal women in Canada. The objectives of NWAC are as follows:

- to be the national voice for Native women;
- to address issues in a manner which reflects the changing needs of Native women in Canada;
- to assist and promote common goals toward self-determination and self-sufficiency for Native peoples in their role as mothers and leaders;
- to promote equal opportunities for Native women in programs and activities;
- to cultivate and teach the characteristics that are unique aspects of Native cultural and historical traditions;
- to assist Native women's organizations, as well as community initiatives in the development of their local projects;
- to advance issues and concerns of Native women; and to link with other Native

organizations with common goals

(Native Women's Association of Canada, 1991).

The structure of NWAC consists of four levels from the local "grass-roots" level to the national level. The locals are situated on the reserves and in other urban and rural areas. Each local either elects or appoints an executive body, normally consisting of presidents and members of the locals/chapters of their region. The latter in turn make up the membership of the Provincial Territorial Member Associations (PTMA's), which function through operation funding and special project funding received from various government agencies. Each PTMA has its own Executive and Board of Directors as well as its own individual constitution.

The National office receives its direction from the locals and PTMA's. The Board of Directors of NWAC consists of one National Speaker, four Regional Executive Leaders, four Regional Executive Leaders, four Regional Youth Representatives, thirteen Regional Representatives (three for each of the regions except for the East which selects four), and a Council of Elders. The NWAC head office is located at the Six Nations of the Grand River in Ohsweken, Ontario and the National office is in Ottawa.

The major issues on the NWAC agenda are: the Indian Act; Constitutional recognition; family violence; AIDS; Justice; health related issues; child welfare; and aboriginal rights in general.

The Native Women's Association of Canada rise to prominence in the 1990-92 constitutional debate was itself a reaction against the male dominated nature of both the AFN and the NCC, especially the former. In particular, it opposed the AFN's view that the Charter of Rights,

including the equality rights, should not override aboriginal rights. NWAC sought the protection of the Charter to ensure women's rights. While it is the smallest of the three groups mentioned to date, it has acquired additional moral and sometimes material support from organizations such as the National Action Committee on the Status of Women.

Without doubt one of the key impacts of NWAC and other Native women organizations was the passage of Bill C-31 in 1985. This legislation eliminated most provisions in the Indian Act which had discriminated against Indian women who had married non-Indians. But the administration of these changes and continued resistence to them by many Band Chiefs has been a continuing source of anger and frustration by NWAC. Indeed, many attribute the on reserve defeat of the 1993 referendum on the Constitution to the successful opposition of women to Band Chief systems of governance and the policies they produced at the community level.

NWAC's place in the constellation of national organizations and in the federal policy milieu is also governed by the often expressed perception that its leadership is very radical and deeply mistrustful of other players. Yet at the same time, it has drawn attention to vital issues concerning women for which uncompromising policy positions are often more than warranted.

The Metis National Council

In 1970, Metis associations on the prairies united with non-status Indians and Metis of British Columbia and other regions to establish the Native Council of Canada (NCC). However, in the late 1970's, as we have seen above, it had become clear that important differences existed between the two constituencies of the NCC. While non-status Indians were pursuing the right to

rebuild Indian Nations and end the reserve system, the Metis, particularly in Western Canada, sought their own land base as a distinct aboriginal people. This significant difference in objectives was exacerbated by the structure of the NCC, in which each of the provincial and territorial associations of Metis and non-status Indians was allowed one vote on the NCC Board of Directors and the same number of votes at the annual assembly when national executive officers were elected. This meant that the prairie Metis associations, although they claimed larger populations, had less of a voice than the non-status Indian associations, which were more numerous but less populous.

This friction within the NCC led to the Association of Metis and Non-Status Indians of Saskatchewan (AMNSIS), the Manitoba Metis Federation (MMF), the Metis Association of Alberta (MAA) breaking away from the organization in 1983. On March 8, 1983 the Metis National Council, a national Metis organization, was created in Regina "to pursue a Metis land base as a separate constitutional agenda item and objective." (Metis National Council, 1992, p 17).

In March, 1983 the Metis National Council launched a court action against Prime Minister Trudeau in order to gain seats at the 1983 First Ministers' Conference. An out-of-court agreement was reached in which, besides gaining representation at the conference, the Metis National Council was also able to have a Metis land base included in the agenda for the ongoing process.

The Metis National Council defines Metis as:

> the descendants of those persons in Western Canada who received land grants and-or scrip under the Manitoba Act 1870, and the Dominion Lands Act 1879. We have also made provisions for other persons of aboriginal ancestry who have been or are accepted and become a part of the Metis community (Weinstein, 1993 p. 3).

This definition of Metis is different from that of the NCC. The latter identifies Metis as simply "people of Aboriginal ancestry who self-identify as Metis and are accepted as such by a Metis community." (Native Council of Canada Constitutional Review Commission, 1992, Introduction).

The main source of funding for the MNC is the Secretary of State, with the balance obtained through program policy studies from various departments and agencies such as Health Canada, Industry Canada, Canada Mortgage and Housing Corporation and Human Resources Canada.

Membership in the MNC is comprised of the Metis Nation of Alberta, Manitoba Metis Federation Inc., the Association of Metis and Non-Status Indians of Saskatchewan, and the Louis Riel Metis Association of British Columbia (Metis National Council By-Law No. 1).

Most of the member associations are democratic bodies which elect their leadership through one-person, one-vote ballot box elections held by local associations at the community level. Each province is divided into districts/regions which are further divided into locals, with between 25 to 110 locals in each province. Local leaders are elected on a local basis, regional leaders on a regional basis and provincial executives are elected by the membership at large.

Regional councils consist of local presidents and regional directors who give direction to the provincial executive or council. Provincial executives or councils are made up of officers elected at large and members of each regional council. The leaders of the provincial executives sit on the National board of directors who elect a president.

The Metis associations have, in recent years, established Metis Senates consisting of elders and former leaders. Besides serving on advisory bodies, these respected leaders are often asked to settle disputes within organizations.

Unlike the Assembly of First Nations, NCC and Inuit Tapirisat of Canada, the Metis National Council has no relationship with the Department of Indian Affairs and Northern Development. The Interlocutor for Metis and Non-Status Indians was first created in 1985 to address the needs of Metis and Non-status Indians not dealt with by DIAND.

In most policy realms, the Metis people work mainly on a local basis with agencies such as CMHC to address the shortage of affordable housing for Metis people. They also deal on a local basis with Employment and Immigration Canada on employment programs for Metis people.

The MNC takes the position that Metis people come under Section 91.24 of the Constitution Act of 1867 which states that the federal government has legislative jurisdiction to deal with Indians and lands reserved for Indians. While all the provincial governments, except for Alberta, agree with this view, the federal government holds that the Metis do not fall under this section and should pursue their concerns with the provincial governments. Hence, Metis people are stuck in a "jurisdictional limbo" where both levels of government refuse to address their issues. They do not come under the mandate of the Department of Indian Affairs and Northern Development and are often excluded from the federal government's comprehensive and specific land claims policy. The only option available to them in order to file for a land claim is to file a statement of claim in the courts, which the Manitoba Metis Federation has done. This process, however, is a lengthy and costly one.

Another result of this jurisdictional limbo is that very little of the billions of dollars spent annually in Canada on programs and services for aboriginal peoples goes to Metis people.

As stressed above, a top priority of the MNC is the pursuit of a land base. The establishment of a land base represents for the Metis people a cultural base as well as an economic base. The MNC believe that the issue of their land base needs to be resolved through the resolution of Metis land rights in the Manitoba Act and Dominion Lands Act instead of in general discussions of Aboriginal rights because these tend to focus on other Aboriginal peoples who have already obtained recognition of their lands claims by Ottawa.

Also high on the MNC's list of priorities is the need to ascertain the size of the Metis population through a Metis-driven enumeration process. This process would help to identify who the Metis are and where they are located as well as identify those who are eligible to participate in the Metis electoral process and programs and services administered by Metis governments. This has never been done and the Metis Nation is frustrated with arguments of successive federal governments that Ottawa cannot deal with the Metis because they do not know who the Metis are.

Housing is also of great concern to the MNC. Since 1974, the Metis Nation has been administering the Rural and Native Housing Program (RNH) which was established by CMHC to address the housing needs of both native and non-native people in rural areas, except on Indian reserves. The 1993 federal budget has eliminated all funding to these programs. Besides the devastating social consequences this creates, there are other effects as well, such as the loss of trained staff and the loss of jobs.

The Inuit Tapirisat of Canada

The Inuit Tapirisat of Canada (ITC), was established out of a mounting desire among Inuit to control and govern their own affairs. ITC serves as the voice for 36,000 Inuit people in Canada on economic, environmental, educational and political issues and is commited to preserving the Inuit culture and identity. It emerged out of the Committee for Original Peoples' Entitlement (COPE) formed in 1969 in response to the surge of oil, gas and mineral exploration throughout the north. This energy boom was causing increased anxiety among the Inuit who were concerned about potential social, environmental and economic repercussions.

While ITC deals with national concerns, six affiliates handle regional affairs and jealously guard their autonomy: the Inuvialuit Regional Corporation in the western Arctic; the Baffin Region Inuit Association; the Kitikmeot Inuit Association in the central arctic; the Keewatin Inuit Association; Makivik Corporation in northern Quebec; and the Labrador Inuit Association.

The Board of Directors of ITC is comprised of the Presidents of: the Inuvialuit Regional Corporation; the Makivik Corporation; Nunavut Tunngavik Inc. which represents land settlement for the Inuit of the central arctic, high arctic and Baffin Island; the Labrador Inuit Association; and Pauktuutit, the Inuit Women's Association.

ITC receives core funding of $500,000 from Heritage Canada to cover all core activities. Its funds have been reduced by 34% since 1987 and are to be further reduced by an additional 15% in 1994-95 and an additional 20% in 1995-96 for a total 1995-96 budget of just over $300,000. In 10 years, there has been a 69% reduction of funding. As well, project funding is received from various

other government departments. No monetary contributions are received from members. Funding has also been received from the Royal Commission on Aboriginal Peoples for research.

The national constitutional reform process has been the ITC's primary concern in recent years. Inuit have insisted that constitutional negotiations include the entrenchment in the constitution of the inherent right of aboriginal peoples to self-government, protection of Inuit culture and language and acknowledgment of aboriginal governments as one of the three orders of government (Kuptana, 1992). The ITC also stresses the necessity of protecting aboriginal and treaty rights "from the effects of future transfers of power between Ottawa and the provinces" (Kuptana, 1992, p. 41).

In the Eastern Arctic, Inuit have finalized a land claims agreement which provides substantial land ownership and financial resources and will lead to the creation in 1999 of a territory called Nunavut whose government will be controlled by the Inuit. These achievements are closely linked as well to international alliances in which the ITC is working with the Canadian government on a proposed Arctic Council which would involve aboriginal people as equal participants with the eight circumpolar governments, dealing with issues of importance to Arctic peoples.

The ITC is also intensely involved in the area of environmental conservation and protection and also in identifying trans-Arctic environmental pollution and contamination problems. They are lobbying the federal government to promptly proceed with an Arctic environmental strategy and are conducting research studies of their own. The ITC also works closely with Inuit in Northern Quebec and in the Northwest Territories to ensure no further hydroelectric developments occur in James Bay before suitable environmental regimes and protective measures have been established

The ITC has also played a major part in calling attention to the serious human rights violations with regard to Canadian Inuit, in particular the "High Arctic exiles" - those Inuit from Northern Quebec who were relocated to the High Arctic by the Canadian government in the 1950's. The ITC wants the Government of Canada to honour the exiles' request that a Heritage Trust Fund be established for the relocatees.

FEDERAL FUNDING OF ABORIGINAL ORGANIZATIONS

It is vital to complement the above discussion of aboriginal national origanizations with a more particular, albeit brief, look at their funding relationships, especially with Herotage Canada (formerly the Department of the Secretary of State). As we have seen, national aboriginal organizations have, throughout the last 20 years, obtained funding basic to their very existence from the Department of the Secretary of State. The pattern of funding for the past two decades is a fairly simple one. Initially, this funding went up in the 1970s and early 1980s but in recent years severe cuts have occurred that affect the very lifeline of some aboriginal organizations

This pattern of funding has occurred amidst three political realities. The first is the basic one that the Department of the Secretary of State was simply not a very influential federal department during this period and therefore has not been able to defend itself against these cuts. Indeed it may not have even wanted to, given the priority it has for its own other language and cultural funding programs (Phillips, 1991; Pal, 1993). The second political reality is that some of the cuts to aboriginal funding arose because of Mulroney Government anger at aboriginal organizations, especially after Meech Lake failed in 1990. The funding of advocacy groups is often treated as patronage politics with the Conservative caucus given its say as to which groups should get how

much or who should be punished for their opposition to the government. In the late 1980s and early 1990s aboriginal organizations paid the price for their advocacy.

The third political reality concerns relationships among national organizations. Aboriginal organizations other than the AFN consistently argued that the AFN was getting double funding from both DIAND and Secretary of the State and that the AFN could thus spend more on activities such as court cases which other national organizations could not. Moreover, there was always a sense among all groups that getting grants and contract funding was often an unseemly game that bred resentment about fair shares or unfair shares among organizations with widely varying needs.

While the above are the operative political realities, it is also essential to have some appreciation of the detailed contours of Heritage Canada funding since it is an important part of the overall configuration of aboriginal policy formation. Aboriginal programs funded by Heritage Canada are community-based and administered by aboriginal people. They are designed to assist aboriginal peoples in dealing with social, cultural, political and economic issues affecting their lives. (Secretary of State, 1993-94).

The Aboriginal Representative Organizations Program (AROP) was created in July 1971. Formerly called the Core Funding Program, it was established to foster political representation, advocacy and negotiation. In 1990-91, the program discontinued financial assistance to groups representing reserve-Indians. Their funding was transfered to DIAND. Heritage Canada provides funding to the Congress of Aboriginal Peoples, the Metis National Council and the Inuit Tapirisat, as well as provincial, territorial and regional non-reserve Indian, Metis and Inuit organizations. (Secretary of State, 1992). Annual funding for AROP is now about $5.8 million, which is centrally

administered by the Native Citizens' Directorate of the department. Aboriginal organizations estimate that the funding is now worth in constant dollar value about one fifth what it was in the mid-1970s.

Designed to improve the quality of life for urban aboriginal peoples, the Aboriginal Friendship Centre Program is a second important Heritage Canada program. It provides program, capital and project funding to the National Association of Friendship Centres and 99 friendship centres in Canada to help in the acquisition of their facilities. The centres provide assistance to aboriginal peoples in the areas of housing, education, employment, recreation, human resource development, and cultural maintenance. The program promotes the participation of aboriginal people with disabilities in the services provided by the friendship centres. In 1992-93, 15 projects were scheduled to be funded under the program. The Aboriginal Friendship Centre Program allocation for 1993-94 is $17.9 million.

The Northern Native Broadcast Access Program (NNBAP) assists aboriginal broadcasters in the operation and maintenance of regional network production centres and the production and broadcast of aboriginal radio and television programs by providing production and distribution funding. Programming is usually provided in the aboriginal languages indigenous to the region. In 1992-93, broadcasters funded by this program broadcast 307.5 hours of radio and 14 hours of television programming a week in 16 Aboriginal languages. In 1993-94, $10 million was provided to 13 Native broadcast societies.

A further fixed term funding program is the Aboriginal Constitutional Review Program (ACRP). Funding for this program was provided for the years 1981-1987, 1991-92 and 1992-93

only. Its purpose was to enable the four national aboriginal organizations to participate in the Canadian constitutional review process. The organizations are the Assembly of First Nations, the then named Native Council of Canada, the Metis National Council and the Inuit Tapirisat of Canada. Provisions were made in the agreements with each of the four organizations for funding to the Aboriginal women's associations: the Native Women's Association of Canada, the Pauktuutit Inuit Women's Association and the Metis National Council's women's committee. The funding for the year 1991-92 was $11.5 million and for 1992-93, $11 million.

The Aboriginal Women's Program is a further special program which provides funding to two national Aboriginal women's organizations, the Native Women's Association of Canada (NWAC), and the Pauktuutit Inuit Women's Association of Canada. Twenty-two provincial/territorial associations and approximately 40 regional and local groups receive program support. An integral component of the AWP is the Family Violence Initiative. Under this initiative, about 30 projects were funded for activities promoting networking, the building of coalitions, and the empowerment of community level decision-making.

Yet another Secretary of State program is the Native Social and Cultural Development Program. Its purpose is to promote and strengthen opportunities for aboriginal individuals to develop their potential in various socio-cultural endeavours. Activities that qualify are those which encourage the revival and maintenance of traditional aboriginal cultures and languages. This has included support to organizations such as the Canadian Native Arts Foundation for the promotion of youth in the arts, the Assembly of First Nations to continue the First Nations Language Revitalization Implementation, the Metis National Council to host the Back to Batoche Days, and

the Inuit Circumpolar Conference to support Inuit culture, rights and self-sufficiency. For 1993-94, the amount of funding allocated to the program was $1 million.

The Canada/Northwest Territories Cooperation Agreement on Aboriginal Languages is an $18 million, 3-year agreement which was signed on August 16, 1992. It ensures the provision of essential government services in six aboriginal languages in the Northwest Territories and provides funding for community-based language and cultural projects, aboriginal language literacy training, language teacher and instructor training, development of languages and cultural materials, and translator and interpreter services. The territorial government has established two new major initiatives: the Aboriginal Language Development Grant and Contribution program and the Promotion of Aboriginal Languages Literacy. An analagous Canada/Yukon agreement also exists involving $4.25 million over a five year period.

None of the above programs are very large but aboriginal national groups regard them in recent years as always being vulnerable to cuts. And indeed funding cuts have been the norm ranging from 10 to 20 percent for particular programs or recipients. Most of these programs were established only after intense aboriginal lobbying but in an overall climate of support at the then existing Department of the Secretary of State. This was in part because the Secretary of State mandate, and many of its officials, were sympathetic to the democratic and representational goals that are inherent in all of these programs. But even in the current Heritage Canada's otherwise mildly conducive pro-aboriginal policy climate, aboriginal organizations are always competing with other language and cultural groups who are more numerous and influential.

CONCLUSIONS

This chapter has presented the first of two portraits of the vital role of the five main national aboriginal organizations. An understanding of the origins, recent evolution, and democratic base of each organization are absolutely crucial in appreciating how the federal aboriginal policy process works and does not work. So too is an understanding of the strong dependence of the organizations on the federal government for their basic funding. In later chapters we examine their positions and relative influence in a more illustrative fashion in particular policy fields and situations. In this initial overall examination, however, three conclusions stand out.

First, the national organizations see themselves overwhelmingly as nations seeking recognition and justice as peoples. They eschew the language of normal interest group politics, even while practicing many of its finer arts. But they also know, with a strong sense of anger and frustration, that the federal government far too often largely views them in practical terms as another interest group among many. Second, though there is some unity among the national organizations over constitutional approaches, the underlying politics among them on lower level issues (that is, normal policy making vis a vis the federal government) is often quite divisive. These divisions are rooted partly in different views of democratic representation but also partly in the diverse realities of the situations each organization's membership faces. Many of these divisions show up not only in policy positions but in quite specific battles over how much funding each gets from the federal government.

And last but hardly least, the organizations have experienced undoubted budgetary cuts in federal spending directed to enabling the organizations to build their own institutional and policy

analysis capacities. Despite this, their political energy, analytical capacity, and overall efficacy as political organizations has undoubtedly increased in the last decade. There is little doubt that without their persistent presence on the national scene there would be no effective national aboriginal policy reform agenda.

Chapter 3

DIAND, MINISTERS AND KEY POLICY DYNAMICS

From the macro processes of aboriginal policy formation, we now turn to the micro policy arena as revealed through, first, a closer look at the evolution of the Department of Indian Affairs and Northern Development (DIAND) and, second, the preferences and approaches of some of its recent ministers. In Chapter 4, we examine the dynamics surrounding three vital policy initiatives dealing with governance: the policy on community self-government from the 1986 to early 1990s period; the early 1990s exercise involving alternatives to the Indian Act; and policy processes regarding land claims. As is the case with the entire study, the chapter supplies an examination of basic trends and changes over the entire decade rather than an account of detailed DIAND policy initiatives of which there were obviously many.

The chapter begins with an account of DIAND as a political-administrative entity endowed with, or afflicted by, its peculiar role of being deeply mistrusted by aboriginal groups but at the same time the often preferred devil that they know compared to its unknown future structural or governing alternative. The second part of the chapter then examines the roles of selected DIAND ministers whose policy preferences, skills, and relative influence and power, often in concert with their deputy ministers, is clearly of importance in understanding aboriginal policy formation.

DIAND AND ABORIGINAL POLICY PROCESSES

DIAND's mandate is derived primarily from the Indian Act but also from the Department of Indian Affairs and Northern Development Act of 1970 and other legislation. Its current program structure shows four realms of activity: the Indian and Inuit Affairs Program; the Northern Affairs Program; the Transfer Payments to the Territorial Governments Program; and the Administration Program. Recent publications characterize DIAND's overall objective as being that of fulfilling the Government of Canada's obligations to aboriginal peoples arising from treaties, the Indian Act and other legislation. DIAND's functions in greater detail are to: administer Indian reserve lands and elections of band councils; administer band funds and the estates of certain individual Indians; provide delivery of basic services; negotiate land claims; support constitutional development with regard to aboriginal peoples; provide funding to the Yukon and Northwest Territories governments for provision of services to residents; support balanced development of the North through management of natural resources, protection and management of the environment, promoting economic and employment opportunities and funding of social and cultural programs; encourage political development of the Northern territories; and coordinate federal policies and programming for the North.[iv]

Within the ambit of this mandate there are four elements of the political-administrative evolution of DIAND that are important in understanding the micro aboriginal policy process. These are: the tug and pull of DIAND's northern versus aboriginal politics and mandate; the turnover of ministers and deputy ministers; the internal DIAND decision process and its routes to Cabinet; expenditure trends and the devolution and downsizing of DIAND.

The Indian Versus Northern Versus Aboriginal Mandates

Just as within the larger federal policy process there are numerous entities and interests seeking attention and resources, so also within DIAND are there contending mandate claims, albeit of an unequal nature. The above stated elements of the DIAND mandate reveal the extent to which it is a department of Indian affairs with Indian Act obligations to status and on reserve Indians, a spatial-regional department for numerous activities north of 60, and, in addition, a department with much more ill-defined obligations to deal with urban and off-reserve Indians, Metis and Inuit. All federal departments are to some extent a holding company of separate entities which exert their own internal pressures. They are competitors not only for money but for an equally scarce commodity, ministerial and deputy ministerial time, attention, energy and political capital.

It is useful in this regard to recall the earlier discussion in the Introduction of the essential Mulroney era two-track policy that became a defacto three-track set of alternatives to constitutional negotiations. This approach both reflects and telegraphs the essence of the hierarchy of the DIAND mandate.

The first track was the DIAND-centred community self-government track which eventually lead as well to the Indian Act Alternatives process examined in Chapter 4. The second track was the Tripartite Consultation approach involving the federal government, the provinces, and non status and Metis aboriginal peoples. DIAND was not the centre point for this second track thus revealing that DIAND was only nominally a supporter of this wider aboriginal policy domain. The third track that evolved was that involving the Inuit and northern development. This was DIAND-centred but of a lesser order of importance relative to the Indian Act and DIAND's main preoccupation with

status Indians.

Thus there is conflict among the three nominal DIAND mandate areas but there is also a pecking order of concerns. Equally there are aspects of all three areas that occasionally reinforce each other or which need careful attention so as not to create unwanted policy precedents across the three mandate areas.

For example, the northern mandate contains vital aboriginal issues (Inuit and other) but the two are not co-terminus. Driving through the "northerness" of the DIAND mandate are also resource, environment, transport, and social policy issues. The Indian and aboriginal mandates in turn contain spatial imperatives be they north, south, east, west, or urban. In the early 1970s, when DIAND included the Parks Service, the department was often seen as being mainly a department of northern development for southern Canadians. Indian issues were submerged in the political doldrums of the post-1969 White Paper on Indian Policy era. Indeed during his six year tenure as Minister from 1968 to 1974, Jean Chretien became politically known as the minister of parks and relished the politics and credit that accrued to establishing new parks. Northern issues also became irrevocably tied to the politically divisive energy policies of the first energy crisis of 1973-74 and the second energy crisis of 1980 to 1982 (Doern and Toner, 1984) when southern Canadians saw northern oil and gas reserves as a key to Canadian energy security.

Political and policy tension within DIAND over the northern and Indian mandates was also heightened during much of the 1970s because various aboriginal groups instinctively tended to adopt an anti-resource development stance partly out of belief and partly as a way to get southern and white policy attention about their larger agenda. The extent of this tension abated considerably

in the 1980s when aboriginal groups saw resource development as positive, even while still seeking greater northern and aboriginal control over the nature and pace of such developments (Whittington, 1985). The tension also abated because the political democraticization of the territorial governments increased considerably throughout the 1980s and early 1990s. This democratization was partly due to pressure from northerners but it was also facilitated almost as a consolation prize for the continuing basic failure at the constitutional level.

The central purpose of this brief reference to internal mandate clashes and complementarities is not to supply chapter and verse in detail, an impossible task given the brevity of this study. Rather, it is to stress that an important internal DIAND dynamic is continuously at work here with real policy consequences. These consequences will be shown more concretely in the three case studies on governance policy in Chapter 4.

Ministerial Turnover

A second element of the micro aboriginal policy process is found in the issue of ministerial turnover. Table 3.1 shows the DIAND ministers since 1980. There have been seven ministers in thirteen years compared to five encumbents in the decade of the 1970s. Thus a new minister about every two years is moved into the portfolio.

Table 3.1

MINISTERS OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT 1980 TO 1994	
John Munro	1980-84
Doug Frith	1984
David Crombie	1984-86
Bill McKnight	1986-89
Pierre Cadieux	1989-90
Thomas Siddon	1990-93
Pauline Browes	1993
Ronald Irwin	1993

Deputy ministerial turnover is less frequent but the net effect is that there is no continuity of political leadership. Moreover, as a general rule, DIAND ministers are not, when they are appointed, senior cabinet ministers in terms of normal cabinet clout. They are either ministers on the downward phase of their influence such as John Munro was in the 1980-84 period or they are junior ministers either on their way up or assigned as a lateral holding position, politically speaking. Such rankings are of course judgemental but there are few who would rank DIAND ministers in the top circle or even in the second quadrant of ministers for most of the period we are covering.

This does not mean that there is no room for ministers to do good or to pick their times for advancing aboriginal concerns. But policy depends also on power and power in part depends on expectations and perceptions of power. DIAND's many ministers have almost never been able to exude such confidence. Accordingly, most aim low, rather than high.

Deputy Ministerial Regimes and Internal DIAND Decision Processes

The third general aspect of the micro aboriginal policy process involves an appreciation of its links with the policy-managerial approaches of its recent deputy ministers and the internal priority-setting and decision processes within DIAND. In the period in question, we focus only on the regimes presided over first by Bruce Rawson and then by Harry Swain. This is because together they both provide a contrast of styles and approaches but also they presided over the most significant organizational changes for decades, starting slowly with ad hoc changes under Rawson and then virtual cultural sea-changes under Swain.

Rawson had come to DIAND with David Crombie in part because Crombie worked well with him when Crombie was the Minister of Health and Welfare in 1979 during the short-lived Clark Conservative Government. Rawson was not known as a policy person but he did reorganize DIAND by breaking it into components that more carefully reflected its recent and current priorities. Thus components for services; lands, revenue and trusts; claims and self-government; and economic development were headed by Assistant Deputy Ministers. Rawson's managerial style, however, was characterized by what one colleague has called "constructive tension". He would trust one or two of his ADMs but not others.

Moreover, on the key detailed administrative issues, he basically withdrew from the field, leaving most of the so-called "hatchet" duties to one senior official. On the internal operations of the department then, the Rawson period was not seen as one conducive to elevating the department's esprit de corp.

This lack of morale was reflected outside by national aboriginal groups. Rawson was not seen as having his own good rapport with aboriginal organizations. As a former deputy minister in the central agencies of government, he did have a good network there. But as we will see below, his first minister, David Crombie, did not have a parallel political network at the centre.

Harry Swain was deputy minister at DIAND from 1986 until 1992. Save for having considerable central agency experience, Swain was the virtual opposite of Rawson. He was known as a policy-type and an aggressive one who did not suffer fools gladly. He was certainly not known as a manager but by the time he had left DIAND he had significantly transformed it. He replaced some officials, delegated authority within DIAND, expected officials to make their own decisions, and devolved 70 percent of operational decision making to Band decision makers and organizations (see more below). By the time he left, DIAND was winning internal federal awards for the best managed organization in the federal public service.

Swain's relationships with aboriginal groups were mixed. His relentless logical style of argument was not always appreciated. He, in turn, often dispaired at the disorganized nature of the AFN, its excessive rhetorical politics, and its equally relentess criticism of DIAND. On the other hand, many individual band leaders appreciated his feistiness and his determination to change the culture of DIAND. Swain wanted to do deals, to get "product" and he had little patience with personal guilt trips about the sordid past of Indian policy (Smith, 1993).

Swain's main policy initiative was the search for alternatives to the Indian Act. This initiative, as we see in Chapter 4, was born out of his frustration with the perilously slow pace of negotiations over self-government, and over claims negotiations. He wanted to gut the Indian Act in

bigger, faster chunks.

There is little doubt that these two contrasting deputy ministerial regimes also produced different internal priority-setting and policy review processes. In the Rawson era, the tendency was for policy ideas to emanate from ADMs and to proceed to executive discussion within DIAND often regardless of whether the funds were there or not. Rawson, however, did have his own policy views and preferences. These included the pursuit of alternative funding arrangements and also a strong personal interest in the on reserve community self-government initiative.

The internal decision process changed quite markedly in the Harry Swain era. Policies were vetted, including resource commitments, by a policy committee chaired by DIAND's ADM for policy and consultation. Swain was not a supporter of the self-government initiative. As we see in Chapter 4, he did become a strong advocate of the Indian Act Alternatives program.

In both deputy ministerial periods, however, it is worth noting what the pace of policy initiatives was. Officials who span the entire period since 1980 estimate that initiatives requiring a cabinet proposal (a memorandum to cabinet or, more recently, an aide memoire) have hovered pretty consistently around 25 to 30 memoranda or aide memoires annually. In the period since August 1990, there have been 74 documents sent to Cabinet, 6 with other departments, and 6 of which were withdrawn or not reviewed. A large number of the 74 documents involve particular claims negotiations, each of which can involve up to four different cabinet meetings. In addition, of course there are many other decisions that may be policies or simply "cases" that do not have to go to Cabinet and can be decided within DIAND's existing statutory or policy mandate.

Spending Trends and Administrative Devolution

There are two compelling trends in recent years about DIAND which shed light on policy success and policy failure. These trends are first, the commitment of quite robust increases in spending despite a decade of federal budgetary restraint and second, the achievement of considerable devolution of responsibility for the delivery of services and programs from DIAND to the direct control of first nation bands.

The achievement of better than average increases in recent years is a claim based on total federal spending on aboriginal peoples rather than just DIAND spending (Canada, DIAND 1993). Chart 1 shows that current dollar spending has increased, including in the difficult periods since the mid-1980s. Certainly few other policy fields could make the same claim during the same period. Indeed, in the last two years aboriginal program spending increased 7.9 percent compared to 3.1 percent for federal programs as a whole.

But such successes are questioned in three senses by DIAND's critics. First, some aboriginal groups query just what sorts of spending are included within the overall data. In short, they express doubts at how wide the definitional net has been stretched as to spending that impacts upon aboriginal peoples. Second, much of the increased "commitment" is simply demand-driven spending. That is, the spending reflects the deep needs caused by increases in population and abysmal living conditions rather than new upward levels of political priority commitments. As we saw in Chapter 1, this was the core of the AFN's criticism before the Standing Committee on Aboriginal Affairs both in 1988 and in 1993. Third, the fact that spending outside of DIAND (in other departments) is growing faster than within DIAND reveals not only the second point but also

shows increasingly that aboriginal organizations seek support elsewhere rather through DIAND.

As suggested in Chapter 1, another potential impetus for increased Conservative Government spending on aboriginal peoples is that it was a fairly inexpensive way (relatively speaking) to show social policy concern to compensate for a larger policy record that was not sympathetic to social concerns. As Table 1 shows, Conservative rates of spending increase dropped markedly in the 1985 to 1988 period, well below the early 1980 Liberal record, and only picked up again from 1988-89 to 1993-94. The latter half of the 1970s also shows fairly significant rates of annual growth. These data for the full Liberal years from roughly the mid-1970s to 1984 reflects partly the brokerage spending style of the John Munro years (1980 to 1984) but also the start-up and demand-driven nature of the new programs then starting (Abele and Graham, 1987; Graham, 1988).

In all of the above discussion of spending trends, it must always be remembered that spending is by no means the only or even the major indicator of DIAND policy or federal policy. The Indian Act as we have seen was and is profoundly regulatory. And this is why program devolution is partly a deregulatory initiative, in short, an effort to free-up the shackles of the Indian Act without frontally changing the legislation.

There is no doubt that significant devolution has occurred among Indian program expenditures (DIAND, 1993). Indeed, this is a trend that began in the previous fifteen years. But more particularly, between 1985-86 and 1991-92, the percentage of the expenditures of the DIAND Indian and Inuit Affairs Program administered by Indian bands had increased from 62.1 percent to 77.3 perent. A further indicator of devolution is that the authorized person years in this program has decreased since 1982-83 from 4,463 to 2,608. Thus the DIAND bureaucracy has clearly shrunk in

size but it is still funding the activities being carried out by Indian reserve personnel.

The devolution policy grew in the 1980s out of several general and specific impetuses for action. First, it was in the spirit of the post-Penner era critique of DIAND. Second, DIAND's management was consious of the fact that simple program effectiveness required it. Complex programs and services could not be managed well out of Ottawa. Third, the 1986 report of the Auditor General, which was extremely critical of both DIAND and Band administration of programs, was a catalyst for action as was the Neilsen Task Force.

The devolution policy also became much more explicit in 1986 when the Treasury Board approved a comprehensive five year devolution plan. The plan allowed for four different funding mechanisms to effect the transfer of resources depending upon the willingness and circumstances of different First Nations.

Again, as with general spending, the devolution data both reflects and masks success. Devolution has clearly occurred and for many First Nations it is real. But its achievement is still seen by many aboriginal groups as notional since it appears to them more as a sop for policy failure in the larger realms of the constitution, self-government and treaty claims. Moreover, it has taken at least a full decade to get even modest devolution under way.

Integral to an understanding both spending trends and devolution are the various funding arrangements between DIAND and First Nation governments. Broadly intended to empower First Nations, reduce administrative burdens and emphasize local accountability, a wider array of arrangements have emerged (Prince, 1994). Comprehensive funding arrangements (CFAs) are

DIAND's basic funding mechanism for program and service delivery by band councils, including services such as education, social assistance, child welfare and economic development. While more flexible than previous arrangements, the CFAs still have to spell out accountability arrangements to the minister involving funding, programs, audit, emergencies/problems and termination.

Also in existence are "Alternative Funding Arrangements" (AFAs). These more flexible arrangements are designed to enable Indian Bands and tribal councils to redesign or establish programs to meet community priorities and to foster greater accountability of bands and councils to their local communities (Prince, 1994).

Not surprisingly, the new variety of financial arrangements gets a variety of evaluative verdicts. The Auditor General of Canada acknowledges that the new arrangements are positive regarding more flexibility and aboriginal community capacity building (Canada, Auditor General of Canada, 1988; 1992) but continues to raise classic accountability concerns. These include, the legislative basis for the arrangements, whether policy is being delegated by the minister, whether realistic monitoring is occurring; and whether proper accountability frameworks exist in bands and communities.

For their part aboriginal organizations from the AFN to individual bands see the benefits of the new arrangements but still have many program areas where they beliwve that even more program and financial flexibility is crucial. Caught between the devolution pressures of the AFN and the accountability pressures of the Auditor General, DIAND treads a careful line between the proverbial rock and a hard place.

MINISTERS, POLICY APPROACHES AND DYNAMICS

In any policy field, it is ministers who must take policy initiatives to Cabinet, who must sell and defend policies to Parliament, voters and the media and who will be blamed for failure. Each of the DIAND ministers since the early 1980s had to make policies in the context of their specific times in office and guided by their own sense of risk-taking or risk averse behaviour and their sense of what would fly: a) in the Ottawa system; and b) in the aboriginal constitutency most affected. Ministers also exhibited different personal skills, assets and liabilities which affected policy progress. The capsule views of ministers below are brief but indicative of many of the micro policy dynamics involved.

John Munro's tenure as the last main Trudeau DIAND minister from 1980 to 1984 was marked by a political style that was high on expenditure brokerage politics (as the above data partially shows) and low on policy (as the chronology in the Introduction showed). Munro was not a significant player in the constitutional negotiations in 1981-82 and was only compelled into marginal but belated action following the 1983 Penner report. He did, however, build some alliances with aboriginal groups, especially the AFN, by securing additional funding and program expenditures for them. One legacy of this expenditure largesse was that a significant degree of distrust built up between DIAND and the Treasury Board. The Board got into the habit of giving DIAND relatively low initial dollar committments in the main estimates in order to force DIAND to come back with significant supplementary estimates which could be scrutinized more closely. In the latter Liberal years, DIAND accounted for about one third of the supplementary estimates dealt with annually by the Treasury Board. Much of this additional scrutiny was ordered from the top

precisely because of the excesses of the Munro style. As one senior official put it, "in the Munro era, Indian policy was whatever Munro chose to throw money at".

John Munro's brokerage style was partly a function of his populist approach. He enjoyed visiting the Indian bands and when he saw things on his visits that he thought he could help out with, he would make commitments. The first Mulroney DIAND minister, David Crombie, was in some respects cut from the same populist cloth as Munro. Crombie was a surprise appointment to the DIAND portfolio but he too was moved by his many early contacts with aboriginal peoples by the need to respond.

The difference between Crombie and Munro, however, lay in two political realities. First, Munro was able to deliver on many of his commitments in part because he had some personal rapport with Prime Minister Trudeau and because there was money in the federal coffers. Crombie, on the other hand, was an outsider in the new Mulroney regime since he had opposed Mulroney in the Conservative leadership race and was philosophically seen as "red Tory". Far more often than not, Crombie's instant commitments could not be translated into firm ones when he got back to Ottawa. The second political reality for Crombie was that there was simply less money around. The new Mulroney inner circle was determined to cut back spending and the Nielsen Task Force on Program Review, headed by Eric Nielsen, already had its eagle eye on DIAND.

The Crombie era from 1984 to 1986 was also characterized by an early battle between the new minister and the department. Crombie brought in outside staffers into his ministerial office, who were ardent aboriginal advocates and some of whom had links with the AFN. Such political staff were meant to give meaning to the Mulroney Government's forcefully held view that the

senior bureaucracy, long used to Liberal rule, was not to be trusted. This was seen by Crombie to be almost doubly true when applied to DIAND. While undoubtedly some of this push for independent advice was healthy and garnered him praise from aboriginal groups, it was also counterproductive in many ways.

After many episodes in which he could not deliver on program financial comittments, Crombie cut back his visits, and looked to other initiatives. Paradoxically, one of his best moments as minister came when he went public in 1986 against the post-Neilsen Task Force memo to Cabinet from the central agencies which sought to virtually close-up DIAND and hand programs over to the provinces (Weaver, 1986a, 1986b). Aboriginal groups united against this proposal seeing it, quite correctly, as a virtual replay of the hated 1969 White Paper episode. The Crombie emphasis on a policy on self-government emerged from the need to recover from the Neilson debacle but also from Crombie's own instincts that progress just simply had to be shown and exhibited given the slow progress on the constitutional front.

If the Crombie era was initially one of raising expectations, then the era of his successor, Bill McKnight, was one of managing them downwards. Whereas DIAND's senior officials found both Munro and Crombie to be wild-cards in the ministerial deck, McKnight was the steadying kind and far less likely to deliver surprises. When he visited Indian and Inuit groups, he was quite prepared to firmly but politely say no and explain why. Moroever, he would not blame the Treasury Board or others for the need to say no. This latter fiscal rectitude was also a product of the fact that DIAND had struck a deal with Finance and the Treasury Board that it would get the reverse of the Munro and Crombie era situation. Its main estimates would supply adequate funding and there

would be few if any "supps" (supplementary estimates) provided that DIAND programs were better managed. The net result was that, although McKnight made fewer commitments, when he made them they were real and they stuck.

This more even-handed capacity in the McKnight period was also due to the fact that he brought two further distinct political assets with him. First, McKnight was a prairie protege of Don Mazankowski, who by 1986 was Deputy Prime Minister and Mulroney's "minister of everything". What is equally important, McKnight and Mazankowski shared an Ottawa apartment given that their respective families resided on the prairies. Because of this, McKnight was often able to obtain decisions quickly and authoritatively. A second reason for greater clout with the centre was that McKnight's ministerial Chief of Staff, Greg Fyfe, was also the chairman of the weekly Chiefs of Staff meetings.

McKnight was respected by some aboriginal groups but was not well liked. They could sense that he, unlike Crombie and Munro, did not feel comfortable interacting with aboriginal peoples. This was partly a personality attribute. But it was also undoubtedly partly due to having to be a bearer of either no new or bad news. In any event, the McKnight era from 1986 to 1989 did succeed in lowering expectations, and, as we saw above, lower rates of budgetary increase.

These expectations were lowered further during the one year 1989-90 tenure of Pierre Cadieux. Like most one year ministers, Cadieux had little chance to make an imprint but the one he left was not positive and did not advance the aboriginal agenda. Cadieux was a lawyer, whom both officials and aboriginals characterize as a "detail man". There was mutual discomfort when he met with aboriginal groups. Unlike McKnight, he was simply blunt rather than charmingly blunt.

Moreover, he brought no central clout or contacts with him.

The final minister to close out the Mulroney era was Thomas Siddon who held the reigns of DIAND from 1990 to the summer of 1993. Siddon had two forms of experience relevant to the aboriginal mandate. First, he had just come from the Fisheries and Oceans portfolio where, in his dealings with aboriginal peoples over fishing rights, he did not have a positive reputation. Second, as a British Columbia-based minister, he was very familiar with aboriginal issues, and had developed good working relationships with them in his own electoral riding and as a senior BC minister in the Cabinet.

The Siddon period was different still from previous eras and far more volatile. On the one hand, Siddon liked the contact with aboriginal groups and cultivated good relations with many selected local groups. In addition, he was lucky in that he was in office when some past slogging work produced a payoff or agreement which he was able to take credit for. But Siddon, on the other hand, had to bear the political cross of Oka where he was vilified by aboriginal groups as "hidden Siddon" because of his failure to be even seen during the long hot Oka crisis of the summer and fall of 1990. Moroever, after Oka and during the Charlottetown Accord constitutional debate, Siddon had to take a back seat to Joe Clark whom most aboriginal groups saw as their best and most sympathetic source of support in the Mulroney Cabinet. Nonetheless, Siddon was influential in getting a Native Agenda announced after Oka in September 1990 and in moving other initiatives such as the establishment of the Nunavut government in the North.

It is too early to judge the tenure of the first minister in the Chretien Liberal Government, Ronald Irwin. Irwin did pick up on themes struck by Prime Minister Jean Chretien during the

election of 1993 which said that the Liberals would negotiate and implement the inherent right of self-government outside the constitutional reform process. The Liberals also said that DIAND would eventually be dismantled (Prince, 1994). Irwin also succeeded in the first Chretien expenditure budget to garner over $250 million more in funds for DIAND which was about one third of the total new spending available in an otherwise very tight budget. Some of these enhanced financial committments were simply due to worsening conditions but were also spelled out in the famous Liberal "Red Book" policy agenda proposals including an Aboriginal Head Start Program and funds to address the backlog on post-secondary student funding (Liberal Party of Canada, 1993).

Each of the above ministerial profiles must be seen in the context of all of Chapter 1 and the early parts of this chapter as well. And they must be seen in the context of the genuine policy disputes and problems inherent in the three policy case studies on governance in Chapter 4.

CONCLUSIONS

Aboriginal policy formation also occurs in a micro policy realm centred on DIAND. Some of the episodic attributes of aboriginal policy formation can be attributed to the simple fact that DIAND must accommodate at least three policy mandates -Indian, northern and aboriginal- which have widely varying degrees of clarity, which compete for internal attention and resources but which also have a rank order of priority beginning with status Indians, then northern, and lastly and reluctantly, non status and Metis. The preferences, styles, assets and liabilities of successive DIAND ministers, and the turnover of ministers, are also important in explaining the uneven nature of aboriginal policy dynamics.

But the micro policy realm also shows progress in the considerable achievement of general devolution in program management and in the major downsizing of DIAND's staff. Expenditure gains have also been significant given the era of general budgetary restraint in which they have occurred. But they are still grossly inadequate relative to the conditions faced by aboriginal peoples.

Chapter 4

POLICY PROCESSES ON GOVERNANCE INITIATIVES

As stressed from the outset, this book does not examine aboriginal constitutional politics. Constitutional struggles certainly affect, as we have already seen, the climate and content of regular aboriginal policy making in the federal domain but space simply does not allow a full account here of any of the details of constitutional reform matters. The book must, however, pay attention to what, in this chapter, are identified as policy processes dealing with key governance initiatives. By governance is meant initiatives, short of constitutional change, that affect the structure of power and decision making among aboriginal peoples, and between aboriginal peoples and the federal government.

In the last decade there have been three such initiatives on governance whose journey through the federal aboriginal policy process we explore in this chapter: the policy on community self-government from the 1986 to early 1990s period; the early 1990s exercise involving alternatives to the Indian Act; and recent policy processes regarding land claims. These three initiatives each touch on governance in different ways with land claims policy probably coming closest to a virtual constitutional and governance definitional grey zone.

While we are interested in the substantive policy issues involved in these three initiatives,

our primary focus is on the policy processes themselves. This is because the governance policy processes are a further part of the micro policy realm centred on the Department of Indian Affairs and Northern Development (DIAND). In short, they help tell us more about the DIAND policy process. They are also a part of the context in which other policy processes involving other federal departments (Chapters 5 and 6) were functioning. The governance initiatives, and the policy energy they consumed, and at times diverted, are also a further part of the analysis of national aboriginal organizations begun in Chapter 2, including a source of the divisions and overlapping strategies among them.

While the chapter is organized around a discussion of each of the three policy initiatives on governance, it is important to relate them briefly to some key issues which their recent (and longer term) histories in total inevitably deal with.

The first issue undoubtedly is that of aboriginal peoples' deep sense of historical injustice. As Menno Boldt, puts it in the opening sentences of his book, "The Indian quest for justice began shortly after first contact with the forces of European imperialism" (Boldt, 1993, p. 3). Boldt's first chapter on "justice" then proceeds through a full discussion of all of the elements of governance which add up to continuing injustice. These include the broadest notions of governance (broader than the parameters of this chapter and of this book) and include the courts, aboriginal rights, the treaties, and the international rights of peoples, in all of which realms Canadian governance writ large is seen to be lacking when it comes to its dealing with its aboriginal peoples. All of the following initiatives on governance, and hence their policy processes, are necessarily seen by most Aboriginal organizations as being grossly inadequate relative to this historic test of injustice.

A closely related second issue is captured in what Chartrand refers to as the "two sides of legitimacy" regarding governance issues by and for aboriginal peoples in a Canadian political setting (Chartrand, 1993). Chartrand, in concert with many other aboriginal spokespersons, sees governance issues being trapped in two assumptions that "fail to confront and may even divert attention from, the issue of legitimacy" (Chartrand, 1993, p. 232). The first assumption is Aboriginal peoples are a "racial minority" and the second is that Canadian political liberalism generates the individualist premise that all Canadians must be treated equally. Chartrand concludes that these assumptions make it "difficult to recognize Aboriginal peoples as distinct 'political' communities with unique status" (Chartrand, 1993, p. 232).

The ambivalent climate for governance debates are also revealed by data on public and business opinion about aboriginal self-government. In 1993 opinion poll data indicated that about 60 percent of Canadians strongly support native self-government (but with the latter concept not well defined).[v] Forty percent of business people, however, oppose native self-government, while 36 percent support it and 24 percent are unsure. Business opposition increases to well over 70 percent when self-government is suggested for traditional territories and urban areas.[vi]

A third issue of importance in the context of governance initiatives, albeit cast in the narrower and current language of accountability and responsible government, is the apparent frequent assumption in mainstream Canadian thought, that Aboriginal governance systems do not meet the highest tests of accountability. Recent analysis puts the lie to this perception in quite convincing fashion. McInnes and Billingsley's analysis of twenty self-governing cases of governance within Indian bands concludes that "Canada's Indians do not need to take lessons from

non-Indians on the importance of the accountability of leaders" (McInnes and Billingsley, 1992, p. 215). The study goes on to conclude that many aspects of accountability are "more direct and richer in practice than those typically enjoyed by most non-Indian Canadian citizens" (McInnes and Billingsley, 1992, p. 215).

A final issue to recall in the context of this chapter is the discussion in the Introduction of the imperatives and traps of the Indian Act. The policy processes surrounding governance initiatives in one sense seek to escape the bounds of the Indian Act but are simultaneously entrapped by it in the face of unknown future substitutes for it and in the face, as we will see, of divisions among national and local Aboriginal organizations.

It is in the context of the above issues, and in the light of the discussion in Chapter 3 of DIAND as a triple-mandated organization that we can now proceed to a brief account of each of the three initiatives on governance.

THE COMMUNITY SELF-GOVERNMENT POLICY AND DECISION PROCESS

DIAND's 1986 policy on community self-government refers to a policy through which Indian bands which wanted to could negotiate with DIAND self-government agreements (the transfer of government authority to such groups). The process involved a series of stages beginning with: workshops and developmental action (information exchange, research and consultation); framework negotiations or the setting of terms of reference for negotiation in which a community itemized the authorities it wanted beyond the Indian Act, the proposed modifications to its governing structures, the legislative arrangements sought, and a workplan and budget for actual

negotiations; and substantive negotiations followed by legislative drafting. A key feature of each stage was that DIAND funding increased at each stage, in part because each was more expensive than the previous stage but also because money was itself an enticement to play what some cynically referred to as the "the great game" (Smith, 1993).

The forging of the policy on self-government announced by David Crombie in April, 1986 involved a difficult political journey (McInnes and Billingsley, 1992; Weaver, 1991). Its roots in the 1980s begin basically with the Penner Report. The Penner Report enjoyed broad non-partisan support in Parliament and had advocated, as saw in Chapter 1, a multi-track approach to reform--constitutional, legislative, and administrative-- all broadly identified as self-government approaches. In a rush to take advantage of the moment of opportunity created by the Penner Report and because of the need to formally respond to it, DIAND and its Minister, John Munro, rushed forward with proposals that culminated in Bill C-52. The process had involved a hectic series of meetings across the country with provincial and Indian leaders. Munro had also persuaded Prime Minister Trudeau, in the dying months of the latter's regime, to allow a bill to go-forward. The process had also involved AFN input through two AFN consultants but there was only limited input from other national groups since they did not represent status Indians.

Even within the Cabinet, the process that saw the birth of Bill C-52 was abornmal. It did not go through normal cabinet committees but rather was patched together by a special ad hoc cabinet committee. Ultimate approval was secured through a briefing note to the Prime Minister. In the end, Bill C-52 died an equally ragged death, becoming known inside DIAND as the B-52 because it bombed! The attempt to encompass self-government under one framework almost "White Paper-

like" bill in a rush before the 1984 election simply fell in the face of both the government's and aboriginal realities. The Liberals were preoccupied first with a leadership race and then with gearing up for the election. The AFN, despite its go-between involvement, opposed the proposed law as a perpetuation of Indian Act dependency. But the larger reality was simply that there were diverse notions within the Indian communities about what self-government actually did mean and about the political pre-election tactics of giving it their blessing given the preference for going the larger constitutional route to policy progress.

The second cut at a self-government policy culminating in the April 1986 statement was the product of Mulroney era frustration and a further seizing of moments of opportunity. The frustration came with the failure of the constitutional discussions and with the Nielsen Task Force debacle (Boldt, 1993). The moments of opportunity came with the demonstration effect supplied by the passage in February, 1986 of the Sechelt Indian Band Self-Government Act. This, along with the July 1984 passage of the Cree-Naskapi Act, were the only two examples of practical self-government achievement and David Crombie seized them as his policy lifeline. The word went out from Crombie and his staff that the minister wanted "12 stars" of self-government success by which he meant 12 more Sechelt-like or even better agreements spread across the provincial and territorial areas of the country. Initiatives such as the Sechelt project may have been seen as successes by ministers but they were not applauded in Indian political circles because they defied the larger constitutional strategy.

It is in the above context that our reference in Chapter 1 to project-based policy episodes and cycles is important. The desire among ministers was to see micro-level demonstrable progress

but each unit of progress would, individually, be unthreatening in a political or budgetary sense. It would also facilitate a "learning as you go" approach to self-government. It is not hard to see how this would make administrative and practical political sense in DIAND but at the same time, sound and look like updated colonialism in aboriginal political circles. Aboriginal groups wanted constitutional first nation status and were being given quasi-municipal government, in extremely small doses.

There was also the thorny issue of overall accountability, especially financial accountability as seen by the Treasury Board and Department of Finance. The Department of Justice was also putting a break on these negotiations since Justice lawyers were inherently cautious about any self-government implications.

Later in the decade and into the 1990s, the political equation on self-goverment among aboriginal groups was also changed by the emergence of demands by aboriginal women. Groups such as the Native Women's Association of Canada challenged the notion of male-dominated self-governing systems. When added to already strong suspicions by many local bands about the national posturing of their Ottawa-based AFN, it meant that self-government negotiations were a slow ride up a very steep hill.

By the early 1990s, as Table 1 shows, the self-government policy for Indian bands had generated 142 proposals (out of about 600 Indian bands) and only 13 were at the substantive negotiations stage, albeit involving 50 bands. This spotty record was certainly not just due to divisons within the aboriginal community. DIAND itself was not well prepared to handle the negotiations, especially given the climate of the larger constitutional negotiations. Given the

absence of political impetus from the top and given the genuine problems of definition, it would have been a brave official who would negotiate with much vigour not knowing whether his or her political masters would support or kill the initiative-taking. The incentives to hunker down were far greater than the incentives to be a self-government risk-taker.

A February 1993 audit reported in the Globe and Mail pointed to several other administrative and bureaucratic factors which contributed to the slow pace of negotiations and change.[vii] These include: the absence of deadlines to achieve agreements; the frequent amendment of funding agreements; weak relations with the provinces; and lack of appropriately qualified regional staff.[viii]

THE INDIAN ACT ALTERNATIVES PROCESS

It was partly frustration with the self-government policy which led to a policy process that sought to find alternatives to the Indian Act. But the policy trail that led to the Indian Act Alternatives process began with what was initially cast as a managerial review. The 1986 report of the Auditor General had criticized DIAND's administration of the Indian Act in two ways. First, DIAND was badly under-resourced to carry out the obligations of the legislation. Second, DIAND was promoting self-government in ways that were contrary to the law. This criticism lead to a management review coordinated initially by the Office of the Comptroller General (OCG) which gradually evolved by 1988 into DIAND's LRT Review process (Canada, DIAND 1990). This was a process that reviewed the Lands, Revenues and Trusts, in short, the main detailed elements of the Indian Act. In the first phase of the LRT Review, issues, questions and options were raised mainly through consultants' studies and internal reports. But in the second phase of the review, extensive

consultation groups were set up among Indian groups, including the AFN and NCC, and further background studies were prepared by these groups. The two year process not only helped reduce the considerable ignorance that existed everywhere about what exactly was involved in the Indian Act but also laid out quite starkly the long distance to be travelled between the Indian Act-based status quo and some form or forms of Indian self-government.

The LRT process also generated an important form of "bottom-up" coalescing of interests among Indian bands regarding particular parts of the Indian Act and how to change it. Thus the so-called "Lands Chiefs" involved and particularly interested in land management issues wanted to take action and sought their own direct relationship with the Minister. But LRT discussions also made it clear that many nations and bands did not want to change the Indian Act or at least wanted the option to remain under it. Thus, it was essential as the LRT process gave way late in 1990 to the more elaborate Indian Act Alternatives process that no first nation would be compelled to participate in any new legislative regimes.

A key mover on the Indian Act Alternatives was DIAND's Deputy Minister, Harry Swain. Not content with the dribbles being achieved by the self-government policy and yet not seeing much constitutional progress, Swain, with ministerial support, gradually supported the LRT process when he saw that hopefully it would take bigger chunks out of the Indian Act. DIAND and Indian bands would, in a sense, hollow-out the act so that perhaps in a decade or so, it would exist as a hollow shell but be rendered unnecessary. The LRT review process had already evolved in the Bruce Rawson era to the point where Rawson used it as a catalyst to reorganize DIAND, giving the LRT area its own Assistant Deputy Minister. This gave it further organizational impetus such that

by early in 1991 Swain was emphasizing that the LRT's successor process, the Indian Act Alternatives process, was to be DIAND's top priority (Smith, 1993).

The Indian Act Alternatives process demonstrated some of the difficulties that DIAND and national aboriginal groups have in dealing with DIAND and with each other. Once again the AFN was reluctant to be seen cooperating with any strategy that drew attention and political energy away from the constitutional route. But DIAND, as we have seen, was already working largely through band chiefs or groups of chiefs (who were also AFN members) to come up with legislative changes to key aspects of the Indian Act.

Initially five groups of chiefs took on six priority areas: Indian monies and estates; forestry resources on reserves; governance, including band elections; management of reserve lands; direct taxation; and an Indian regulatory gazette (the last two lead by the Indian Taxation Advisory Board). Different groups of chiefs, in effect, picked areas on which they had certain greater inherent interest and expertise. The groups made varying degrees of progress in the early 1990s, but almost inevitably this middle-level strategy also succumbed to built in political-administrative inertia.

First, many of the groups of chiefs were accused by fellow aboriginals of selling out the aboriginal cause in much the same way that the Sechelt Band was criticized for striking its own self-government deal. Second, DIAND's minister, Tom Siddon, was properly insisting that each group of chiefs present him with an agreed cross-country consensus before he would take any legislation to Parliament. This was obviously more difficult in some areas than others. Third, leadership among the six groups varied greatly and thus lead to varying movement. Fourth, along the way, each of the groups presented discussions and conclusions to the AFN and the NCC. There

was never any vote at AFN and NCC meetings but there was certainly both direct and implied criticism. Key leaders such as the AFN's Ovide Mercredi minced no words when he argued that First Nations should be passing their own sovereign laws rather than amending the Indian Act (Smith, 1993). Some chiefs involved in the exercise withdrew rather than endure the pressure from the AFN, on the one hand, and DIAND and some of their fellow chiefs on the other. The NCC was raising serious opposition to many aspects because of the perpetual land-based versus off reserve issues and because of differences over democratic and representational issues.

By late 1992, four major legislative initiatives were being discussed:

- the development of an optional First Nations Chartered Land Act that would recognize the authority of First Nations to manage their own lands;
- The establishment of an optional First Nations Forestry Resources Management Act that would establish a comprehensive forest management regime under First Nation's control;
- The development of an optional First Nations Moneys Management Act to replace the minister as the trustee of Indian moneys (primarily derived from oil and gas revenues) with trust structures under the control of First Nations; and
- the development of a contemporary First Nations Governance Recognition Act that would recognize the right of First Nations to exercise the functions of government. Leadership selection, law-making and executive and judicial activities would be specifically addressed in this legislation.[ix]

Only the first of the above, however, had any chance of passage, and even this would have to await

the 1993 federal election and an uncertain post-election federal policy agenda.

LAND CLAIMS POLICY PROCESSES.

Both of the above examined processes have some of the characteristics of project-based politics sketched out in Chapter 1, in short, four to six projects in the Indian Act Alternatives exercise and potentially several hundred projects in the self-government policy world. The third policy realm, land claims, is also project-based. In the first two policy areas, however, both the glue and the bane of the politics of the policy process is the Indian Act. In the land claims area, policy demands and policy roots go well beyond the Indian Act to treaty rights and to broader aboriginal rights.

Pressured by the 1973 Calder case in which the Supreme Court declared that aboriginal rights did exist in Canadian law, the Trudeau Government that same year enunciated a land claims policy. The policy distinguished between "specific claims" and "comprehensive claims" (Canada, DIAND, 1987). The former are claims made in cases where an existing treaty has not been fulfilled or where Indian moneys or reserves have been improperly appropriated. Only Indian bands were defined as claimants. Comprehensive claims are claims which are based on aboriginal title but where there is no treaty. While it is important to distinguish the evolution of the two types of claims, it is also essential to stress that aboriginal groups usually do not make such distinctions and, moreover, object to the very use of the word "claims" since it implies that they are rights that should be or can be extinguished (Townshend, 1992).

The federal specific claims policy for the period from the mid-1970s to the mid-1980s was

essentially a three-fold policy: to begin the process of negotiating claims; to keep the definition of claims to a manageable minimum such as by not including issues such as hunting, fishing, and trapping rights and by rejecting claims based on pre-Confederation governmental actions; and to resolve grievances at the lowest cost. Some minor amendments to the specific claims policy occurred in 1982 but none were definitive changes.

Virtually every aboriginal group has some specific claims and these had festered as an intense source of injustice for a century or more. Insult was added to injury by the slow grinding process set up after the 1973 policy. Claims by bands are submitted to DIAND's Claims Branch which prepares a statement of fact. But it is the Justice Department (see more in Chapter 3) which then assesses the legal merits and determines the government's lawful obligations. Final decisions are nominally in the hands of the DIAND Minister but, in reality, the Justice role is determinative. The Justice role, as we see further in Chapter 3, also is carried out without it having direct contact with the claimant and with no opportunity for aboriginal peoples to present evidence in a public process.

The specific claims process is also crucially influenced by the size of the federal funds set aside annually for claims resolution. In the early 1990s, these funds hovered around the 15 million dollar range but earlier they were even more paltry than that. Not surprisingly, claims processes have taken many years, often a decade or more, and even these were for a minority of claims. During the 1970s and 1980s, only 38 of over 515 claims ended in actual settlements

It was only after the Oka standoff and the announcement of the Native Agenda in September, 1990 (see Chapter 1) that a new specific claims policy was announced in April 1991.

The new policy contained five measures: a fast-tracking process for small claims; increased funding; an independent commission to assist in dispute resolution but with no binding authority; two joint aboriginal-government working groups (NCC and AFN) to work on further policy controversies; the consideration of pre-Confederation claims.

In the 1991 to 1993 period, the new policy has produced better results. Twenty four claims have been settled at a cost of $26 million and another 25 were scheduled for completion at a cost of about $50 million (Canada, DIAND, 1993c). Another significant achievement was the negotiation of a major treaty land entitlement agreement in Saskatchewan.

Meanwhile, the dynamics on the comprehensive claims side of the claims and treaties agenda, was playing out differently. It involved larger claims which, for most Canadians, only vaulted into the news periodically and then briefly. The key political differences, however, were significant. First, many such claims were north of the 60th parallel where many aboriginal peoples had never signed treaties. This implied the potential legal right to lands covering one third of Canada. The Calder decision again upped the ante in this regard and in the 1970s, events such as the Berger Commission, both drew attention to the issues and, as discussed above, slowed down some of the southern based developmental plans. These were further chastened by the hangover after the 1980 National Energy Program and the 1981 Liberal Economic Development strategy when heady notions of a parade of resource-based mega projects north and south of 60 dissipated into the devastating reality of plummeting energy prices and the 1982-83 recession (Doern and Toner, 1984). Aboriginal strategies, meanwhile, had evolved from a relatively simple "land claims settled before pipelines could be built" approach to the addition of political and governance

demands. Various strategies were pursued ranging from the Dene Declaration of 1975 in which the Dene declared itself a nation seeking self-determination, to the Inuvialuit's agreement in the Beaufort Sea area which initially opted for more limited progress on land claims but extensive involvement on advisory boards and then later settled land claims (Angus, 1992).

For comprehensive claims south of 60, the other key political and policy imperative was that the provinces had to be involved, particularly, but certainly not exclusively, the Western provinces. The failure of the constitutional negotiations in the mid to late 1980s were linked to these developments, in particular because they did not augur well for much political goodwill on any aboriginal issues south of 60.

Without doubt the major policy event concerning comprehensive claims was the 1986 Coolican Task Force Report (Canada, DIAND, 1986). Appointed by David Crombie, the task force report was greeted as a breakthrough by major aboriginal groups. The report title, Living Treaties: Lasting Agreements evoked an approach that had rejected the notion of extinguishing rights and reaching final settlements. It also recommended that policy break clear of the Indian Act-based definitions of who had entitlements and who could negotiate claims. It spoke also of living, evolving flexible agreements that would build economic self-sufficiency and self-governing democracy.

The report lead to a new December 1986 land claims policy announced by Crombie's successor as minister, Bill McKnight. As discussed above, McKnight's strategy of lowering expectations was applied to the comprehensive claims field as well (Canada, DIAND, 1987). The policy did not evoke the broader notions of economic and political development but focussed on

what was and was not negotiable. The latter was still an advance on the status quo in that the policy indicated that issues such as resource revenue sharing, offshore rights and joint decision making over lands and resources were negotiable. But the policy still falls far short of evoking any rights-oriented language in the comprehensive claims process.

While each step was begrudging rather than generous, by the early 1990s Mulroney ministers were much more satisfied with the claims policy area than they were about self-government or the Indian Act Alternatives process. Certainly there was considerable satisfaction when, in 1993, the Inuit claim process culminated in the formation of Nunavut as the new territorial government of the eastern Arctic. Indeed, since 1990 three comprehensive claims covering two-thirds of the Artic have been settled. The failure of the Charlottetown Accord also propelled progress on the comprehensive claims process in that the federal government and British Columbia reached a joint agreement that would start the process of claims negotiations in that province.

Throughout the last decade, the comprehensive claims process was also affected by the inherent fiscal and bureaucratic realities of internal cabinet decision making. First, the cabinet had, until 1990, set a limit of allowing negotiations of 6 claims to be going on at any given time. Second, as claims reached the cabinet process itself, as many as four or five cabinet or committee meetings were needed interspersed among the many cabinet topics and agenda items. And third, given DIAND's bad fiscal reputation in the early 1980s, Finance and the Treasury Board and later DIAND itself made sure that in late 1980s and beyond that there would be no big dollar surprises emanating from comprehensive negotiations. It is the Department of Finance that is the guardian of an aboriginal account which contains actual or potential funds needed for settlements over the next 8

to 10 years.

NATIONAL ABORIGINAL ORGANIZATIONS AND THE GOVERNANCE INITIATIVES PROCESS

In the above account of the three policy initiatives on governance it is not difficult to see both the divisions among the national aboriginal associations and the varying relationships they had with DIAND. All the national organizations in a general sense sought the constitutional recognition of rights as a philosophical and tactical first priority. But their practical views of the three tracks of the non-constitutional federal policy approach identified in Chapter 3 varied enormously. The AFN deeply mistrusted DIAND, and saw the three policies as being token in nature reflecting a kind of divide and conquer strategy. But at the same time, the AFN could not deny the right of individual chiefs and First Nations to strike deals of their own.

The CAP and the MNC were always in partial conflict with the AFN for several reasons. First, the AFN consistently opposed policies and funding that recognized non-status and Metis rights or program needs. Second, neither the CAP or the MNC had easy access to DIAND and both were frustrated by the total inadequacy of the ministerial Interlocutor position that was supposed to be their window into the government. Third, the self-government and related issues were totally different for aboriginal peoples which had no clear land base or which were not recognized under the Indian Act. And fourth, since every initiative involved funding and money, there was always an implicit or explicit sense among the groups that every policy was a zero-sum game. Resources spent on one group were a loss to another.

Meanwhile smaller organizations such as NWAC and the ITC had a combination of assets and liabilities as they sought to manoeuvre in this larger arena of interest group politics. NWAC clearly had different views about the very nature of self-government, opposing male and chief-dominated systems. This got them national political attention and even some implicit support in DIAND given that NWAC was putting the spotlight on an AFN that many in DIAND did not trust. The ITC meanwhile could almost ignore some of the elements of the debate. Its smaller numbers, northern focus, and greater organizational nimbleness allowed it to pursue northern self-government and land claims in a more concerted way, albeit not without enormous frustration at the delays they encountered both in DIAND and elsewhere.

CONCLUSIONS

The three policy initiatives on governance examined above, on community or band self-government, Indian Act Alternatives, and claims policy, exhibit some progress over the period as a whole. But it is not difficult to see why Aboriginal groups are angered and frustrated by the way things are done (or not done) and at how slow the process is relative to the scale of the problems.

The three policy processes were all contextualized by the key issues sketched at the beginning of the chapter: the sense of historic injustice; the clash of assumptions about what "governance", short of constitutional change, meant; views about whether Aboriginal governance was sufficiently accountable in conventional Parliamentary government terms; and the perils of both living with and getting out of the clutches of the Indian Act.

Equally, however, the three policy governance initiatives each reveal genuine differences of

opinion and tactics among aboriginal groups. The three issues were also influenced constantly by the perceived need by some aboriginal groups to play the constitutional card, a tactic which sometimes advanced the aboriginal agenda and at other times undoubtedly detracted from further progress in specific areas.

Chapter 5

ABORIGINAL SOCIAL POLICY FORMATION

Federal aboriginal policy formation also occurs in what can usefully be called a middle realm, that of the mandate areas of other federal departments and their policy communities. In the case of each department both the department and its policy community must be understood, the former because of its statutory, policy and political realities, and its policy community because of the need to locate at different times how aboriginal organizations do or do not fit in amidst increasingly complex arrays of stakeholders in each policy field (Doern and Phidd, 1992; Coleman and Skogstad, 1990).

It is a middle realm of aboriginal policy formation in at least three senses. First, it is simply the middle zone between the macro overall federal policy process and the micro-DIAND-based process. Second, aboriginal policy is also made by, and in, at least 11 other departments. Hence, it is a policy realm in which policy is debated and structured in programmatic and traditional "policy field" terms (as opposed to constitutional or governance terms) and in which aboriginal organizations can often be caught between periodically favourable and unfavourable movements in the separate policy agendas of these departments and their policy communities. And finally, it is often the third but, at times, preferred arena of choice by aboriginal organizations in that both the

macro and micro arenas examined in Chapters 1 to 4 have often been inhospitable, lacking in legitimacy, or both. Thus, beginning as early as the 1950s, aboriginal organizations have lobbied some of these other policy arenas in search of program benefits and political support (Crossley, 1992).

Each of these other departments and their aboriginal policy processes is a complicated story not only at present but even more so over the larger period since 1980. The analytical dilemma for a two chapter account of these dynamics is obviously how to deal with both depth and breadth in these complex arenas. In the space available, I have opted for breadth of departmental coverage across eight agencies so as to give a good solid glimpse of the dynamics across this third realm. But glimpse is still the operative word, since in each case a full chapter could easily be written especially to ensure that the dynamics are seen from: the perspective of each department concerned; programmatic realities and constraints; the aboriginal lobbying effort; the reaction and degree of opposition or support from DIAND; and the larger policy community pressures which each department must manage and accommodate.

While we touch on each of the above features, what is presented in this chapter and Chapter 6 is, in effect, a series of policy mini-cases or vignettes. In total they will convey some key aspects of this vital area of aboriginal policy formation in both social policy and economic policy fields.

SOCIAL POLICY FORMATION AND BOUNDARIES

In this chapter four departments and related case studies are examined: the Department of Justice; Environment Canada; Health and Welfare; and Fisheries and Oceans Canada. But the mere

act of selecting these departments begs important questions about what social policy is in aboriginal matters and how it has been handled in the larger federal policy and decision process.

In general terms, social policy first evokes areas such as welfare, education and health, "the welfare state writ large". It suggests policy areas whose intended purpose is to promote equity, redistribute income, and foster decent and fair living conditions.

For most Canadians these social policy areas are largely provincial but with significant federal funding and policy influence. For aboriginal peoples, social policy is more federal in nature (though with many provincial overlaps and consequences) and, equally important, social policy must be made without any significant control over taxation and revenue raising powers. Even more vital is the fact that, for aboriginal peoples, social policy is much broader in scope and perceived content. Thus policies on justice and policing, the environment, welfare, and the fisheries must be considered. Indeed, it is somewhat of an arbitrary choice to put issues of fishery policy in this chapter rather than in the discussion of economic policy in Chapter 6. It is included in this chapter, however, because there is much more of a sense of all policies being fundamentally "social" in aboriginal eyes and perceptions. Needless to say policies such as those on constitutional change and governance are also cast as social in the sense that they evoke the rights of aboriginal peoples and First Nations as a collectivity.

Against the above notion of social policy boundaries, one must also have a sense of how the federal government's budgetary decision process handled aboriginal social policy. Some of these dynamics were brought out in Chapter 1 but of special import is the simple fact that virtually all aboriginal policy spending was handled by social policy committees of the Cabinet. In the days of

Ottawa's formal budgetary envelope system, aboriginal matters (including DIAND) were part of the social policy spending envelope.

Thus while nominally both aboriginal peoples and the federal policy process saw aboriginal matters largely as social policy, there was a vast difference in the meaning attached to these otherwise similar groupings. The tendency of the federal social policy process was still largely to see these issues as falling within an overall norm of welfare whereas the aboriginal peoples sought an escape from dependence in all its forms.

THE DEPARTMENT OF JUSTICE AND ABORIGINAL POLICY FORMATION

The starting point for understanding the Justice Department role is to appreciate the unique role of the Minister of Justice among Cabinet ministers. The Minister of Justice is like all ministers in that he is held responsible in Parliamentary government for his or her department and its statutes and programs. But the Minister of Justice is unlike most other ministers in the degree to which he or she must not only be, but appear to be, above politics, not only partisan politics but also politics that curries special favour for anyone. As the Attorney General and chief law officer of the Crown, he or she has a duty to act independently to uphold justice, the Constitution and the Charter, and to respect the independence of the courts. Justice Department lawyers are located both in the department proper but also, as employees of Justice, in each of the main federal departments, including DIAND.

The Justice Department is also a "central agency" or horizontal coordinating body in another important sense. This arises from the fact that the law enforcement function is in fact carried out by

several federal departments and agencies and thus there are concerns, procedural and substantive, about how enforcement is carried out across the government. The Charter of Rights and Freedoms only enhances the need for the Justice Department to stand guard over enforcement activity, even while its lawyers are spread through the federal bureaucracy. About 80 Justice lawyers are involved full-time on aboriginal matters. In the Justice Department itself there are about 30 and DIAND about 50. Well over half of the lawyers in DIAND are involved in claims negotiations.

When dealing in general with the Justice Minister's role, there must be an immediate appreciation that usually very few cases ever go to the Minister of Justice. Matters that involve a decision to appeal a lower court's decision often will involve Justice Department lawyers at the Deputy and Assistant Deputy Minister level but there is considerable discretion in the hands of Justice lawyers who deal with other departments.

Having stressed this largely limited role for the Justice minister, it must be quickly added that, in aboriginal matters, ministerial involvement by successive Justice ministers has probably been greater than in other policy and case realms. This is because of four factors. First, aboriginal cases have been about defining rights and the courts have left immense room for political interpretation. Justice and DIAND lawyers, accordingly, have sought ministerial guidance quite frequently. Second, in addition to its role in defining treaty and constitutional rights, Justice is intensely involved simply because the Indian Act, as we have seen, makes aboriginal policy largely legally-driven policy. Third, there are at present over 400 cases pending against the federal Crown on aboriginal matters, most dealing with aboriginal rights and related governance matters. Thus there is a compelling need for consistency in federal positions. Fourth, as we see further below, the

Minister of Justice has often been appointed the Interlocutor for Metis and non-status aboriginal issues.

The Justice Department is also a central agency in another subtle sense. Just as Finance is a guardian of revenues and the tax and revenue system and Treasury Board and Finance are guardians of spending and the spending process so also does the Justice Department see itself as a guardian of the justice system, the Charter, and respect for the law (Doern and Phidd, 1992). All of these guardianship urges are powerfully conservative not in a partisan sense but rather in the sense that all such guardians see themselves and "their system" as being surrounded by an almost unlimited supply of interests demanding either revenue or tax breaks, spending, or, in an equally powerful currency, "rights". Each guardian in their own institutional core must learn to say no far more often than yes and each interest group or litigant wants them to say yes in their case or situation and often may not care what is said in all other situations.

This prologue on the Justice Department is necessary because of all of Ottawa's central agencies, it is probably the least written about in the context of the normal policy process. It is also an agency where clearly lawyers are the dominant profession and the centre-point of its policy community, especially given the importance of the Charter of Rights. Justice is also protective in that its job is to see that current laws, such as the Indian Act, are implemented according to law and not changed until there is a proper basis, namely, a new law, for doing so. In short, the essence of the Justice lawyer's role is to examine what premises of law are being applied to cases and to new policy development and to ensure that it is correct law. The Justice role is to protect rights but also to ensure that liabilities are not lightly acceded to. Both rights and the liabilities of the federal

government compete for attention.

Aboriginal interest group views of the Justice Department are often extremely critical precisely because aboriginal views are articulated as rights and as a call for justice. Aboriginal groups frequently see DIAND as being "managed" by the Department of Justice. Following each of the key Supreme Court cases referred to in Chapter 1 (the Calder, Guerin, Sparrow cases) the perception among aboriginal groups clearly has been that Justice lawyers and the Justice Department then sought to reign in on, rather than expand upon, the interpretation of aboriginal rights. While no doubt some of this posture by Justice was because of an explicit lack of sympathy for, and opposition to, such rights, some of it was due to the inherent uncertainty which Justice lawyers felt about the whole unfolding of the rights-liabilities equation. The Charter of Rights and Freedoms also added to this sense of caution. For most of the 1980s and early 1990s, the still young Charter was a very uncertain upstart in the Canadian political and legal family.

We have already glimpsed in Chapter 4 one area, specific claims, where the Justice Department role was definitive. But somewhat more detail is required here. In the specific claims process, Indians groups making the claim submit their claim to DIAND which, after investigation, submits its "statement of fact" to the Department of Justice. Critics of the process argue that Justice then applies almost a criminal standard of proof "beyond reasonable doubt" to the factual situation, eschewing broader approaches and standards such as might be brought by a historian.

The First Nation Band hears from DIAND what the final decision is on the claim, and the general reasoning behind it, but at no point does it actually see the Justice Department opinion. Such opinions are vital and usually definitive but First Nation's have no direct access to such

decision makers. Thus there has been a strictness of interpretation and an absence of due process which aboriginal groups find fundamentally unjust. This does not mean that individual Justice lawyers, including those in DIAND, do not develop some supportive views on aboriginal issues and cases. Rather it is to say that there are systemic guardian values continuously at work in the Justice Department's policy domain.

The Justice role of course extends beyond the above aspects of aboriginal policy. It is Ministers of Justice who have usually, in concert with the Prime Minister, headed up most of the constitutional negotitiations with aboriginal peoples and with the provinces. And it is Ministers of Justice who have most often been appointed the Interlocutor on Metis issues but with staff support coming from the Federal-Provincial Relations Office and PCO and Justice staff as well. The former is a natural role for the Government's chief law officer but the latter undoubtedly involves some policy conflicts given the rest of the mandate that a Minister of Justice has. The Interlocutor role must also be seen for what it is, a part-time or overtime part of a Justice ministers work load.

National aboriginal associations all have a deep antipathy towards the Department of Justice but they vary in their desire and ability to use court cases as a vehicle of redress. For example, the Metis National Council regards the Interlocutor role (whether carried out by Justice or non-Justice ministers) as totally ineffectual. But the MNC is not keen to use court cases as a central action strategy. This is partly because it lacks the resources to go to court but also because it genuinely feels that Metis problems require a series of politically negotiated solutions.

The Assembly of First Nations, on the other hand, has developed a concerted legal program to research cases and to launch numerous court cases against the federal Crown. It also has had far

greater budgetary resources to avail itself of this tactical option.

The above discussion does not deal with two subjects which are undoubtedly connected to, but also go beyond, the Department of Justice per se. These are aboriginal views of the "justice system" and of aboriginal versus white or European justice paradigms. The former refers to the entire system of aboriginal law enforcement which at the federal level involves the Department of the Solicitor General, the RCMP, and other enfocement agencies (e.g. fisheries, hunting) and at the provincial level both provincial and city police forces. This important area is not examined in this study, but there is no doubt that very critical aboriginal views of the justice system affect their views of the Department of Justice. Indeed, the Department of Justice has been given the lead role in an Aboriginal Justice project. This project has brought the department into a direct consultative relationship with aboriginal groups. In its larger role, Justice does not usually engage in such consultations on its own. Rather, its preference is to accompany other line departments who typically take the lead for the federal government.

As for differences in "paradigms" of justice, the key here is that many aboriginals see their own traditional systems of justice as being both different from and often superior to white and European paradigms. As one author has put it, for aboriginals, the "state" is a foreign concept. "Justice depends upon the internal order and relations of a given community.... Aboriginal peoples do not perceive the adversarial, retributive model of criminal justice as being an adequate response to the problem of crime".[x] Once again, this is a huge topic which we are unable to cover here. But such views again affect perceptions of the Justice Department in an overall institutional sense.

ENVIRONMENT CANADA, POLICY LINKAGES AND POLICY OPPORTUNISM

When dealing with the actual and potential dynamics of aboriginal policy formation involving the environment and Environment Canada, it is necessary to appreciate two basic facts about Environment Canada. The first fact is that environmental issues since 1980 have themselves been initially low on the policy and political agenda, especially from 1980 to 1987, and then rose in prominence in the late 1980s and early 1990s culminating in the announcement of the $3 billion Green Plan (Hoberg, Harrison, and Albert; 1993). This down and up pattern in some sense parallels the political trajectory of aboriginal issues. The second fact is that environment-aboriginal issues and controversies can be triggered by any of the main mandate areas of Environment Canada. These include: regulatory environmental protection cases under the Fisheries Act, the Canadian Environmental Protection Act (or CEPA), and the Wildlife Act; environmental assessment hearings on development projects subject to federal jurisdiction; the establishment and operation of parks by Environment Canada's Parks Service; and conservation resource management issues funded with or without federal-provincial cooperation (Conway, 1992).

While aboriginal groups have an often avowed a genuine special affinity with nature as a part of their cultural traditions and evolution, and frequently pressed environmental issues to the fore, the actual relations with Environment Canada are quite mixed and episodic. Three episodes are briefly surveyed to illustrate some of these varied dynamics and to show how aboriginal interests both collide with and link up with other interests that are a part of Environment Canada's policy community. These episodes are: Len Marchand's efforts, as Canada's first aboriginal Minister of the Environment, to affect changes to wildlife hunting practices; the mid-1980s establishment of

South Morseby Park and the relationship between the Haida Nation and environmentalists; and the above mentioned achievement in which Green Plan funds were obtained for the Native Agenda.

Len Marchand, the first aboriginal Canadian to be appointed to the Cabinet, became Minister of the Environment in April 1979. Marchand took some understandable and long overdue interest in the links between aboriginals and environmental policy. This included his concerns that wildlife policy did not trample on traditional Native hunting and fishing rights (Doern and Conway, 1993). He also helped advance the acid rain file within the department. But, in general, he was far too junior to have much impact in his short stay as minister, which ended within two months due to the electoral defeat of the Trudeau Liberals by the Clark Conservatives.

What is important about what he launched, however, is how quickly it became emersed in a swamp of federal-provincial and complex interest group politics that ultimately spanned North America because of its eventual and inevitable link to a North American Waterfowl Plan (Doern and Conway, 1993). Marchand's concern was partly to help protect aboriginal rights in hunting waterfowl. While the full story is complex and spans several years into the 1980s, the essence of the issue begins with growing concern in the latter part of the 1970s with a declining waterfowl population.

American hunters were beginning to complain loudly, through organizations such as Ducks Unlimited and via the United States Fish and Wildlife Service, that too many ducks were being killed in Canada, particularly, in their view, by native subsistence harvesters. Aboriginal groups argued that they possessed traditional hunting rights. Environment Canada, in partial support, argued that while some 80% of waterfowl were "produced" in Canada, 80% of the "mortality" of

birds through hunting occurred in the United States. Meanwhile, Canadian farm groups were complaining that ducks and other waterfowl were contributing to significant grain crop losses.

These concerns lead Marchand and his American counterpart, the Interior Secretary, to launch two parallel domestic waterfowl policy reviews which would eventually produce a North American Waterfowl Plan. But a process that Marchand and his department hoped would take a few months, in fact took years. On the Canadian side, this was partly because some provinces, used the policy review as a vehicle for staking a jurisdictional claim to all matters dealing with wildlife because of their connection to natural resources. The political tenacity of this claim was further abetted by the fact that the discussions were going on at a time in the early 1980s when the fierce resource politics battles over the National Energy Program were still fresh.

A plan was eventually developed but the interest group politics had mushroomed well beyond aboriginal concerns and indeed had mobilized a host of highly diverse environmental groups. There was in all of this, especially in diverse local situations, no easy or happy strategic marriage between aboriginal and environmental groups. In the end there was no clear protection of aboriginal hunting rights.

The South Moresby-Haida decision also involved a complex alliance of interests on a decade long saga to convert Gwai Haanas, as the Haida Nation called the eventual South Moresby Park area, into a protected park (May, 1990). The glorious forests and wildlife on the Queen Charlotte Islands of British Columbia were central to the life and identity of the Haida Nation for thousands of years.

The South Moresby situation began to come on the political agenda in 1974 when local environmentalists, in concert with the Haida Council, voiced strong opposition to logging on Burnaby Island. From then until a park was agreed to in 1987, an array of interests, pressures, and counterpressures, had been applied (Doern and Conway, 1993). The BC Government initially declared a moratorium on logging rights but then granted licenses to log on nearby islands. The Federal Fisheries Department, under the Fisheries Act, ordered that logging not be allowed on yet another nearby island. Local logging interests, in concert with the BC Social Credit Government, strongly opposed this federal intervention in a local resource issue.

Parks Canada suggested its suitablility as a park but this idea caused a split between environmentalists and the Haida Nation because the latter wanted land claims settled. Federal MPs such as Jim Fulton, began to raise the issue nationally and forged a non-partisan coalition of MPs that quickly included such people as about to be Prime Minister, Joe Clark, and Tom McMillan and John Fraser who became environment ministers. Media personalities such as David Suzuki also became actively involved.

The park issue languished in the early 1980s but by 1985 a coalition of environmental and aboriginal groups gave it increasingly strong national backing. Indeed, South Moresby increasingly became a test case for the Mulroney Government's environmental credibility which had gotten off to a disasterous start with the appointment of Suzanne Blais-Grenier. Meanwhile, in BC, a pro-development BC Government had indicated that it was likely to allow logging, pressured by a local lobby group concerned about jobs in the South Moresby area. It eventually did allow the logging.

The Haida Nation reacted to this threat by physically blocking the roads to loggers, a tactic

which garnered national television attention in the fall of 1985 and led to the arrests of 72 Haida persons. In his first major speech as environment minister, Tom McMillan, the new Mulroney appointee after Blais-Grenier, committed himself to the formation of South Moresby Park.

There followed in the next two years, a five sided brokerage political negotiation that centred on: defining the exact boundaries and use of the park; freeing up the $100 million in federal money which BC insisted would have to be paid by Ottawa to buy up existing logging rights; and setting up institutions of local management that fully involved the Haida in a co-management regime (May, 1990; Doern and Conway, 1993). The five key sets of interests included: the BC Government whose Premier Bill Vander Zalm was being actively courted by Brian Mulroney over the Meech Lake constitutional package and for which South Moresby money was a partial price; the Haida who were concerned about boundaries, use and management, including land claims; Environment Canada where there were differences between the Minister's office and Parks Canada as to how far to go and how much to pay for; the central agencies, including the detailed personal involvement of Don Mazankowski, Dalton Camp, and even Speaker, John Fraser. It was the Mazankowski-Camp involvement that eventually secured the funds which were in turn linked to the larger politics of the Meech Lake saga; and the larger environmental lobby which continued to forcefully tell the government that this was the test case of Mulroney's green credentials.

The South Moresby decision was long and tortuous, involved mainly a Haida-environmental coalition rather than a Haida-national aboriginal group coalition, fit in with Environment Canada's priorities, and in the end, was very much dependent upon whether a large wad of federal dollars could be freed up at the right time.

The final environmental-aboriginal policy example, the 1990 Green Plan-Native Agenda links can be noted quite briefly. It was basically an example of budgetary opportunism in which DIAND siezed the moment to advance an important policy issue- water and sewage problems on the reserves- but one that needed resources. The background to this moment of opportunity is found in the essential politics of the Green Plan itself.

As the Green Plan was being forged in the fall of 1990 and as it became known within the Ottawa system that a sizeable amount of new money (the only new money in town!) was planned for it, the departments battled over their share of the great green fund. Environment Canada saw it as its plan and wanted the lion's share. Other departments, conscious of protecting their own jurisdictions from Environment Canada's new claims about "sustainable development", and anxious simply to get money, insisted that key parts of the fund would be theirs, albeit with monies having to be spent on environmentally related projects.

Environmental agendas (and money) and aboriginal agendas (and no money) in a sense fortuitously met in the autumn of 1990. In the early months of 1990, just a few months earlier, there was no guarantee that their separate trajectories would cross or that either would see the political light of day. Such are some of the vagaries...and opportunites...of creative federal aboriginal (and environmental) policy formation. There are both ladders to climb and snakes to slither down in the social policy realm of the aboriginal policy process.

HEALTH AND WELFARE CANADA AND THE HEALTH PROGRAM TRANSFER INITIATIVE

The largest federal expenditure and service program for aboriginals outside of DIAND is the Indian and Northern Health Services (INHS) activity of the Medical Services Branch of the Department of National Health and Welfare (Health and Welfare Canada). The INHS (involving about $734 million in 1992-93) is one of three activities in the branch which in turn is one of seven branches of Ottawa's biggest spending department (Health and Welfare Canada, 1993). Of the department's almost $37 billion budget, about 95 percent is non-discretionary transfer payments to the provinces or to individuals. Health and Welfare Canada affects aboriginals in other ways than through the INHS. This is because status Indians and Inuit are eligible for other health, welfare and social benefits funded through the department directly or via the provinces.

Our focus here is on the decision process that lead to the health transfer initiative by which the Medical Services Branch has sought to transfer the control of health services to Indian bands. But the dynamics of the decision begin with the raw realities inherent in the above one paragraph profile. For the most part, aboriginal issues are a small program, in one branch, of a big department, whose preoccupations most of the time are elsewhere. In the ten year period covered by this mini-case study, the Health and Welfare Canada agenda has largely been focussed on: fighting off and aborbing significant social spending cuts; new initiatives such as day care which have not seen the light of day; defending the principles of Medicare; and a host of other health issues that include AIDS, drug regulation, and environmental health.

Aboriginal issues had to find a niche in this larger agenda and in the political attention span

of successive health and welfare ministers and their widespread policy community. The objective case for giving prioirity attention to aboriginal health issues could not be clearer (Health and Welfare Canada, 1991). Health conditions are far worse for most aboriginals than for other Canadians. And key health professionals and officials in the Medical Services Branch were determined to help. This determination came from personal and field knowledge of the needs but also from direct aboriginal pressure.

The immediate backdrop for this pressure is found in the nature of the branch's medical service activities. The core of this activity is the branch's responsibility to ensure the provision of community health services to status Indians on-reserve or residents in the Yukon and to all Inuit people. These services include general medical and emergency treatment, health education, immunization, nutrition counselling and dental care (Health and Welfare Canada, 1991). On top of this, there is a Non-Insured Health Benefits Program which provides benefits for status Indians on- and off-reserve and Inuit. These include drugs, medical supplies, vision care services and eye glasses, dental care assistance and assistance with medically necessary transportation (Health and Welfare Canada, 1993).

The latter program, established in 1979, is itself an indication of the timely meeting of minister and message. The extension of some services to off-reserve Indians came during the brief tenure of David Crombie, who was health minister under the short-lived Clark Conservative government. It was launched "knowingly without knowing", as one official put it, the likely costs of this initiative. Within three years, the costs were as great as the larger basic program described above.

There is a sense in which the health program transfer initiative fitted tactically into the basic political situation of Health and Welfare Canada, namely, how to do social good without spending any new money or any large amounts of new money. But it was also more than that. The dynamics of the initiative are best seen in three phases.

The first phase began in the context of the 1982 constitutional process and the subsequent period of the early aboriginal constitutional conferences. During this time, the Medical Services Branch began a three year demonstration program, under the urging of the AFN and other groups. A few medical service self-government initiatives had begun with a few bands and many more applications to take part were coming in. But when the constitutional talks bogged down, a moratorium on the demonstration program was declared to the great frustration and anger of those involved.

At this point, it was bureaucratic initiative within Health and Welfare Canada and the Medical Services Branch which kept the ball rolling. An internal exercise began as to how a general transfer of control should or could work. The review group included four aboriginal persons who were involved because of their detailed program knowledge on medical services but who could not speak for the aboriginal organizations they came from. This was a vital first step in devolution in the health area because actual service delivery was involved, not just the transfer of funds. The review group's report was signed off as a consensus document by all of the aboriginal and departmental persons involved.

Following this preparatory work in late 1985 and early 1986, an April 1986 announcement by Health Minister, Jake Epp, made the inititive public (Health and Welfare Canada, 1988). Epp

committed the government to transfer administrative control of federal Indian health services to Indian bands south of the 60th parallel. The transfer would occur within the confines of existing funding and within the existing legal framework. Moreover, decisions to transfer would be up to each Indian community.

The reaction to the initiative was similar to the larger concurrent politics of the federal aboriginal policy process. Some groups (national and local) applauded the move. Others saw it as an expenditure off-loading exercise by the Mulroney Conservatives. And still others saw it as an effort to abrogate its fiduciary responsibilities and to deny it as an aboriginal treaty right (Bruyere, 1988). In the face of this reaction, the AFN sought and obtained health department funding for a November 1987 National Indian Health Transfer Conference. The conference echoed all the earlier concerns, funding limits, jurisdiction, and actual health conditions, but especially brought out the issue of aboriginal and treaty rights relating to health care. There was also criticism of the Medical Services Branch, though far less than is typical of criticisms of DIAND, in part because other departmental program professionals such as Health and Welfare's are seen as broadly sympathetic.

In March, 1988, Cabinet approval was given to the transfer initiative. Among its key provisions, augmented from the 1986 announcement, were provisions that: enable communities to design health programs to meet their needs; strengthens the accountability of Chiefs and Councils to community members; supplies financial flexibility to allocate funds according to local priorities and to retain unspent balances; permits multi-year agreements; state that the agreements do not prejudice treaty or aboriginal rights (Health and Welfare Canada, 1991).

A January 1992 evaluation study showed that by late 1991 there were 14 signed transfer

agreements involving 55 bands and another 79 pre-transfer projects underway involving another 244 bands (Adrian Gibbons and Associates, 1992). The study was monitored by an evaluation advisory committee, eight of whose 13 members were aboriginals from local groups. It concluded that the short term objectives of the transfer program in the communities studied were being met but the larger array of issues still provided a formidable agenda for aboriginal peoples and for Health and Welfare Canada (Adrian Gibbons and Associates, 1992).

Although the transfer initiative was the major aboriginal policy initiative at Health and Welfare Canada during the full period covered in this chapter, its submission to the Royal Commission on Aboriginal Peoples cites other recent initiatives as well. For example, there is an Indian and Inuit component in the "Brighter Futures" Child Development Initiative, a $500 million program which arose out of the 1990 World Summit for Children. Health and Welfare Canada also has a small chunk of Green Plan money which is linked to DIAND's larger water and sewage program also funded by Green Plan moneys as discussed above. And last, but not least, the department cites the Tripartite Working Group on Aboriginal Health which has been formed after national aboriginal groups pressed for a broader mechanism to help improve aboriginal health conditions. It involves federal, provincial and national aboriginal group representation (Health and Welfare Canada, 1993).

FISHERIES AND OCEANS CANADA AND THE ABORIGINAL FISHING STRATEGY

The final example of aboriginal policy formation at the middle or sectoral level concerns the development, largely in the wake of the Sparrow court case decision in 1990, of an Aboriginal Fishing Strategy (AFS) by the Department of Fisheries and Oceans (McCorquodale, 1993). The

AFS was partly intended to prevent future policy being made by a series of court cases. It involved a multi-year program for both the east and west coast fisheries whose configurations of aboriginal importance relative to the size of the fishery are quite different. The AFS assigned to aboriginal groups responsibility for fisheries management including the regulation of Indian fishing, surveillance, catch monitoring and enhancement activity. The AFS included federal funding, including funding for training. But the key change was that Indian Band communities were allocated a specific number of fish which they were also allowed to sell (McCorquodale, 1993).

The direct causal line from the Sparrow case to the allocated catch component in the AFS is obvious. As mentioned in Chapter 1, the Sparrow case had applied section 35 (1) of the Constitution Act of 1982 to the Fisheries Act and the Supreme Court had ruled that aboriginal rights could not be extinguished by regulation. The court also ruled that aborginal rights to the fishery did exist and such rights would be placed after conservation needs but before commercial or sports fishing interests.

The radical nature of this ruling can be seen from a brief profile of how the Fisheries and Oceans policy process has evolved over the past twenty or years, which in turn shows why aboriginal groups had such difficulty penetrating it, and which in turn shows how the courts helped them jump the policy line-up in 1990-91. Susan McCorquodale's analysis of fisheries policy formation shows the nature of that process changing from a system characterized by "bipartite bargaining" up to about the mid-1970s, to "multipartite bargaining" during the period from about 1977 to 1990, and now to a post-Sparrow system which she calls "legalism and co-management" (McCorquodale, 1993).

In the first phase, the bipartitite nature of decision making essentially referred to deals between the department and the big commercial fishing companies on both coasts. Aboriginals clearly were not major players in this period, though there were many local disputes. One of the key triggers for the emergence of a multipartite era after 1977 was Canada's declaration of a 200 mile fishing limit on its borders. This added new international interests but these also coincided with major increases in provincial government interests and in regional development funding that helped build up fishing infrastructure and helped promote tourism based on sports fishing. Fishing crises (prices, declining stocks, and too many fisherman) on both coasts in the early 1980s lead to major inquiry reports, the Kirby and Pearce reports on the east and west coasts. respectively (Canada, 1983; Commission on Pacific Fisheries Policy, 1982).

During the 1980s, the array of players and interests involved in any multipartite decision arena on the fisheries included: federal and provincial fishery agencies; environmental agencies; commercial fishing interests; recreational and sports fishing interests, aboriginal communities, special international commissions and American and other foreign governments (McCorquodale, 1988); Doern, 1987). All had a stake in a common property resource. In this period, aboriginal groups had lobbied hard enough to get themselves recognized as an interest but not as a major interest (though BC aboriginals had more potential influence than aboriginals in Atlantic Canada).

The latest phase still has many players involved, and has occurred at a time of declining fishing stocks but it does appear to be different because of the insertion of aboriginal legal rights. In the short run, this has created resentment among both commercial and sports fishing interests. As soon as the Sparrow decision was made, aboriginal groups pressed their claims which they regard

as historically long overdue. They have lobbied fisheries ministers and the AFS is the department's first major response.

While the AFS involved consultation with aboriginal groups, it was largely a very rushed and patched together program. In its early operation it suffered from a lack of communication both inside and outside the department. It also involved a lack of preparedness and training for some aboriginal communities who under the agreements of the AFS had to guarantee that they would fulfill their undertakings (McCorquodale, 1993).

The amounts of money involved thus far are quite small (about $12 million in BC) but the AFS could suffer if federal expenditure cuts continue apace. Like some other areas of middle-level aboriginal policy formation, it is policy making on the run. It is also regulatory common resource policy making and hence different from big spending programs. Aboriginal groups see it as preemptive policy making to constrain rights, even while recognizing them. In the fisheries department, there is a mixture of views, partly that wrongs must be righted but also that they had better not cost too much, with costs being measured partly in dollars but also in regulatory control over the Fisheries Act.

CONCLUSIONS

The chapter has offered four departmental and case-study glimpses into aboriginal social policy formation as well as a sense of how social policy is inherently perceived by aboriginal peoples, on the one hand, and the federal decision process, on the other. The four departments, and their policy communities, cover only half of those departments that have nominal social policy

mandates that include, or impact upon, aboriginal issues and concerns. While the portraits have been necessarily brief and focussed on the policy process, they nonetheless show an important part of the story of the last decade of federal aboriginal policy formation.

There has been greater recognition of aboriginal issues in most of the departments but there is also evidence of the very episodic nature of these improvements. Some of this uneveness arises from the fact that aboriginal policy issues are simply not the main policy concern of these departments and aboriginal peoples are perceived to be only one part of their policy community. Yet within each department, there are sympathetic and supportive professionals who have helped advance programmatic needs for aboriginal peoples. Consultative processes are better than they were before 1980, in large part because of intense lobbying by national and local aboriginal organizations.

But there is also evidence of a certain "snakes and ladders" nature to the policy process that too often seems analagous to lucky or unlucky throws of the political and policy dice. It was Oka and the Green Plan that freed up the funds at the right time. Or it was court cases that forced the hand of Fisheries and Oceans Canada. While often sought out by aboriginal organizations, this social arena of aboriginal policy formation has produced what can only be described as a very mixed array of policies and policy outcomes.

Chapter 6

ABORIGINAL ECONOMIC POLICY FORMATION

The second area of the middle realm of aboriginal policy formation is that of economic policy. The same strategic issues for aboriginal peoples sketched out in Chapter 5 about social policy also apply here: the search for sympathetic arenas of support from various departments within the federal government; the search for programs and funding that will advance the aboriginal peoples' agenda; and the demands for devolved delivery and aboriginal control of economic development.

In conventional terms, economic policy is usually divided into macro and micro economic policy. Macro economic policy refers to the government's policies regarding the aggregates of spending and taxing and related concerns about inflation, exchange rates, and trade balances. This is a policy world centred mainly but not exclusively in the Department of Finance. Micro economic policy is sometimes summed up by the notion of industrial policy but in fact is infinitely broader than that. Micro economic policy embraces a large array of actions and inactions that affect the efficiency and productivity of the main factors of production in an economy: capital; knowledge and technology; labour and human capital; and land and resources. Accordingly, micro economic policy formation involves many federal departments including industry, employment, and natural

resource departments.

In the macro economic policy realm, aboriginal peoples are simply not significant players in the federal scheme of things. There have certainly been discussions about tax policies that affect aboriginal groups and controversies such as the 1993-94 taxation of tobacco and its relation to illegal smuggling of products, but these are usually several steps removed from the main levers of macro fiscal policy. This is not to say, however, that aboriginal peoples are not affected by macro policy. Without doubt, recent deficit reduction policies have had adverse affects, as they do on all the politically weaker groups in society.

Thus when economic policy formation is referred to in this chapter, it is simply the case that we are referring mainly to aboriginal micro economic policy. The Chapter examines two departmental realms: Industry Canada and Human Resources Canada. As was the case with the previous chapter, we attempt to examine overall developments and policy processes along with very brief glimpses into particular policy cases where appropriate. But because we have selected only two departments we are able to delve into somewhat more detail regarding the actual delivery of programs, especially those of Industry Canada.

INDUSTRY CANADA AND ABORIGINAL ECONOMIC DEVELOPMENT POLICY

We look first at Industry Canada, and, by extension, its predecessor agencies in the early 1980s and early 1990s (ISTC, DRIE, ITC, DREE and MOSST). As was the case in our account of social policy areas, we need first to understand the broad evolution of the department and its mandate area.

This history is essentially one that in the 1970s and 1980s revolved around how to accommodate the twin pulls of Canada's efforts to devise industrial policies, namely the reduction of regional disparities versus the development of internationally competitive industries (Savoie, 1986; Doern, 1990).

Until 1982, the regional policy realm was the preserve of the Department of Regional Economic Expansion (DREE) which functioned mainly through grants and federal-provincial regional development agreements. The industrial competitiveness mandate was the task of the Department of Industry, Trade and Commerce, whose focal point was the knowledge of its industry sector branches and its trade commissioners (though the latter were transfered to External Affairs in 1982). Between 1982 and 1987, the twin aspects of policy, regional and industrial, were merged in one department, the Department of Regional Industrial Expansion (DRIE). Also established in 1981-82 was a new overall coordinating Ministry of State for Economic and Regional Development which reviewed the budgets and policies of some 17 federal economic departments.

With growing dissatisfaction over this warring within a single department, and because of the imperatives of a globalizing economy, the Mulroney Government again separated the roles. When the Department of Industry, Science and Technology (ISTC) was formed in 1987, it was given a mandate that to a greater extent than ever before was to be focussed upon international technology-based competitiveness. The government also announced that its new flagship department for the micro-economy was to phase down its use of grants and was to base its role much more on good analysis and knowledge. It was also to become, internally within the government, a reasoned advocate for industrial competitiveness, in short, a more aggressive

horizontal agency. ISTC and its predecessor departments had suffered a decline in influence as well, a fact reflected in its own brand of musical chairs changes in ministers, nine in a decade. But for most of the period being reviewed here, the industry departments did have money. Indeed, on a annual basis, it was probably the largest amount of discretionary funding available in Ottawa. In 1993, Industry Canada was formed by combining the former ISTC with large regulatory components from the former Department of Consumer and Corporate Affairs and the Department of Communications.

Aboriginal policy formation conveniently intersected with industrial policy budgeting in the early 1980s to produce the Native Economic Development Program (Canada, 1988). In the first instance, this was an example of DREE, under pressure from the Native Council of Canada (NCC), taking advantage of moments of budgetary opportunity similar to the previously mentioned Green Plan fund dynamics in Chapter 5. In the early 1980s, the equivalent dipping pool was $365 million obtained by DREE-DRIE from the Western Canada Development Fund. The Western Fund was a $2 billion fund that the Trudeau Liberals had carved out of the then expected lucractive energy revenues from the National Energy Program (Doern and Toner, 1984). Since the NEP revenues were largely coming from Western Canada, the intent of the Western Fund was to plow back some moneys into Western Canada.

While the NEDP was made possible by this budgetary windfall, it was also due to lobbying by DREE and by the NCC. The NCC in its joint meetings with a Liberal Cabinet Committee had been pressing for economic development programs for non status Indians and Metis for some time. Later, when the prospect of a program became more likely, DIAND applied pressure within the

Government to ensure that on-reserve Indians were also covered. This move by DIAND became the source of considerable resentment at the NCC because later evidence showed that non status aboriginal peoples obtained less than one quarter of the funds in a program which was initially thought of as being for non status Indians and Metis. The NEDP became a national rather than only a western program but it also became a DREE-DRIE- based program rather than one based in DIAND. It was also given a five year life or sunset clause. These features were partly due to mistrust of DIAND by non-status aboriginal groups and because the program was for all natives not just status Indians, but also because of the government's desire to keep the programs as "economic" incentives inside a solid economic department. Within the then existing Department of Regional and Industrial Expansion (DRIE) the NEDP joined two other grant and incentive-based programs, the Special Agricultural and Rural Development Act program and the Northern Development Agreements in effect in the three prairie provinces. These two smaller programs were not explicitly aboriginal programs but aboriginal peoples were major users of them (Canada, 1988).

When looked at from a DRIE perspective in the early to mid-1980s, the three programs fit not uneasily into the then dominant grant-based distributive culture of DRIE. They were simply a part of the network of programs but without an Assistant Deputy Minister designated for aboriginal matters (as was later instituted). During this period a network of aboriginal advisory committees and boards also grew up to advise on and administer the programs. The program was a part of the department but it was certainly not the main preoccupation of DRIE.

By the mid-1980s, several events and pressures conspired to produce a new successor program within DRIE. First, in DIAND, the Report of the Task Force on Indian Economic

Development (the Allan Report) became public in December 1985. The Allan Report had involved extensive comsultation with Indians. Its themes were centred on greater aboriginal control and self-sufficiency and on greater coordination among federal departments (Canada, 1989). Coming after the Nielsen Task Force had made similar observations about program duplication and overlap, the Allan Report struck a cord in other federal agencies such as DRIE.

But it was more specific pressures within DRIE that prompted a program change. First, as noted above, the then new ISTC was moving from its grants to knowledge role and was looking at all spending programs. Second, by 1985-86, it was clear that not much of the NEDP had in fact been spent. Moreover, it and the other smaller programs were all scheduled for their 1987 sunset clause and had to reviewed, extended or ended. Third, the Conservatives were on a budget-cutting hunt for programs to eliminate or scale down no matter where they were located.

Consequently, in July, 1987, Bernard Valcourt, the Minister of State for Small Business in the ISTC portfolio, began ISTC's own policy and program review (Canada, 1988). Valcourt was a minister who was supportive of aboriginal interests, in part because he knew personally many of the aboriginal persons who were on the board that ran the NEDP. The review was led by Lawrence Gladue, an experienced aboriginal business executive who designed the process of consultation and whose aboriginal consultation group held over 160 meetings with aboriginal groups across Canada (Canada, 1988).

A Task Force Review Group was also formed chaired by DRIE's then relatively new ADM of Native Economic Programs. It monitored Gladue's consultation group and offered guidance. This review group included representatives of the AFN, NCC, the Metis National Council, Inuit

Tapirisat of Canada, the Native Women's Association of Canada, the Prairie Treaty Nations Alliance and other federal departments such as DIAND and CEIC. The Task Force Review Group made five overall structural recommendations: that all ISTC prgrams for aboriginals should have the common goal of enhancing self-reliance, self-determination and Native control; that all such ISTC initiatives should be under one umbrella program; that the same programming should be available in all parts of Canada; that ISTC should make long-term commitments to Native programming; and that Income Tax Act provisions regarding the treatment of a contribution as income should not apply to funds provided to assist Native economic development (ISTC, 1988).

The ISTC review process eventually led to the establishment in 1989 of the Canadian Aboriginal Economic Development (CAED) Strategy (Canada, 1989). It was presented to Cabinet under the signatures of ISTC, DIAND and CEIC ministers. The final ISTC program configuration of CAED Strategy activity was based on very close agreement between aboriginal board members of the new program and ISTC, but other aboriginal groups had opted for more flexibility. For example, some groups wanted 100 percent federal contributions rather than having to put in any aborginal capital. But ISTC and the board insisted that there would have to be viable business plans submitted, backed up by real capital commitments with some room to negotiate these percentages up or down on a case by case basis.

The downside to the CAED program was that by the time it started in the 1990s, the amounts available on an annual basis were reduced by about 20 percent compared to the last year of the predecessor programs. There are other features of the CAED program, its component parts, and of the involvement of aboriginal peoples that warrant further comment and analysis. But before

proceeding any further, we need to examine the involvement of Human Resources Canada and its predecessor department, Employment and Immigration Canada in the formation of the CAED Strategy and in other employment matters affecting aboriginal peoples.

HUMAN RESOURCES CANADA AND ECONOMIC POLICY FORMATION

Human Resources Canada (HRC) and its predecessor department, Employment and Immigration Canada (EIC) is, in essence, a very large spending oriented labour market department. Like Industry Canada, HRC and EIC is preoccupied with its larger mandate rather than with aboriginal matters. While the HRC mandate includes a newly combined realm of social security, income support, unemployment insurance and training and employment, its role as EIC for most of the period covered in this brief account was on the latter two areas rather than the first two.

Accordingly, aboriginal matters had to struggle for attention against and within an evolving policy agenda in the 1980s in which policy and program battles centred on reforming unemployment insurance and shifting from a direct job creation emphasis to a training focus (Mahone, 1990; Economic Council of Canada, 1990). Moreover, the policy community and key interest groups largely centred around decade long, indeed much earlier, efforts to institutionalize workable and effective tripartite political relationships between business, labour and government (Adjusting to Win, 1989; Phidd and Doern, 1978). "Government" in this context meant provincial governments and their institutions as well, chief among which are community colleges through which most training is delivered. The politics of unemployment insurance also involved intense regional political concerns particularly in Atlantic Canada (Savoie, 1986).

Efforts in the 1980s by aboriginal organizations to get special attention paid to their employment and training needs began at the regional level in the early 1980s. This was particularly the case in British Columbia where some local bands pressed the district EIC offices to involve aboriginal peoples in a more "bottom-up" approach to job creation and training. About a dozen aboriginal district advisory boards were put in place to review projects in relation to available money. Thus, in some parts of EIC, but certainly not in its overall consciousness, recognition of aboriginal needs began to occur. A key feature of the EIC structure was that its regional offices were extremely powerful but very hard to change, given their preoccupation with the reliable, predictable delivery of large spending programs and counselling activities. British Columbia was the point of access but there were no equivalents elsewhere, save for the periodic employment of Native Employment Counsellors in some offices.

A second stage of slightly heightened awareness of aboriginal issues also occurred when EIC developed in the early 1980s an equity program approach. This was aimed largely at women, visible minorities, and the handicapped but it also supplied a political opportunity to make the case for aboriginal peoples' employment needs. It must be stressed, however, that aboriginal peoples in this instance did not refer to off-reserve Indians or to Metis peoples.

In the mid-1980s, in the wake of the Mulroney Conservative policy changes in labour market policy, aboriginal peoples found a policy opportunity characterized by mixed blessings. The positive side was that the Conservative's Canadian Jobs Strategy opened the door somewhat to a greater consideration of segmented parts of the job market, including those especially needing training (Prince and Rice, 1989). The difficult aspect was that the shift in emphasis was from direct

job creation to training as such.

The Canadian Jobs Strategy elicited a very critical response from many aboriginal organizations on three grounds. First, they raised the vital issue of "training for what?". With 25 to 50 percent unemployment rates, this was a compelling question. Second, training, if it led to jobs, would largely require aboriginal peoples to leave the reserve. Third, previous job creation funds that had reached aboriginal peoples had been used not only to employ aboriginal people directly but also to employ them in aboriginal organizations so that they helped in basic aboriginal institution and capacity-building. This purpose would decline under a new training orientation.

Aboriginal organizations basically said to the federal Minister of Employment and Immigration of the day, Barbara McDougall, "exempt us" from the Canadian Job Strategy provisions, or "fix it for us". At this stage the Minister was reluctant to do either, largely out of concern for establishing precedents for other groups as well.

The basic thrust of aboriginal concerns continued through to the late 1980s and crystallized this time around the Conservative Government's 1989 Labour Force Development Strategy (LFDS) (Mahon, 1990). By this time, the Minister was prepared to look more completely and consultatively at aboriginal issues. The main vehicle of policy development was the Aboriginal Employment and Training Working Group (AETWG). Composed of 19 aboriginal participants from both national and regional aboriginal organizations, AETWG reviewed not only the department's policies but also program and service delivery relationships with aboriginal peoples (Employment and Immigration Canada, 1991).

In the course of its work with departmental officials, AETWG and the government agreed to five principles for a new working policy and implementation partnership. These principles centre on:

- Consultation process and local control of decision making;
- Delivery mechanisms through Aboriginal infrastructures;
- Funding mechanisms and institutional development capacity;
- Employment equity both internally and externally to Employment and Immigration Canada; and
- Eligibility for programs and services based on more discretion than in the past (Employment and Immigration Canada, pp. 6-7).

Overall implementation and on-going consultation would centre on three management boards in parallel with the EIC structure: local management boards, regional boards, and a national management board with varied and appropriate policy, project approval, and advisory roles.

As we have seen above in the discussion of Industry Canada, Employment and Immigration Canada was also involved prior to, but in some respects overlapping with, the 1988-89 process that produced the Canadian Aboriginal Economic Development (CAED) Strategy. Many similar policy and implementation issues were involved in this process but, as we saw above, it was driven as much by considerations of budget-cutting and of responding to criticisms of the lack of interdepartmental coordination. While Employment and Immigration Canada was at the time a partner in the CAED Strategy, it regarded itself as somewhat removed from it, particularly since, by 1989, the AETWG and Pathways to Success process was its main preoccupation.

The implementation of Pathways began formally in 1990 and the three tier structure of management boards have been put in place. In 1992, The National Aboriginal Management Board approved the development of four initial pilot sites for a concept called the One Agreement Model. It is intended to enable HRC to enter into a single contribution agreement with an Aboriginal Training Corporation which would carry out a number of employment and training programs and services using the Canadian Jobs Strategy terms and conditions. This approach was seen as the potential next step towards futher devolution.

ECONOMIC POLICY PROGRAM DELIVERY

Space does not allow a full account of program delivery in both Industry Canada and Human Resources Canada. But it is important to have a more detailed sense of at least some elements of such service delivery processes. Accordingly, we look more closely at the Industry Canada activity now called Aboriginal Business Canada.

The Aboriginal Economic Programs sector of the former Industry, Science and Technology Canada had, from the mid 1980s until 1993, been headed by its own Assistant Deputy Minister. But following the major enlargement of industry policy activities that accompanied the 1993 creation of Industry Canada, it has been placed under the jurisdiction of the ADM for Service Industries and Small Businesses (SISB). SISB includes areas such as business services, tourism, environmental industries, and entrepreneurship and small business.

Recently renamed Aboriginal Business Canada, the branch consists of only 100 persons in Ottawa and in 9 regional offices. The core program it administers is the Aboriginal Business

Development Program and Joint Venture Program (ABDJVP). The program provides financial and development assistance to aboriginal entrepreneurs and communities to start up or expand commercial ventures (Industry, Science and Technology Canada, 1993). In 1993 almost 1300 projects were funded involving over $35 million in program money and over $97 million in other funds supplied by applicants or other sources of capital. The program is based on a recognition that only projects with strong potential to be commercially profitable will generate wealth and contribute to self-sufficiency for aboriginal peoples. With both service and financial components, the ABDJVP can support all phases of the business cycle. More particularly, it can support:

- business plans;
- project specific training;
- investment in buildings, equipment and start-up costs;
- marketing initiatives; technology adaptation;
- occasionally, operating costs; and
- post-investment business support.

Several program principles are applied to requests for support.

First, there must be a reasonable commercial return on investment. Second, there must be reasonable client equity invested in the project (always in excess of 10 percent and usually more than 20 percent). Third, clients must show managerial capacity in relation to the project size and complexity. Fourth, clients must demonstrate advanced planning and preparation; Fifth, there is no entitlement to program financing.

In addition, financing must be appropriately proportioned among client investment, commercial or other financing, and government assistance. Levels of assistance vary with the merits of each case but broadly involve: 30-40 percent of capital costs and infrastructure and costs of developing new products, services, etc; up to 75 percent of marketing activities; up to 75 percent of business plans, and up to 90 percent of developmental pilot project costs.

Recent studies show that aboriginal businesses assisted by the ABDJVP survive at rates equivalent to, or greater than, other businesses (Goss Gilroy Inc., 1994). Of 327 supported businesses, the majority were found to be profitable or reported only a small loss (less than 10 percent of revenue).

As we have seen, aboriginal economic and business development programs have involved a broad range of assistance over the years largely through joint federal-provincial programming, including: community development planning; training; infrastructure; and equity contributions for start-ups, acquisitions, expansions and modernizations (Auditor General of Canada, 1993). Initially, the focus was on job creation but gradually this gave way to the current focus on business formation as the core function.

Through its Aboriginal Business Canada branch, Industry Canada has responsibility for three of the eight components of the CAED Strategy: the Aboriginal Business Development, Joint Ventures, and Aboriginal Capital Corporations. It also shares responsibility for the Research and Advocacy Program with DIAND and EIC (now Human Resources Development Canada).

Originally, three Aborginal Economic Development Boards, made up predominantly of

Aboriginal business persons, were also central to the sector's service delivery environment. The boards provided direction to the Aboriginal Business Development Program and other programs and to overall aboriginal economic development policy. One of the boards operated for the provinces and territories west of the Ontario/Manitoba border and another operated for eastern Canada. A National Board continues to review the larger and more complex projects.

The Eastern and Western Boards had 15 members each and supplied advice on regional issues to the National Board and to the Minister. The two boards handled all cases with requests for assistance between $100,000 and $250,000 and oversaw the administration of the balance of cases below $100,000, therefore dealing with more than 90 percent of the case load. Cases under $100,000 are decided by the program's Regional Director but later reported to the regional board.

The National Board consists of 15 persons. It advises the Minister on overall policy and program operations. It also handles all investments over $250,000. Recently as part of the government's cost-cutting measures, the two regional boards have been eliminated.

The board structure is not in itself only a "small p" political structure. It exists to manage programs. But its members are also well plugged in with the various national aboriginal associations and local communities. Hence, board members are strongly supportive of efforts to ensure that decision making and control reside with Aboriginal peoples (Aboriginal CAEDS Assessment Project, 1994). Moreover, many have known the minister on a personal basis.

An obvious key element of the sector's political and managerial environment is the composition of the Aboriginal population and its business development aspects. Of key importance

for service delivery purposes are recent data on the business ownership characteristics of the adult Aboriginal population in Canada. A recent survey showed that 32,680 persons have owned or operated a business, 18,625 presently own or operate a business, and over 34,000 are considering going into business over the next two years (Goss Gilroy Inc, 1994). These data are similar in percentage terms to figures for the general non-aboriginal Canadian population.

As indicated above, a key objective of policy in recent years has been support for initiatives which encourage aboriginal self-reliance and which help break the dependency cycle. This objective extended to the use of "capacity building" efforts aimed at the creation and growth of aboriginally owned and controlled institutions. The three boards described above are a part of this effort as are the capital corporations and related measures to foster business support organizations.

It has become apparent also that more aboriginal businesses can readily be developed and encouraged but that existing staff resources within the branch and within Industry Canada will not permit adequate coverage in order to meet client demand.

A further change brought by the combination of the 1993 reorganization and the election of the Liberal Government is that, in addition to no longer having an ADM to head the program, Aboriginal Business Canada also no longer had a Minister of Small Businesses to give it some extra political impetus when needed. Moreover, because of increases in the level of delegation of spending decisions ($1 million at the discretion of the ADM of the Service Industries and Small Businesses sector and $500,000 at the Executive Director's discretion) there was very little contact with the Minister of Industry. This lessening contact was further reinforced by the fact that the size of the average contribution per project was going down as the number of funded projects went up.

At the time of the 1989 changes, consideration was given to turning the branch into a Special Operating Agency (SOA). In 1992 further internal debate occurred about the SOA option. After all, the program already had a structure of boards and a clearly identifiable clientele. The option was rejected on both occasions partly because such choices were seen as machinery of government issues and thus PCO and Treasury Board terrain and partly because some SOA's often had their own revenue sources, a characteristic Aboriginal Business Canada did not have.

Also woven into changing views of the service role were budget cuts across most of the CAED Strategy programs. Aboriginal Business Canada funding stood at about $70 million in 1989-90 but by 1994-95 was down by about $14 million in the crucial grants and contributions category. The pressure increasingly has been to hold on to the core of funding and to show good results and solid client support. The current Deputy Minister of Industry, Harry Swain, had come to the department from a four year tenure as Deputy Minister of Indian Affairs and Northern Development and thus was a supporter of Aboriginal business development funding. On the other hand, the mandate of the rest of the Industry Canada operations was clearly moving away from the use of grants and incentives for industry to a focus on a knowledge role.

Thus the convergence of these forces, combined with the knowledge that there was a large aboriginal business community that had yet to be tapped, resulted in more focussed attention being placed on just what the core service was and should be.

Before 1989, incentive program eligibility was often judged by hiring accountants to assess the business proposal, who applied eligibility rules and said yes or no. It was a very procedural kind of program delivery. After 1989 the effort was to make the role of program's own staff more

proactive, an effort that has still not easily broken the shackles of the procedural approach.

The core service is in one sense that of providing financial assistance of varying kinds to various kinds of business acting or progressing at various stages of the business planning cycle. In the past few years the effort has been to get program officers to be educators, counsellors and catalysts rather than rote spenders. The intention has been to have less of an emphasis on "the project" and more on the "business as a whole", on fostering business culture and on results. In effect, this is the Aboriginal Business Canada's own effort to move from a grants to a knowledge role like the rest of Industry Canada.

But clearly this is more easily said than done and its future prospects depend greatly upon three aspects of service delivery and client relations. The first is simply to appreciate the two main modes of delivery. One is direct by the program's own staff and regional offices. And the other is through External Delivery Organizations (XDOs). In both cases clients apply for assistance according to the same rules and overall processes. And in both cases there is overall guidance by the Aboriginal board that advise on and guide the program as a whole.

The XDO approach began in 1992 with 6 pilot organizations, expanded quickly to as many as 23 and then dropped back to 19.[xi] The intent of the initiative was to find a further service delivery mechanism that would reach prospective applicants not easily or readily reached by existing offices. Thus impoved client access and service were central motivations. So also was the goal of "capacity building" in the host Aboriginal organization. At present, the extent to which each region of Canada is serviced by direct versus XDO mechanisms varies greatly. Ontario is about half and half whereas other regions are typically 20 percent XDOs and 80 percent program staff.

A recent review of the XDO experience concluded with a mixed verdict. Performance across the offices was similar. They had a good record of hiring Aboriginal persons (19 of 26 positions) but there was little evidence of the larger goals of enhancing capacity building. There was also concern in the climate of budget cuts that the XDO costs (about $125,000 per organization) were actually taking sizeable sums away from direct program dollars. Current pressures therefore suggest that direct delivery may be cheaper and that continuing XDO arrangements should focus on truly remote and hard to reach areas of service.

The second aspect of its service role and ethos, though hardly disconnected from the discussion above, is what the aboriginal clients and aboriginal communities think of the service. A recently published community assessment of the overall CAED Strategy (including its Industry Canada components) shows both positive and negative views of service (Aboriginal CAEDS Assessment Project, 1994). Survey questionnaires for the study were directed at three target groups: users of CAED Strategy services; community leaders and members; and institutions. With respect to Industry Canada (Aboriginal Business Canada) the following conclusions were reached:

- There is low awareness of specific (CAED Strategy) programs among general community members;
- Service users are "generally satisfied" with Industry Canada's Aboriginal Capital Corporations Program and are "slightly less satisfied" with the Aboriginal Business Development Program.
- Aboriginal institutions that have been involved with Industry Canada"are not highly satisfied" with the services received, especially "with respect to follow-up".

- The turnaround time from project submission to approval (and funding) is criticized by users, especially of the Aboriginal Business Development program. Of 50 respondents on the latter, 47 said it took more than 6 months (Aboriginal CAEDS Assessment Project, 1994, pp 7-8).

The thrust of the community assessment report was that more decentralized delegation and decision making controlled by Aboriginal peoples was essential for better service.

Faced with the inexorable tug of hierarchy and the pull of clientele, Aboriginal Business Canada has sought a better way to proceed. An internal review process, mediated by a management consultant firm, concluded in a report that the existing reality of the program was that it was "process oriented" and that its desired future vision is that it should be "client-driven and results-focussed" (Young and Wiltshire, 1994, p.2). The summary report on the new needs said that the key was "empowered employees" but without management "abdicating its accountabilities" (Young And Wiltshire, 1994, p. 4).

Program management is aware of the need for this shift in orientation but is also conscious of other realities. The transformation of case officers from processors of projects to advisers and catalysts of "whole businesses" requires a major commitment to staff training and hence to considerable funding commitments. Turnaround times can be improved but this is not just a function of staff and process. It is the client user that is also a co-deliverer of the service. Delays can as readily occur from failures by the client to do what is required (such as filling in the wrong information). Moreover, a devotion to a "whole firm" approach could in fact take more time but be a better overall service. One could also make the case that the clientele the program should pay the

most attention to is the 66 percent of applicants that do not succeed in applications. Little is known about their characteristics or needs although a study of this group is currently underway.

The aboriginal community assessment shows also that there are indeed differences between clients as users and clients as stakeholders or interest groups. In the case of aboriginal programs there is the even larger political reality, as Chapters 1 and 2 showed, of the "clientele" seeing itself profoundly as nations and peoples rather than as mere interest groups. Meanwhile, Aboriginal Business Canada must seek to plan its operations knowing that the ultimate shoe may drop, namely the handing over of all Aboriginal programming to Aboriginal self-government institutions.

CONCLUSIONS

This chapter has allowed a brief but more concerted look at aboriginal economic policy processes within the federal government. Unlike the previous social policy chapter, we have also been able to look briefly at implementation and service delivery issues as well, especially regarding Industry Canada. The two departments examined, Industry Canada and Human Resources Canada (and their predecessor departments), have demonstrated patterns of slow sensitivity to aboriginal needs in job creation, business formation, and training that parallel those seen in Chapter 5 regarding social policy.

First, in the early 1980s, there was very limited recognition of aboriginal matters in the consciousness of the departments. Programs for aboriginal peoples existed, especially in the Industry portfolio, but the department's political and policy agenda was almost invariably focused elsewhere. Second, greater recognition of aboriginal concerns arose in the mid to late 1980s. This

was partly in response to persistent pressure by aboriginal organizations and has resulted in a much more devolved set of mechanisms for program delivery. But some of the positive recognition factors were muted by substantive policy shifts in each program area which made only partial sense to aboriginal peoples even while creating an opening for them to make their case. Thus, as we have seen, the shift from a job creation policy focus to a training focus allowed greater consideration of aboriginal peoples as a special labour market segment, but at the same time, the focus on training led to serious problems in that the "training for what?" question was not easily answered.

A final caveat is essential with respect to the classic puzzle inherent in the last two chapters. The issue of what is to be included in "economic" versus "social" policy categories and arenas is always somewhat arbitrary and problematic. The discussion of the fisheries and of environmental policy in Chapter 5 could as readily be seen as being economic in nature. The tendency in aboriginal political circles is to see the economic and social realms as a seemless web. This is probably also true in the larger political debate in Canada but for aboriginal peoples, it hits closer to home because they have always had to find their way through the federal government's often artifical departmental and institutional policy boxes.

Chapter 7

CONCLUSIONS

Conclusions about the nature and evolution of the federal aboriginal policy process since 1980 are simultaneously obvious and subtle. An overall concluding assessment must deal with three logical steps in thinking about the last 15 years of turmoil and change. First, the chapter summarizes the basic empirical findings about how the policy process works and how it has changed. Second, it discusses more explicitly the major criteria that can be brought to bear in assessing the adequacy of the changes observed. And finally I offer explanations as to why I characterize the last 15 years as the politics of slow progress in aboriginal policy formation and in how aboriginal governance has been affected.

KEY REALITIES AND CHANGES IN THE ABORIGINAL POLICY PROCESS

The first overall reality flows from the inherent existence of the three policy making arenas portrayed in the analysis as whole. This reality is simply that there is no single aboriginal policy process at the federal level and that each of the macro, micro and middle realms has contained both opportunities and pitfalls for Canada's aboriginal peoples. Chapters 1 and 2 showed broadly that in the macro realm, aboriginal policy emerged in intended and unintended ways through shifting Prime Ministerial and Cabinet priorities and structural changes, the often ad-hoc dynamics of the

spending, tax and regulatory processes, the realities of project-based policy dynamics, and crises. Even in the micro policy realm portrayed in Chapters 3 and 4, there is no single arena for obtaining policy satisfaction. This is in part because DIAND itself must manage at least three hierarchically-ranked mandates, namely its Indian, its northern, and its broader and much vaguer aboriginal departmental mandates. Chapter 4 also showed that policy dynamics were always congested by the fact that attention shifted among initiatives such as self-government, land claims policy, and Indian Act alternatives, and all three in turn did a continuous tactical dance with the even larger politics surrounding the constitutional preferences of the main national aboriginal organizations and leaders. And looming over all of the above was the Indian Act, a statutory legacy that no one wants but which no one could find an agreed way of replacing. Chapter 3 also showed that not only was there considerable turnover among DIAND ministers but also widely varying degrees of interest, commitment and inherent political skill among ministers. These varying capacities related both to dealing with aboriginal organizations and the central agencies of the federal policy system.

Chapter 5 and 6 portrayed an even more complex policy arena and indeed dealt with only nine of the 12 federal departments other than DIAND that deal with aboriginal issues. Whether dealing with aboriginal funding through health programs and regulations through fisheries policy or with changing business development and employment strategies, this middle level policy arena has a slippery nature to it for aboriginal peoples. On the one hand, it has been a source of policy gains and support. But on the other hand, it is often the source of sudden demise and the closing of doors as each department involved obeys the dictates of its own policy communities and its own instincts for survival.

Cutting across all of the separate policy field arenas, social and economic, is the inherent complexity caused by the very different histories and perceptions of each of the main aboriginal peoples now recognized in the Constitution. Thus status Indians, non status Indians, Metis, and Inuit each have had different inherent relationships with the federal government that ranged from draconian control under the Indian Act, to honoured and dishonoured treaty-based relationships, and from scrip to a full disavowel of responsibility or recognition. To these aspects of very long histories, there was added, especially since the early 1980s, the additional parameters of the role of women, youth and urban aboriginal peoples.

A second reality of the federal aboriginal policy process, is that it is characterized by an intense form of rights-oriented constitutionally-focussed politics. As emphasized from the outset, and as shown concretely in Chapter 2, the main national aboriginal organizations see themselves as engaged in nation-to-nation negotiations with Canada over the recognition of rights. The use of the courts and the emphasis placed on key court decisions is a further manifestation of constitutional politics. The main national organizations, the AFN, CAP, NWAC, MNC, and ITC, all stress that they are not interest groups. This does not mean that some traditional interest group lobbying is not a feature of their activity. Rather it means that policy discourse is primarily, from the perspective of these groups, in the language of rights and governance, rather than in the language of conventional policy fields. This means fundamentally that to a great extent the federal government, despite its greater use of rights-oriented discourse, and national aboriginal organizations, are not even playing the same game. Aboriginal organizations tend to demand in the name of rights and federal policy makers tend to respond in the name of programmatic policies and cautious experimentation with alternative governing mechanisms and alternatives, most of which are closer to municipal-style

government than nation-to-nation arrangements.

A third compelling feature of the federal aboriginal policy process is that aboriginal peoples themselves have had to build and coordinate a complex national organizational structure which, much like the country as a whole, often has difficulty obtaining consensus over either ends or means. The main national organizations are often united on issues such as constitutional recognition, but they each also have distinct interests and different points of access to the federal aboriginal policy process. Moreover, the national organizations sit astride, but do not control, a quite elaborate structure of governance that includes individual First Nations communities, bands, provincial and regional groups, and sectoral or policy field groups such as those involved in forestry or health. The main national organizations are extremely dependent upon the state for funding their activities and exhibit widely varying abilities in carrying out what federal politicians and their officials regard as credible policy analysis. Despite all these difficult growing pains, the aboriginal national organizations have undoubtedly come a long way in the last decade both in the cohesion of their approaches on some key matters and their skill in pressuring the federal government.

A fourth conclusion from the analysis is that in their basic relationships with each other, both aboriginal peoples and federal policy makers now employ a much more consultative approach to policy formation and the management of some programs than was the case in the 1960s and 1970s. This has been evident in many of the governance and sectoral policy issues examined in previous chapters including the community self-government process, the Indian Act Alternatives process, aboriginal business development and employment policy and the health program transfer initiative. Administrative devolution has also demonstrated this tendency. The genuineness of

consultation and the efficacy of policy in various consultative fora are of course subject to intense dispute but there can be little doubt that there is much more constructive consultation than there used to be.

There are always genuine difficulties in measuring how much new policy process values towards aboriginal peoples are being genuinely "internalized" within the political and bureaucratic levels of the Government of Canada. My impression is that there is much greater sensitivity than in earlier decades and that aboriginal issues are seen far more than before as a Government of Canada-wide issue rather than a "leave it to DIAND" issue. But the counterweight to the above positive feature is that this improved internalization of attitudes is occurring precisely at the time when there are severe expenditure and budgetary shortages and hence a greatly lessened ability to respond concretely with real resources.

CONTENDING CRITERIA FOR ASSESSING THE ADEQUACY OF CHANGE

While the forgoing changes and realities are extremely important, they beg the larger question of what criteria to apply to assess the adequacy of the changes observed. Essentially, there are five criteria that compete for attention, but not all of which we can comment on definitively. These criteria are the adequacy of change compared to: the processes and practices of other countries; the processes and outcomes of other policy fields (a pluralist test); the situation in the early 1980s compared to now; the historic sense of rights denied; and the greater "degree of difficulty" test inherent in rights-oriented versus interest group politics and policy processes.

The comparative test is in one sense the easiest to deal with. This is simply because in this

study no comparative study of Canada with other countries' aboriginal policy processes has been attempted. While Canada's aboriginal peoples are often extremely critical of the federal government in international arenas, it is probably the case that Canada's approaches in recent years compare quite favourably, albeit with all countries lodged in the "slow progress" part of the continuum of change.

The pluralist criterion basically means that aboriginal peoples are treated as one of many dozens of interest groups competing for scarce resources and political attention in a Canadian political system dominated by such special interests. By this criterion aboriginal organizations may have done "better" in recent years than many other interest groups such as the urban poor in general, or unemployed Atlantic fishermen. Or, for example, it can be said that over the past twenty years, environmental interest groups and their policy cause, did well in the early 1970s, fared badly from the mid-1970s until the later 1980s, and then enjoyed a resurgence from 1988 until about 1992 (Doern and Conway, 1995). Thus, various trajectories of influence or policy success, "up and down", "mainly down", or "mainly up", could be constructed for many interest groups over the past ten to fifteen years, including some who cast their politics as rights-oriented politics. The problem with such assessments obviously centres on such questions as "what does doing "better" or "worse" actually mean?" and "how precisely is it measured or thought about?". It would fly in the face of the facts to argue that aboriginal peoples or aboriginal organizations have gotten most of the what there is to get out of federal policies. But equally, there would certainly be some interest groups in other policy fields which would argue that they are not faring well either and that it is about time that attention was paid to them.

Once again, this study cannot claim to have made such a head-to-head pluralist comparison. The clearest criterion applied in this study is the third in our list, namely a broad comparison with the early 1980s but confined within some general notion of an aboriginal policy field. As already indicated above, I conclude that there has been progress in the federal aboriginal policy process in the sense of better consultation, greater internalization of concern, and a better Government of Canada-wide perspective. But progress has also been very slow and uneven, as we see further below.

It is for very good and understandable reasons that national aboriginal organizations are largely unwilling to apply any of the above criteria as their litmus test of policy progress. Indeed, they are often angered by even the attempted application of such criteria. Major aboriginal organizations apply a test which begins with a deep and legitimate sense of historic grievance and which characterizes the only relevant criteria as "rights" and justice. Many aboriginal organizations attest to some improvement in recent years but such progress is seen as limited when set against past and continuing injustice and when set against absolute need among aboriginal peoples. These differences were shown in the study not only in obvious areas such as in preferences for playing the constitutional card but also in how budgetary statistics were viewed. Aboriginal organizations saw increased resource commitments as being evidence of reduced support because real program service levels were not improving relative to growing, not steady-state, need. DIAND and the federal government believe they have done well because aboriginal program spending went up more than all or most other program spending, or suffered fewer cuts.

It is because of the clash between rights-oriented and pluralist criteria that the fifth criterion

of evaluation is necessary to mention. This suggests that one needs to factor in a "degree of difficulty" criterion. The positive attribute of this test suggests that both governments and aboriginal peoples deserve some sympathy and empathy over the inherent difficulty of the task at hand. The negative attribute of this test is that it suggests that no one can meet this test or that there are some permanent irresolvable differences that simply cannot be accomodated when rights-oriented politics meets pluralist politics, especially when resources are more and more scarce.

THE POLITICS OF SLOW PROGRESS AND ABORIGINAL GOVERNANCE

This study has been primarily about the federal aboriginal policy process rather than a systemic look at aboriginal policy outcomes and impacts. Thus, when I use the phrase "slow progress" to characterize the last decade, I am referring mainly to progress in the policy process. But we must also be clearer about why progress is slow, indeed often painfully slow. At least four factors account for this.

One factor undoubtedly still is the existence of both racism and ignorance in the Canadian population about aboriginal peoples. This deadly combination has been reduced in recent years but it is far from absent in the total body politic. Aboriginal organizations also acknowledge that ignorance and some racism also exist among aboriginal peoples about each other.

A second factor causing slow reactions is pluralism itself in all its institutional manifestations. As stressed above, the simple reality is that more and more interest groups are chasing fewer and fewer public resources and limited political attention spans. This is also reflected in, and reinforced by, the very structure of the state and its bureaucracies. Many interest groups

know that the Ottawa policy system is not a system at all. It is not an "it". It is a multi-institutional "them" that only occasionally speaks as a single purposeful political actor.

A third potential reason for slow progress presents a paradox in aboriginal matters. It could be said that broadly the 1980s and early 1990s, characterized basically by neo-Conservative pro-market policies, have simply not been conducive to supporting any peoples that are disadvantaged in society, aboriginal or others. I think this has been the case, and therefore in large measure also contributes to the slow grind of the aboriginal policy process. The paradox arises, however, from the fact that aboriginal issues have probably received more serious attention in the Mulroney era than in any other period. Previous chapters suggest three overall reasons for this. First, the pressure of national aboriginal organizations has been intensified. Second, parts of the Mulroney Government were concerned. And third, the mere fact that improved "big ticket" social policy could not be practiced given ideological preferences and budgetary constraints in the Conservative Government, meant that selective "small scale social policy" could. Thus, some spending could be increased provided that the totals were not large.

The final reason for the slowness of progress rests with divisions among aboriginal organizations and peoples themselves. While undoubtedly to some extent the federal government played a divide and conquer strategy among the main aboriginal peoples and organizations, the divisions among these organizations and peoples were genuine and had real impacts on their strategy and on the processes and relationships among and within aboriginal organizations. Any set of peoples will have divisions in their material interest and in what priorities and strategies to pursue and practice. Aboriginal organizations are therefore not alone in having to deal with this

condition. But their divisions are exacerbated by the dispersed nature of the aboriginal population in Canada's provinces and territories and by their national organizations' financial dependence on the state.

The intense politics and politicization of the last fifteen years has undoubtedly changed the nature of aboriginal governance. Aboriginal groups and associations have vastly increased their experience and capacities and their own often difficult learning curves in a number of realms including: the direct management of programs; the conduct of policy analysis; the use of the courts; the detailed aspects of the Indian Act; differing philosophies of self-government; and the nature of democratic representation.

With respect to the representation of women, youth and urban aboriginal peoples, the analysis suggests several conclusions. First, in the federal policy system as a whole, only women's issues appear to have achieved some formal institutional recognition. While this has had some program affects at the margin (Bill C-31 being a major exception), it can certainly not be said that federal aboriginal policy makers see NWAC as a major player. The AFN and the CAP are seen as the main organizations and are in general seen as representing all aboriginal peoples within their membership regardless of gender. The MNC has greatly enhanced its profile but still has difficulty finding appropriate avenues of access and power.

NWAC has raised important issues and certainly has generated a challenge to male dominated governing regimes within aboriginal communities and national organizations. NWAC and other gender organizations in the aboriginal policy process are probably indirectly the main conduit for defacto policy concerns about youth and family issues though other organizations

express them as well. During the course of the study distinct issues of youth representation or youth policy were rarely if ever directly raised or recognizable in the overall federal aboriginal policy process. Youth are of course implicitly central to all aboriginal concerns about education, justice and police policy, and the general fate of future generations of aboriginal peoples. But aboriginal youth are not central to the formal structure of national organizations and representation.

The issue of urban aboriginal peoples is similarly a derived issue of governance when seen from the perspective of national aboriginal organizations as a whole and from the perspective of aboriginal policy makers within the federal government. The residual nature of urban representation is partly a function of the fact that urban aboriginal peoples have no accepted land base as the core of their political structure. But they are increasingly numerous and thus represent a potential threat to organziations that are more rural or regional-hinterland based.

The CAP and MNC have significant urban interests to promote and accommodate but have been reluctant to see them become the basis for independent representation. The federal government's Interlocutor could be seen in some limited way to be a vehicle for urban aboriginal peoples since it was seen as a vehicle for all off-reserve and Metis. But given the general failure of the Interlocutor role, this could hardly be seen as an urban breakthrough into the federal aboriginal policy process.

In general it must be said that women, youth and urban aboriginal people are not at the apex of the federal aboriginal policy process although women have a greater presence than they had prior to the 1980s. National aboriginal organizations are extremely conscious of the fact that dividing the formal basis of their representation into too many sub-constituencies may only weaken the base of

their political capacity to deal with Canada on a nation-to -nation basis.

In summary, the achievement of slow progress seems to be the most accurate overall conclusion to reach about the federal aboriginal policy process since the early 1980s and about the evolving nature of aboriginal governance. Whether this is seen as a glass one third-filled or two-thirds empty depends very much on the eye of the beholder and on which of the criteria one is emphasizing in the intense realities and difficulties of rights-oriented versus pluralist federal aboriginal policy making.

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NOTES

i. See Office of the Prime Minister, "Notes For An Address to the House of Commons by Prime Minister Brian Mulroney On the House Resolution With Respect to Oka". Ottawa, September 25, 1990.

ii. See DIAND, Information Sheet No. 33, "The Native Agenda", Ottawa, March, 1991.

iii. Ibid., p. 1.

iv. See Canada, Department of Indian Affairs and Northern Development, Estimates, 1993-94, Part III (Ottawa: Minister of Supply and Services, 1993), pp. 1-2.

v. Ottawa Citizen, November 2, 1994, p. A3.

vi. Ibid., p. A3.

vii. See Geoffrey York, "Self-rule Progress Feeble", Globe and Mail, March 29th, 1994, pp. A1 and A2.

viii. Ibid., p. A2.

ix. See Indian Affairs and Northern Affairs Canada, Information Sheet No. 56, May 1993. Indian Act Alternatives.

x. See Len Sawatsky, "Self-Determination and the Criminal Justice System", in Diane Engelstad and John Bird, eds., Nation to Nation (Concord: Anansi, 1992), pp. 92-93.

xi. Data and discussion on XDOs is based on interviews with AEP staff.