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regional government

Western Constitutional Forum
Legislative Assembly Special Committee on Constitutional Development

REGIONAL GOVERNMENT

PART I: REGIONAL GOVERNMENT IN THE WESTERN NORTHWEST TERRITORIES
A DISCUSSION PAPER

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May, 1983

PART II: REGIONAL GOVERNMENTS: A SELECTIVE REVIEW

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&
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Committee on Constitutional
Development

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A B S T R A C T

The following is a brief summary of the questions and issues raised and discussed in the body of the paper.

1. INTRODUCTION

Regionalism is not new to the Northwest Territories. Indeed, for administrative purposes, the North has been divided into regional districts since long before the Territorial Government moved from Ottawa to Yellowknife. What is new, however, is the movement to establish democratic structures with some decision-making powers at the regional level. The concept of regional government has elicited at least moderate support from communities, native organizations and the Government of the Northwest Territories, although not necessarily for the same reasons. To date, one regional council has been recognized by law and at least three others expect legislation in the fall of 1983. It is time that the potential of regional government be examined within the context of division of the N.W.T. in particular, and northern political and constitutional government in general.

For the sake of clarity, a regional council is generally perceived to have less authority than a regional government although the terms tend to be used somewhat interchangeably.

2. FACTORS WHICH HAVE ENCOURAGED THE REGIONAL COUNCIL/GOVERNMENT CONCEPT

Many communities are particularly interested in these structures primarily because they continue to want more control over their affairs and they see regional government as a means to accomplish this end. Less positively perhaps, communities may also be wishing to withdraw from the complexity of Territorial politics and may be perceiving regional governments as a way to reduce the

need for Territorial structures. Is this realistic?

The Government of the Northwest Territories supports regional councils because they fit in with the process of devolution. The policy of devolution encourages the transfer of as much responsibility and authority as possible to the communities. However, consultation with regional groups is easier than with every community, and regional administration is likely cheaper than devolution to each settlement. Might this eventually result in more administrative efficiency but less community involvement in decision-making?

Native organizations support regional councils as long as they are not a substitute for more fundamental political change. Regional councils on their own do not guarantee protection of aboriginal interests in government decision-making. At the same time regional formations could reflect natural divisions between communities and do provide for the development of structures and experience for post-land claims settlement institutions.

3. CRITERIA USED TO DEFINE A REGION

Proposed regional councils emphasize racial, cultural and linguistic groupings more than do present administrative structures which focus more on transportation and communication. As well, the impact of mega-projects creates "regions" of communities with common interests in response to the project. What criteria should be used for regions? What regions do communities feel part of? This may not be clear in all cases. Can a community remain outside of a region if it doesn't feel it fits? Also, do large tax-based towns and cities remain outside of regions? Could they form a "region" on their own?

4. MODELS OF REGIONAL GOVERNMENTS AND COUNCILS IN THE NORTHWEST TERRITORIES

The characteristics of various models are noted: Baffin Regional Council; Keewatin Regional Council; Kitikmeot Regional Council; Deh-Cho Regional Council; Dogrib Tribal Council; and, Western Arctic Regional Municipality (WARM).

5. CRITICAL QUESTIONS AND ISSUES RELATING TO REGIONAL COUNCILS AND GOVERNMENTS

The critical issues listed below ought to be evaluated in relation to two basic principles:

a) The purpose of regional formations is to enhance the power of the communities.
b) The evolution of regional formations must proceed primarily at the initiative of the communities.

And a cautionary note:

- Regional councils/governments are not necessarily a good thing. Regional governments will not necessarily solve all the problems people feel they have with government in the North. They may in fact be another level of frustration.

In light of the above, the following questions are discussed:

1) <u>Will communities gain or lose power through the establishment of regional councils/governments</u>?

The power of regional councils may be at the expense of communities; communities may actually be less involved and less consulted on matters of local concern with regional governments than without. At the same time, communities organizing together can develop shared analyses and strategies and be more effective in pressuring government and industry. An important factor in

the early stages at least is whether regional councils form as a result of powers first being vested in the communities, with communities then agreeing to work together, rather than power being devolved directly from the territorial to the regional level.

2) What relation will regional councils/governments have to land claims settlements?

There must be coordination by both government and native organizations to ensure regional formations enhance institutions and structures evolving from the land claims process.

3) What relation will regional governments have to Development Impact Zone (DIZ) groups?

Could DIZ groups and regional councils be combined in a specific region? Councils were often established because of land use concerns. What would be the effect of their not being responsible in this area?

4) What legislative authority might regional governments have?

Regional governments could have whatever power higher levels of government are willing to give. Is there a danger of weakening the central government if regional governments are given exclusive powers in some areas? Are there specific areas where the higher level of government should not have the power to disallow regional legislation? Generally, in the Canadian tradition, governments below the provincial level do not have their powers constitutionally entrenched. However, are there valid reasons for entrenchment in the North?

5) What fiscal and budgetary powers might regional governments have?

Should regional governments have the power to levy taxes and raise their own revenues? Is this not a necessary part of becoming responsible, meaningful levels of government? However, what mechanisms would exist to share wealth between regions, and between the region and the central government? Would there

be "have" and "have not" regions? Might wealthy regions overpower and neutralize the central government?

6) How should regional governments be chosen?

Regional governments composed of members of community bodies (eg. band chiefs, president of Metis locals, mayors) will emphasize the authority of the community levels to which they are responsible. Regional governments whose members are elected at large will tend to vest more power in regional levels directly, as they are not responsible through any specific community structure.

7) To what extent should language, culture, tribe and race be criteria for regional boundaries?

Historically, the colonization of the North has been defined racially, that is, powerful whites coming North to benefit from its resources and, in the process, to modernize so-called primitive stone-aged cultures. Native movements are now demanding the right to cultural pride and security. How can native culture, languages and collective identity be protected and strengthened, and native people regain their pride without the negative consequences of racism and tribalism? What is the risk of regions, defined on a tribal basis, contributing to a parochialism and fragmentation of native cultures, particularly if these regions are economically unequal? Regions should not be assumed to follow tribal lines without further, serious consideration.

8) How might regional government relate to each other?

Will the N.W.T. Association of Municipalities be the structure for regional councils, or their executives, to get together? Is there another, more appropriate forum?

9) Can regional governments remain dynamic and flexible?

Regional levels must remain flexible and evolutionary to respond to changing northern conditions. As northerners feel

less alienated from government, the need for regional structures may even decrease.

10) How can regional governments deal with the complexity of contemporary issues and still remain a "government of the people"?

Because of the complexity of northern political reality, there will be pressures for a small group of leaders and staff to control regional governments. This would defeat the purpose of regional governments. How can regional governments be effective and yet remain flexible and accessible to the people they serve?

1. INTRODUCTION

At the time of Confederation, the largest area of the country ultimately to become Canada was known simply as the Northwest Territories. Since that time, as European civilization has spread throughout the area, regions have been drawn on the map, demarcated as provinces each with their own arrangement for a provincial level of government. What remains now as the Northwest Territories is, of course, simply the area north of 60 , east of the Yukon Territory.

Within the present Northwest Territories, it is generally agreed that it is now time for a more democratic form of government to evolve. Present forms are understood as transitional. They are expected to change, to become more responsible, more reflective of and more responsive to northern peoples.

It is in this context of general evolution of northern government, that regional governments are proposed. Indeed, for administrative purposes, the North has been divided into regional districts since long before the Territorial Government moved from Ottawa to Yellowknife. However, regional democratic structures, representative of the communities, are a recent phenomenon. In the late sixties, native organizations began to organize within cultural and regional groups. At the same time, as a part of the Local Government Development Program for establishing settlement councils, the Territorial Government sponsored regional meetings for representatives of the new councils. Irregularly, and with varying degrees of government control, these groups met and began to define their common interests as residents of a particular region of the NWT. The government response to these gatherings was ambivalent. Lower level government officials were sometimes chided by their superiors for failing to keep the meetings on the topics of municipal services. The Territorial Government did not welcome the constant regional concern about

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land use as the Territorial Government had no authority in this area.

Over time, however, the Territorial Government has become generally supportive and the regional meetings have resulted in demands for more organized, regularized structures for regional councils. The Baffin Regional Council, with support from the Regional Territorial Government Offices involved, was the first Regional Council to be recognized by an Ordinance of the Legislative Assembly, November 1980. It is expected that legislation formalizing several other regional councils will be introduced in the near future. At the same time, the proposed division of the Northwest Territories and the attention being given to constitutional development, emphasizes the need for further planning of the evolving structure of government. It is therefore an appropriate time to be examining the concept of regional councils and regional governments in the Western Northwest Territories.

2. FACTORS WHICH HAVE ENCOURAGED THE REGIONAL COUNCIL/GOVERNMENT CONCEPT

At the present time, the concept of regional council/government is drawing considerable interest. Proposals exist for various types of regional structures to become part of the northern government process. While the distinction between regional councils and regional governments is not exact, generally regional governments refer to bodies with greater authority, perhaps legislative and fiscal authority, than councils. Regional councils tend to have less authority vested in themselves and serve rather as a coalition of representatives from community bodies. Rather than two discrete options, regional governments and regional councils might best be understood to be on a continuum. At one extreme would be a loose "association" or council of community leaders who get together for no other

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purpose than to discuss common problems, share understandings, perhaps make recommendations to a higher level of government and then return to their communities for any implementation solely through their respective community bodies. At this extreme, the regional level would have no powers or authority of its own.

At the other end of the continuum would be a regional government which had wide-ranging legislative and fiscal powers. Such a government might have near provincial-type powers, or conceivably some powers not presently vested in the provinces. It would not have full provincial powers, however, because it would then be a provincial, not regional government. A regional government is understood to be a structure existing between the municipal and the territorial or provincial level of government. In the discussion following, the terms regional council and regional government will both be used. The exact nature and powers of regional formations is still evolving and it is not yet clear which term is more appropriate.

At the present time, interest in regional councils and governments is increasing. Why? What are the underlying conditions leading to this interest?

Certainly, the general milieu of political change in the North contributes to a re-examination and evaluation of present government structures. The time is ripe to consider new innovations and changes. Stronger regional and cultural identities are emerging from the land claims process and the work of native organizations. Resource development projects impact regionally, underlining the common interests among affected communities. Consequently, communities, native organizations, and the Government of the Northwest Territories are each discussing the evolution of regional government. Each has its own interests in such proposals, as we shall examine.

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a) Communities

It is pretty clear that what the communities want is more control. As is now well acknowledged, the colonial history of the North meant that northerners, particularly native northerners had little say over issues affecting their lands and their society. Communities want to change that reality. Organizing together with other communities is a logical way to hope to gain more control over land use, resource and economic development, renewable resource management and education. They also appear to want more influence generally over the administration of government services in the communities, including allocation of capital items and housing. Communities are also using regional councils as a means to influence business and industry, particularly transportation, communication and resource development proposals in the region. At a minimum, communities want to be consulted and involved.

To this end, government, business, and native organizations have encouraged a variety of committees, boards, societies and organizations. Many have regional networks. Education societies, hunter and trapper committees, housing associations, alcohol and drug committees as well as municipal councils are well established. From the community perspective, part of the role of a regional council is to coordinate these regional organizations. The proliferation of such bodies, each intending to involve the community in some way can in fact dissipate rather than increase the community's overall control of its affairs. Jurisdictional disputes and conflicts can arise. An umbrella regional council can coordinate the various regional bodies to a common end, thus maximizing cooperation and efficiency within each community.

For communities then, regional government would be a means to increase control at the community level. Whether by direct control, pressure and lobby, or through a coordinating role.

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While the desire for community control is generally understood by all concerned to be a good thing, in the context of regional government it does raise some questions. For instance, recognizing the colonial history of the North and the recent and sudden wave of social, political and economic change, it is not difficult to understand why northerners want to get more control over their own situation. However, are regional councils and regional governments in fact able to produce the degree of control desired and expected? Regional councils cannot reduce the intensity and complexity of forces impacting on the North. Are the communities realistic in their expectations of regional structures? What is the risk of their being disappointed and further alienated if regional structures do not in fact produce the desired results?

Similarly, while the push for regional bodies comes from a positive desire to gain more control over one's future, does it also contain a kind of isolationism on the part of communities - a withdrawal from the larger reality, denying the legitimate and positive need for a level of government larger than the communities or region? To what degree is the community's push for regional government a parochial attempt to deny or ignore the need for Territorial Government? What is the risk that regional jurisdictions, partly defined on the basis of culture and race would encourage an underlying tendency towards the most negative possibilities of such parochialism - a destructive tribalism or racism? Given the intensity and complexity of external forces, the rapid rate of cultural change, the resulting insecurity and frustration, there is already a pressure and possibility for all sides to seek more security by withdrawing into a simpler tribal or racist analysis of the world. Along with more positive tendencies, to what degree is this a part of the community motivation for the establishment of regional structures?

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b) The Government of the Northwest Territories

The Territorial Government is publicly committed to the development of self-government in the North and the devolution of many of its programs and responsibilities to the community levels. As an example of this commitment, regional government appears to bring government closer to the people being governed. The Territorial Government, while initially reluctant, is therefore generally encouraging in responding to initiatives for regional councils.

At the same time, however, similar to the examination of community motivations, it is worth attempting to understand the variety of pressures which may motivate Territorial Government support for regional structures.

The Territorial Government is motivated by a commitment to consult and involve communities in its administrative process. Such decentralizing is welcomed by all involved. Regional bodies allow for a more efficient, consultative process. Recognized community representatives gather in one place where government officials can discuss, modify and gain approval for various proposals. Debates about allocation or inequalities between communities can be resolved on the spot. Administratively, it is considerably more efficient to consult and work with regional councils than with individual communities.

While such administrative efficiency is desirable, what is the risk, however, that it may be at the expense of full and adequate involvement of the individual communities? It is much easier to consult one regional council than a number of isolated communities. Might the average community resident or even community councillor actually lose their ability to influence decisions simply because there is less opportunity for face-to-face discussion with Government representatives in the community? Will issues, which used to be placed on

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individual council agenda, now appear only for regional deliberation?

Might there not be a similar possibility with the process of devolution? Although the Territorial Government is publicly committed to the devolution of many of its programs to the communities, in many cases, devolution is very costly and may result in duplicated services between communities. With regional councils, programs could be turned over to the regions more efficiently and at less cost than if turned over directly to the communities. Would such a result not undermine the original intention of devolution to the communities?

The Territorial Government is committed to decentralizing and sharing much of its decision-making with northern peoples. The Government support for regional councils may be partly motivated by the fact that these are potential bodies to share such responsibility. What is the danger, however, that in sharing decisions with regional councils, there may be a greater willingness to share difficult or unpopular decisions? Might this result in the regional council, rather than the Government, unduly bearing the brunt for decisions over which it may really have little control. Along with legitimate devolution of powers, might the Government support for regional councils be conditioned by a desire to absolve itself from being solely responsible for some difficult or unpopular decisions?

Another factor motivating Territorial Government support for regional formations may be a wish to maintain its own position in northern government structure. Over the past 10 years, powerful native organizations have made various proposals for northern government. At some points, for instance during the evidence given to the Berger Inquiry,

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and during community hearings of the Unity Committee, the very legitimacy of the Territorial Government was challenged. In the form of Denendeh, Nunavut or WARM, the central role of the Territorial Government would be considerably altered. At the same time, each of these proposals contains some form of regional body. Indeed, as presently structured, regional organizations are an important part of the present native organizations; in fact, prior to regional councils, they were the only popularly constituted regional political organizations. By now encouraging regional councils, the Territorial Government is responding to pressure from native organizations for government reform, while at the same time ensuring that regional formations evolve within the general framework of the Territorial Government. The Territorial Government thus ensures a process of reform which does not basically challenge its right to continue to exist.

c) Native Organizations

Native organizations have shown a mixed response to Territorial Government supported regional governments. On one hand, they are concerned that the establishment of regional councils not take the place of more fundamental changes in northern government. Regional councils as presently proposed do not guarantee a continuing protection of aboriginal rights and interests. Of themselves, they do not guarantee native people a continuing influence over government legislation and administration. At worst, they are accused of coopting the native push for political change into institutions,which in the long run, may not serve their interests.

On the other hand, however, native organizations, often through their own regional structures, have worked closely with emerging regional councils and have viewed them as representative of the communities concerned. Native organizations recognize that regional councils can be a tool towards greater

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self-government for northern native peoples. They may also evolve to play an even greater role as a result of the settlement of the various land claims negotiations. Present regional councils are viewed as essential training grounds helping to ensure the smooth evolution of post-land claims structures.

At the moment, the federal government has indicated that political development cannot be negotiated as part of the land claims process. Native people are therefore looking for alternate forums to further their political evolution. As long as the establishment of regional levels of government does not undermine the possibility of more fundamental, higher level changes in northern government, such as proposed by Nunavut and Denendeh, native organizations appear willing to endorse the development of regional levels of government. Indeed, in the case of the proposed Western Arctic Regional Municipality, COPE is proposing the establishment of a regional government which would in fact be a more powerful, legislative body.

Thus, native organizations generally support regional councils, while at the same time insisting that they not be a substitute for other higher levels of political change.

3. CRITERIA USED TO DEFINE REGIONS

Regional boundaries are not unchanging or unchangeable. They have evolved over time and have undergone considerable re-arranging. Originally, the Northwest Territories included the western provinces. Indeed, the splitting off of the various provinces may be seen as the establishment of regional governments to serve the special interests of southern Canadian settlers, made possible by the railroad. More recently, just prior to the Territorial Administration moving North, the federal

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government generally recognized three administrative districts north of 60 - the Mackenzie, the Keewatin and the Baffin. These, too, were largely determined by the transportation and communication links north from Edmonton, Winnipeg and Montreal, respectively. When the Territorial Administration came North in the late sixties, it divided the Mackenzie into the Inuvik and Fort Smith Regions, later subdividing the Fort Smith into the Kitikmeot (Central Arctic) and Fort Smith Regions. In general, it appears that the major factors influencing present NWT regional, administration boundaries have been transportation and communication routes, geography, cultural and linguistic areas, number of communities, and aggregate levels of population.

Emerging groupings being considered in the western NWT for regional councils give more importance to the racial, cultural and linguistic groupings of the area. Amongst the Dene, the regions roughly reflect the tribal backgrounds of the peoples. Similarly, the Committee of Original Peoples Entitlement (COPE) represents the region inhabited by the Inuvialuit.

In addition to social background, the impact of long-term, mega-projects creates new common interest groupings. Communities undergoing impact from a large resource development project have in common the need to develop a unified response, perhaps the common need to ensure environmental protection, maintenance of hunting and trapping options, coordination of community employment opportunities, small business opportunities and so forth. In the Delta, for instance, the impact of Beaufort Sea development creates common interests amongst Inuvialuit and Dene communities.

In considering the criteria for inclusion in regional government areas, there are several questions which arise. First, in what region do communities feel themselves to fit? For some, the answer may

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not be easy or singular. It is only very recently that most northern native people have actually moved into communities. It is wrong to assume that communities themselves are all homogeneous entities where everyone's interests are similar. Indeed, many communities are almost "mini-regions" in themselves bringing together several smaller subcommunities. The native population of Fort Good Hope, for instance, includes Hareskin, Slavey, Mountain and Metis. Fort Franklin includes Dogrib, Slavey, Mountain and Metis, while Aklavik includes Inuvialuit, Dene and Metis. In such cases, it may be that these people do not strongly view themselves as part of a region larger than the community. Indeed, one's feeling of "community" may include only a part of the people actually living in the settlement. Other groups of residents may be seen as different people having different customs and traditions.

It is possible, then, that different sectors of the community would view themselves as having commonalities with different other communities - Dogribs with Dogribs, Mountain People with Mountain People, for instance. From a cultural or tribal point of view, such communities might logically fit into several regional groupings. Just recently, Holman Island, for example, has had considerable difficulty in deciding on its regional alliances. Different sectors of the community obviously feel themselves to be a part of different regions.

Or perhaps a community doesn't feel it has much in common with any other community. Perhaps the unique mixture and geography of the community result in little direct ties with any other community. In such a case, is it possible to have some communities outside of regional groupings? Can a region consist of one community?

Another question in deciding on the contemporary criteria to define regions is the question of where the larger tax-based towns and cities fit. While they may have much in common with

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surrounding smaller settlements in terms of geography, transportation and communication links, they are usually considerably different in terms of life style, levels of organization, general business orientation and racial composition. Their size and function make them considerably different than smaller communities which play an intermediate role between bush and settlement life. Where do these larger towns and cities fit? Could Yellowknife become a member of the Dogrib Tribal Council, or Inuvik a member of WARM? Could the larger tax-based municipalities become a "region" of their own? Regions are assumed to be groupings of communities with common interests. Exactly which common interests are most relevant and legitimate is the question which must be addressed.

4. CURRENT NWT MODELS OF REGIONAL GOVERNMENT

There are presently several regional councils actively operating and more being proposed. There is also the model of regional government proposed by the Committee for Original Peoples Entitlement (COPE) for the Western Arctic Regional Municipality (WARM). The following outline describes some of the characteristics of these models:

Baffin Regional Council

This is the earliest formal regional council and at present the only one incorporated by Ordinance of the N.W.T. Legislative Assembly, November 1980.

Communities Involved:

Arctic Bay, Broughton Island, Cape Dorset, Clyde River, Frobisher Bay, Grise Fiord, Hall Beach, Igloolik, Lake Harbour, Pangnirtung, Pond Inlet, Resolute Bay and Sanikiluaq.

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Membership:

Voting Members:

- every mayor of a municipality and chairperson of a settlement council in the Baffin Region;
- a designate of the Baffin Region Inuit Association; and,
- a representative of the Regional Hunters and Trappers Association.

Non-Voting Members:

- members of the Legislative Assembly whose jurisdiction includes parts of the Region;
- an Inuit Tapirisat of Canada representative; and,
- the secretary-manager or settlement secretary of each community in the Region.

There is a move to give a voting membership to the head of all incorporated regional organizations and a non-voting membership to any non-incorporated regional organizations.

Speaker:

The speaker and deputy speaker are chosen by the members for a two-year term. Any resident of the region is eligible to become speaker. The speaker votes only to break a tie.

Quorum:

Two-thirds of voting members.

Meetings:

At least twice per year.

Executive Committee:

Speaker plus voting members as decided by the Council.

Staff:

Executive Secretary plus assistant.

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Powers:

The powers are esssentially advisory, although the Council plays an active part in working with government in the region. It is also an important forum for discussion of regional issues. The following are some of the more recent areas of discussion of the Council:

- involved in setting up the Baffin Regional Hospital Board separate from the N.W.T. Government;
- dealing with the Federal Government on environmental concerns in Lancaster Sound (Eastern Arctic Marine Environment Study);
- involved in GNWT financial planning in the region;
- involved in government staff selection - has a seat on the hiring board for positions of regional superintendent and above in the regional office;
- meets with and lobbies airlines and sealift companies operating in the region; and,
- has been organizing its own internal structure - drawing other regional bodies into its sphere.

One additional structure being considered is the establishment of committees of the council which would be called program boards. One of the more important activities of these Boards would be that the Territorial Government's regional staff responsible for a particular program would report regularly to the appropriate program board.

Keewatin Regional Council

Communities Involved:

Baker Lake, Chesterfield Inlet, Coral Harbour, Eskimo Point, Rankin Inlet, Repulse Bay and Whale Cove.

Essentially this Council is similar to the Baffin Regional Council.

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Kitikmeot Regional Council

Communities Involved:

Cambridge Bay, Coppermine, Holman Island, Gjoa Haven, Spence Bay, Pelly Bay.

In addition to a similar membership to the Baffin Regional Council, the Kitikmeot Council voting membership includes:

- President of the Kitikmeot Region Hunters and Trappers Association;
- President of the Kitikmeot Housing Federation;
- the Chairperson, Ekayutin Nunalikni;
- Chairperson of the Divisional Board of Education; and,
- President of the Arctic Coast Tourist Association.

Deh-Cho Regional Council

Communities Involved:

Fort Liard, Fort Providence, Fort Simpson, Hay River Dene Reserve, Jean Marie River, Kakisa, Nahanni Butte, Trout Lake and Wrigley.

Membership:

Voting Members:

- Fort Liard, Hay River Dene Reserve and Wrigley: Chief plus one other Band councillor per community;
- Jean Marie River, Kakisa, Nahanni Butte and Trout Lake: Sub-Chief of each community;
- Fort Providence: Chief, Chairperson of Settlement Council, and President, Metis Local; and,
- Fort Simpson: Chief, Mayor, and President, Metis Local.

Non-Voting Members:

- Dene Nation and Metis Association Regional representative;

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- members of the Legislative Assembly in the region; and,
- Member of Parliament for the area.

Meetings:

At least four times per year.

The Aims and Objectives are similar to other regional councils and are stated as follows:

1) To work towards improving community and government services to communities as required.
2) To assist communities in having meaningful involvement in the political, economic, social and cultural development of the Deh-Cho Region.
3) To recommend to the Government of the N.W.T. and the Government of Canada, as well as to the Dene Nation and Metis Association of the N.W.T., priorities for services and programs that are in response to the needs of the community.
4) To make proposals for changes to the N.W.T. and Federal Government policies and legislation and to assist the respective governments in the development of new policies and legislation.
5) To act as a forum for the discussion of all matters of concern to the people of the area and to improve communication among the communities of the Deh-Cho Region.
6) To be the forum where community representatives discuss matters of regional concern with government, industry, the Dene Nation and Metis Association representatives and so give community-based direction to them.
7) To cooperate with and assist other organizations having aims and objectives compatible with those of the Deh-Cho Regional Council.
8) To be a body to which powers, responsibilities and resources may be devolved.

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Dogrib Tribal Council (Proposed):

Communities Involved:

Rae Edzo, Rae Lakes, Lac La Martre, Snare Lake, Dettah, Rainbow Valley.

This Council is presently being considered by the Region and has no constitution at this time.

Western Arctic Regional Municipality (WARM)

The Government of the Northwest Territories along with the Committee for Original People's Entitlement (COPE) is considering the establishment of WARM as per the Agreement in Principle signed between COPE and the Federal Government

Communities Involved:

Tuktoyaktuk, Sachs Harbour, Paulatuk, Holman Island, Aklavik.

Eligible Voters:

Nineteen years of age and at least six months residency in a community within the Western Arctic Region.

Structure:

a) Councillors: Two elected by each community from each of the five communities for a two-year term. Aklavik may reserve one of its two seats for the chief of the Dene Band if the residents of Aklavik approve this procedure by a vote.

b) Mayor: Elected by a region-wide vote to a two-year term as the chief executive officer.

c) Other Members: The chairman of the Regional Game Council is automatically a full member of the Regional Council.

d) Program Boards: Program Boards shall be established

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for the administration of each of the subject areas listed under powers for which WARM assumes legislative authority. A member of the Regional Council will be appointed chairman for each Board and the membership of each Board will include an elected representative from each community.

e) Regional Game Council: Consists of two representatives elected from each of the community Hunters and Trappers Associations situated within WARM.

Meetings:

The Regional Council must meet at least once in each half year.

Quorum:

Two thirds of the voting members of the Council is a quorum. A resolution is valid if it is passed by the majority of the quorum. A by-law or an amendment to a by-law is valid only if passed by a two-thirds majority of all the voting members of the Regional Council.

Staff:

The Regional Council will appoint a senior administrative officer plus whatever additional staff it deems necessary.

Powers:

a) To make by-laws and regulations, develop programs, and enter into agreements in relation to the following classes of subjects:
   i) eduction
   ii) economic development
   iii) local government
   iv) police services
   v) game management - N.B. The administration will remain with the Hunters and Trappers Associations at the community level.

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vi) such other subjects as may be negotiated from time to time between WARM and the Territorial or Federal Government; and eventually

vii) health services.

Furthermore, if there are inconsistencies between any by-law or regulation made by WARM, and any legislative enactment of the Legislative Assembly of the N.W.T., the WARM by-law or regulation shall prevail, except where the Commissioner of the N.W.T. exercises his discretionary power of disallowance. The Commissioner may exercise his power of disallowance only when a WARM by-law or regulation is inconsistent with a legislative enactment of the N.W.T.

b) WARM may negotiate directly with the Government of Canada regarding matters under federal jurisdiction.

c) The Regional Council may, by resolution, make rules for the calling of meetings, the conduct of members, the general transaction of the business of Council, and the calling and conduct of regional plebiscites to reach decisions on issues as the Council shall determine. Also, the Council may make by-laws for the governing of Council procedures, the appointment of committees, and the establishment of their powers and duties.

d) The Regional Council is legally empowered to enter into contracts with other parties, to sue and be sued, and to have perpetual succession.

e) The Council may purchase, hold or alienate any real or other property.

f) The Council may undertake research or action with respect to any matter which Council considers to be of regional concern.

g) The Council may recommend changes in the WARM Ordinance to the Commissioner.

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Fiscal Powers and Responsibilities:

a) The Regional Council shall have the power to levy real property taxes, business taxes and business licence fees.

b) An annual budget for WARM shall be prepared and the difference between revenues and expenditures shall be made up by the negotiation by WARM of financial agreements with the Territorial and Federal levels of government for those programs listed under the heading of powers.

c) The Council may also receive grants or contributions from the Minister of the Territorial Government responsible for the WARM Ordinance.

5. CRITICAL QUESTIONS AND ISSUES RELATING TO REGIONAL COUNCILS AND GOVERNMENTS

There are a variety of questions surrounding the evolution of regional governments. The people of the NWT clearly want to gain greater control over their lives and lands. It is not inevitable, however, that the formation of regional councils or regional levels of government will further this end. Rather, it depends on the specific kind of regional government implemented and the process by which it is implemented.

This dicussion will pose some of the questions related to the structure and process of regional councils and regional governments. These questions require political answers and it is not the purpose of this paper to provide such answers. Rather, they are presented here to contribute to the dialogue from which the political decisions will ultimately emerge. The following are some of the major concerns to be addressed in the consideration of regional councils and governments.

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Basic Principles

The following three principles are assumed to be valid and generally agreed upon in this discussion:

a) The purpose of regional formations is to enhance the power of the communities.

Regional governments are not intended to be an end in themselves nor to become powerful at the expense of the communities. They must be judged on the degree to which they facilitate people in the communities to govern their own lives.

b) The evolution of regional formations must proceed primarily at the initiative of the communities.

While it is recognized that much of the impetus for change in the western NWT originates outside the communities, to be a legitimate "government of the people", regional levels of government must evolve under the direction of the communities they represent. This means they must maintain a high degree of flexibility. Their role and function cannot be cast in stone. For instance, at present some councils appear to be primarily interest or pressure groups advocating on behalf of their member communities, playing an advisory function to higher levels of government and sharing information among their communities. Others propose more administrative activities, taking over the delivery of certain government programs, regulating some regional activities, or having the Territorial Government's regional administrators reporting to them.

As presently formulated, the WARM model proposes legislative powers for the regional government. While there will be limits to the powers of regional governments, they must have a wide flexibility to remain responsive

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to the needs and initiatives of the communities. No one structure or process can be implemented now to serve indefinitely. Instead, it is assumed that regional formations will evolve over time and that they will not be imposed or changed without a full process of discussion and development within the communities.

c) Regional councils - regional governments are not necessarily a good thing.

Community people will not necessarily gain power simply by the creation of another level of government, particularly if that level is not well understood, or if it is initially overwhelmed by administrative detail. Indeed, the creation of another level of government could further confuse and alienate the average citizen. Regional government is not per se a good thing. It is not a panacea for resolving all the problems people perceive they have with government in the North. Rather, it must be critically assessed in terms of people gaining or losing power and ultimately judged on the basis of whether or not it supports the people it serves to become more self-determining. The following 10 issues should be evaluated, using these three principles as criteria:

1) Will communities gain or lose power through the establishment of regional councils/governments?

i) Factors contributing to the loss of community power:

Another level of government will not necessarily result in more power. At the present time, communities are directly consulted by government officials and MLA's regarding a full range of government activities affecting the community. Because such consultation is costly and time-

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consuming, there will be a tendency to consult regional governments wherever they exist instead of communities directly. Decisions presently made by community-level councils may become the prerogative of regional levels. The average resident or even community councillor then may find him- or herself even less able to influence decisions affecting the community. In addition, programs and powers which the NWT Government has promised to devolve to the communities may in fact go to the regional level. Thus, with the creation of a regional level of government, there could be a decreased, decision-making power in the community and an increased confusion about who is responsible for what. The community as a whole would have lost power and influence or at least the potential to obtain them.

ii) Factors contributing to communities gaining power:

Communities joining together in a combined voice will have greater power to pressure and influence government and private sector plans affecting the area. They will be able to share facts, information and analyses amongst communities to develop stronger, more informed positions. Such organized regions can influence economic development and land use in the region to a greater extent than any individual communities. As well, there may be activities which a regional level could undertake which no single community could support. For example, in the schools, educational specialists could work within a region to develop a curriculum unique to the language and culture of the people in the region whereas each community could likely not support

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such activities on its own.

Another factor contributing to the communities gaining power is the way in which regional levels are formed. Communities are more likely to be strengthened if regional levels of government evolve by powers first being granted to communities and then communities choosing to join together to form regional levels. Regional levels would be constituted by delegates from community level bodies, directly responsible to those bodies, and with mandates reached by agreement with the communities involved. Over time, the regional level may take on its own interests and concerns apart from those of individual communities. However, by then it should be firmly entrenched under the control of the communities, as their extension, and remain a tool serving to empower the communities.

If, on the other hand, powers are specified at the regional level instead of first at the community level, the regional level may gain its power by weakening the communities.

2) What relation will regional councils/governments have to land claims settlements?

In all cases the formation of regional councils is in close cooperation with the native organization in the region. This cooperation is critical to ensure the emerging regional governments do not contradict the political and economic institutions evolving from the land claims process, just as those involved in the claims process must take into account the evolution of institutions outside the negotiating process. For example, planning for regional governments and councils may need to take into account how they might relate to

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regional corporations established under claims settlements.

The concern about the interface between institutions resulting from the claims process and those evolving apart from that process is not restricted to the regional level. Similar cooperation and coordination is required at the community and the territorial level as well.

3) What relation will regional government have to Development Impact Zone (DIZ) Groups?

Under the recent (March 1983) Resource Development Policy, the NWT Government Executive Committee may approve the establishment of a DIZ group in areas experiencing or about to experience extra-ordinary impacts as a result of resource development. The membership of such groups is essentially the same as regional councils. Could DIZ groups and regional councils be combined in a specific region? If not, would the DIZ group be subject to regional council as are other regional groups? Would keeping them separate undermine the effectiveness of regional councils in the area of land use - often a primary area of interest for the establishment of regional councils in the first place? On the other hand, if they became one body, what would be the effect of such a single issue focus for a council?

4) What legislative authority might regional governments have?

Basically, regional governments can have whatever powers other levels of government are willing to give them. These could range from coordinating and consultative powers to administrative and regulative powers, to actual legislative powers in certain areas - legislation simply meaning the act of any level of government which

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has legal authority. There could be a defined range of powers in which regional governments had essentially exclusive powers. That is, higher levels of government could not overturn or disallow legislation in these areas. In all cases, however, the regional level is a child of some higher level of government and the authority in such areas could ultimately be withdrawn by legislation at the higher level.

If the regional government is to have legislative powers, then the major question is whether regional government powers would be exclusive or concurrent. That is, are they held solely by the regional level or along with a higher level of government? If the powers are concurrent, which level has the paramount or final say?

Generally, in the Canadian tradition, governments below the provincial level do not have exclusive powers. That is not to say, however, that such arrangements could not exist. Ultimately, the sum total of power shared between communities, regions and the territorial level is that which Ottawa is willing to give. The issue here is distribution of powers within the Territories as regional levels will not mean increased powers from Ottawa.

5) <u>What fiscal and budgetary powers might regional governments have?</u>

Although there has been little discussion on this point, the question of fiscal and budgetary powers will inevitably arise. Should regional governments have the power to levy taxes or in other ways raise their own revenues? What would be the limits to such powers? This possibility raises several questions.

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First, what would be the effect on member communities if the regional level had such powers? Is there a risk of the regional level becoming inordinately powerful relative to the communities?

Secondly, what is the risk of creating regional disparities between "have" and "have not" regions? If some regions became wealthy while others did not, might a tendency towards myopia, jealousy and competition develop, particularly if regions were insular, with little sense of a larger interest or identity? What claim would poor regions have to the revenue generated in the more wealthy regions?

Thirdly, how might fiscal powers be organized so that regions did not eventually outweigh the central government? What is the risk that powerful regions, feeling distant from the territorial level, might undermine the ability of the central government to coordinate and direct the overall development of the Territory?

The question of fiscal powers is of course not an all or nothing question. Rather it is a question of balancing the requirements of a regional level to have greater control over its own financial affairs along with the need for coordination and equalizing of wealth amongst the regions, and in relation to the central government. The problem may in time require a fairly sophisticated distribution of fiscal and budgetary powers; again, a solution which must evolve over time according to community need and interest.

6) How should regional government members be chosen?

Present regional councils are made up of the leadership of municipal councils and where existing, band councils

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and Metis locals. Under the WARM proposal, regional municipality members will be elected at large from each community. The mayor will be elected directly by popular vote.

The different methods of choosing membership represent some of the different emphases of the two models. The regional council model with direct accountability through to community organizations, emphasizes the community level of government. The regional function, in this case, is more that of coordination and representation of community interests rather than direct powers of its own. The WARM proposal, on the other hand, emphasizes the establishment of another level of government with its own distinct powers.

7) <u>To what extent should language, culture, tribe and race be criteria for regional boundaries</u>?

An historical perspective may be useful. In the past one hundred years, native people have been subjected to the massive onslaught of non-native society. The colonizing forces of an aggressive society have permeated all aspects of traditional native cultures. People were moved into settlements. Children were placed into non-native schools. Non-native religions were promoted as the only way to a happy afterlife. Historically, most of the colonizing forces defined northern social reality in racist terms. Native culture was either seen as inferior or hopelessly romantic. Rather than names, Inuit people were given Disc numbers for identification. Dene were recorded by Treaty number. In the hope of creating "brown whitemen", schools punished children who spoke native languages. A generation might have to be sacrificed, so the colonial wisdom went, but the hope was that the

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children of an inferior stone-age culture could become assimilated into "white" society. In almost all cases, regardless of the underlying forces, the face of those in power was white, while natives had little power.

Nor is racism absent from present northern society. "Common sense" analysis, "street talk" heard in any northern community often assumes racial categories, benevolent or otherwise. Government policies suggesting "We're all equal" are often thinly disguised attempts to impose southern industrial,middle-class values and institutions on northern native people. "We should all be the same", such policies imply, "and I don't intend to change so you should become like me".

Even today, on both sides of the native, non-native relationship, racial definitions are often accepted as explanations for a variety of behaviors and situations that have little to do with racial origin. The complex relationship between peoples can be simplified and disposed of as simply racial differences. To have one's point of view denied because one is either white or native is equally dehumanizing.

Given this historical setting, it is no wonder that the question of criteria for regional boundaries is exceedingly complex. The wish to strengthen and protect native culture and language is an important and genuine concern. Northern native peoples must have the right and opportunity for the evolution of their cultures. They must be allowed to have pride in themselves as individuals and as peoples.

At the same time, however, does this mean that regional governments should follow essentially racial or tribal

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boundaries? While speaking of culture or language may soften the impact, in fact, cultural and language groups usually overlap with tribal and racial groups. Given the present tendency towards racial definitions of social reality, what might be the effect of tribal or racially defined regional groupings later becoming economically unequal? Might not such economic pressures compound historical and contemporary tensions and result in expression as tribal or racial antagonisms? Obviously, such an outcome is to be avoided.

The issue at one level is quite straightforward. Given the colonial and racist history of northern society, how can emerging institutions foster a positive sense of cultural pride and identity without the negative destructiveness of racial and tribal antagonisms. The answer is less clear. Suffice it to say that it should not be assumed that regional boundaries follow tribal and racial boundaries for there are definite risks in such arrangements.

8) How might regional governments relate to each other?

Will there be a forum for regional councils or their executive committees to get together with each other? Such an association would be a logical outcome of the development of regional councils. Would this forum be the NWT Association of Municipalities or would it be another grouping?

9) Can regional governments remain dynamic and flexible?

Regional councils have evolved in a variety of ways depending on the circumstances, personalities and GNWT response in each region. From informal ad hoc gatherings of community leaders, they are now becoming more

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formalized, regularized bodies operating under Territorial Ordinance. It is important that this flexibility be maintained for the foreseeable future. The negotiations of community levels of government, the impact of resource development projects and the evolution of the Legislative Assembly all create the need for a regional government which can respond creatively to changing conditions. The process, powers and structure of regional governments should not be cast in stone at this time. Such an evolutionary process is not at all new. It is similar to the process by which settlement and municipal councils evolved. Perhaps the developmental model used to encourage the evolution of community-level government could be adopted to develop a flexible, evolutionary approach to the regional level.

Much of the impetus for regional councils has resulted from the perception of government as overly centralized, distant and unsympathetic. This appears to be changing. Perhaps division of the NWT will further reduce this sense of alienation. Will the impetus for regional councils also change? It is too early to tell if regional councils should evolve into another full level of government between the communities and the territorial level, or if they would be more effective to remain as coordinating bodies, interest and advisory groups providing an important forum for airing regional issues. Planning for regional bodies at this time should leave open a maximum number of options for their evolution, including the possibility that they may be only temporary structures, serving a short-term purpose.

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10) <u>How can regional governments deal with the complexity of contemporary issues and still remain a "government of the people"?</u>

It is assumed by most communities that some form of regional government will be developed. There is a danger of their becoming highly complex organizations requiring even control by a small group of leaders, specialized staff and experts. Such a result would defeat the purpose of regional government. We have discussed some of the possible models for such bodies and the need for them to maintain a flexible, evolutionary resiliency. However, the issue here is how can regional governments be implemented to deal with the complex tasks facing them and still maintain their dynamic nature.

At the moment, the issues facing northern people include division of the Territories, constitutional development, large-scale economic development, land claims and a variety of social problems. How can a regional grouping created and operating in such a complex environment maintain close ties to the communities it serves? How can it remain a "government of the people" in the face of a variety of immediate pressures which will tend to harden, bureaucratize and alienate it from community people?

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PART II

REGIONAL GOVERNMENTS: A SELECTIVE REVIEW

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Western Constitutional Forum

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TABLE OF CONTENTS

REGIONAL GOVERNMENTS : A SELECTIVE REVIEW

EXECUTIVE SUMMARY

This report, prepared for the Aboriginal Rights and Constitutional Development Secretariat of the Government of the Northwest Territories by the Institute of Local Government, Queen's University, describes and evaluates a number of selected regional governments.

Four of these regions have been dealt with in separate chapters in considerable detail, and two other areas are covered in a fifth chapter. This summary provides a very brief outline of the content of each of these major chapters. Chapter 7 of the final report presents the observations and conclusions of the authors with respect to each of the areas reviewed, and is not summarized in this Executive Summary. It is recommended that Chapter 7 (8 pages) be read in full.

SUMMARY : CHAPTER 2

REGIONAL GOVERNMENT ARRANGEMENTS IN THE JAMES BAY AREA OF NORTHERN QUEBEC

Arrangements for government in the James Bay region of northern Quebec are defined primarily by 1971 Quebec legislation establishing the James Bay Development Corporation and by the subsequent settlement of native land claims contained in the 1975 James Bay and Northern Quebec Agreement, signatories to which were Canada, Quebec, the Grand Council of the Crees (representing 6300 area Cree), the Northern Quebec Inuit Association (representing some 5200 Inuit) and three Quebec crown corporations - Hydro-Québec, the James Bay Development Corporation and the James Bay Energy Corporation.

The James Bay Region Development Act, in addition to setting up the above crown corporations for development purposes also established the Regional Municipality of James Bay in some 135,000 square miles south of 55^{0} in northern Quebec. Excluded from its jurisdiction were previously incorporated municipalities and Indian reserves governed by the federal Indian Act. A major modification from the Quebec Cities and Towns Act which provides the general basis for its authority is the substitution of the board of directors of the James Bay Development Corporation for an elected municipal council. This council has the power to establish local councils where warranted by population and is linked to the Cree community through the provision for a James Bay Regional Zone Council.

Settlement of the land claim was negotiated in the face of ongoing hydro-electric development of great magnitude and of considerable political and economic importance to the province. The magnitude of the project necessitated provision of governmental structures in previously unorganized territory and a reworking of the position of native peoples in the area.

Definition of land use rights and jurisdiction over 410,000 square miles, the establishment of regimes for the provision of a full range of services at both the local and regional levels combined with the establishment of ethnically oriented corporations for the management of settlement monies and other native interests as well as a variety of consultative panels dealing with primarily environmental issues related to development are among its provisions.

In broad terms, the land regime and other provisions are divided between those south of 55^{0}, associated with the Cree and those north of 55^{0}, associated with the Inuit.

With the exception of Cree band councils on the equivalent of reserve lands, other governing structures for both Cree and Inuit and the non-native population take their authority from such general Quebec legislation as the Cities and Towns Act, corporations, education, health and social services legislation, subject to modifications in the Agreement. In contrast to the situation north of 55^{0} where local and regional government structures are essentially non-ethnic, those south of 55^{0}, aside from the James Bay Regional Municipality, are defined largely in terms of ethnic membership.

The comprehensive nature of the land claim settlement has made its implementation difficult. Jurisdictional differences over interpretation of the Agreement and budget restraints have affected the implementation of service arrangements. The absence of accompanying appropriations legislation and of specifically designated responsibility for implementation are among identified concerns.

Predominance of the province as major developer and municipal administrator through the James Bay Development Corporation is the other major factor in this case.

SUMMARY : CHAPTER 3

THE NORTH SLOPE OF ALASKA

This chapter describes the developments leading to the adoption of the borough system of (local) government when Alaska became a state in 1959. The borough system was an intended change from the city/county style of government in the 'lower 48'.

The North Slope Borough was incorporated in 1972, and was the first native, non-tribal regional government in the U.S.A. Chapter 7 describes in some detail the historical background of the state, the development of the native land claims which eventually led to the signing of the Alaska Native Claims Settlement Act (ANCSA) in 1972, and the events leading to the formation of the North Slope Borough.

Prior to the granting of statehood, Alaska was treated like a colony, with the typical exploitation of resources, 'boom-bust' economic cycles, and little self-government. The Second World War marked a turning point for the state when the territory became a strategic area. A momentum for change to statehood status followed in the decade after the war, particularly as Alaska residents recognized the need for sustained economic growth which could be directed by themselves rather than by federal agencies and large corporations.

The 1960s saw considerable activity regarding native land claims. One of the significant aspects of the granting of statehood had been the land grant to the state of 104 million acres. This, predictably, led to disputes with native groups who were able to cite the Alaska Organic Act of 1884 which provided a firm basis for native land claims.

These disputes were so considerable that in 1968 the Secretary of the Interior placed a moratorium on transfers of federal lands to state jurisdiction pending the settlement of all native claims.

Chapter 7 also outlines the native activity that developed around the issue of land claims, and presents a summary of the key items included in the Alaska Native Claims Settlement Act of 1971, (see pp. 31-34). A brief description is also given of the village and regional corporations.

Delegates to the Constitution Convention (1955-56), when debating the matter of local government in the soon to be created state were anxious to avoid the problems they observed in the existing 48 states. For this reason they established a set of guidelines, (see p. 37) to ensure that the system to be adopted would provide the flexibility required as well as the powers and finances needed to provide services.

A borough system was provided for in the new state's constitution which allowed two types of boroughs, organized and unorganized. An organized borough was to be initiated by area residents and would provide a number of services whereas the state was to be responsible for services in the unorganized boroughs. Public utilities districts that existed prior to statehood were either absorbed into the new boroughs or became new municipalities themselves. Existing cities in the area of a borough were required to become part of the borough but were able to retain their identity as cities. This proved to be a source of some conflict.

The state maintained a role in local government by means of the Local Boundary Commission and the Local Affairs Agency, the latter acting as a general-purpose agency which provides technical and advisory services to municipalities.

The North Slope Borough is the largest of the 11 Alaska Boroughs. In this area native associations had played an important role in community life. The discovery of oil in 1968 at Prudhoe Bay prompted local leaders, native and others, to move to establish control by organizing borough government. This did not happen without opposition by the state and the oil industry.

After considerable litigation the North Slope Borough was established (1972) and the new borough found itself with considerable taxing powers which have enabled it to become one of the most affluent local governments in any of the states. The details of borough powers are provided in Appendix B-3 of the Report.

The North Slope Borough of Alaska, although currently well-financed and seemingly in control has not yet solved the major problem facing it, namely, its future once the Prudhoe Bay resources are depleted. The extent to which its powers of self-government enable the borough to deal effectively with this situation are as yet unknown, and cannot yet be determined from a reading of secondary sources.

SUMMARY : CHAPTER 4

THE HIGHLANDS AND ISLANDS : SCOTLAND

For some years the central government of Great Britain has been engaged in activities regarding regional policies. Since the 1930s, a number of Acts and measures have been undertaken in an effort to deal with the chronic unemployment and outward migration of these areas. Scotland itself has been classified as a region of Great Britain, and in that region, certain areas have received additional attention. The Highlands and Islands of Scotland is one such area.

In 1965 the Highlands and Islands Development Act was passed which established a Board with a broad mandate and extensive power of grants, loans, equity participation, and new factory building. General notes outlining the key points of the Act are contained in Appendix C-2. This Board has taken a multi-faceted approach to economic development in the region, with a view to developing a strong economy with long-term benefits to the region. There has not been much involvement by the Board with the oil-related economic activity which because of its national importance has been the subject of the central government's concerns. It is also important to note that the area and mandate of the Highlands and Islands Development Board has no specific tie-in with an area of governance.

Chapter 4 focusses on governmental development over the past two decades. During that period the Highlands and Islands were subject to certain general planning, economic, and local government legislation which in fact applied to all of Scotland and, in some cases, to the whole of the United Kingdom. During these same two decades oil was discovered and exploited in the North Sea which precipitated these hitherto isolated communities into rapid growth situations. Development came quickly, and on a scale which saw local authorities ill-prepared to deal with such

things as the review and approval of development applications. As well, during the late 1960s and early 1970s, local government was undergoing reform in Great Britain, which attempted to give local government a more important role. This notion of the role of local government obviously would conflict with the central government's need to control the oil-related activities. Thus, as mentioned in the Interim Report of May 31, the Secretary of State retains the right to call in applications deemed to be in the national interest. Current local government structure is set out in pp. 55-59.

An interesting case which has proved to be an exception was that of the Zetland (later Shetlands) County Council. This Council managed to promote a Special Order which later became an Act of Parliament which gave this local government considerable planning powers. The Zetland County Council situation is described in pp. 59-60.

It is clear from the literature review that a variety of regional agencies and initiatives exists, as well as variations in (Scotland's) local government structures and planning regimes. In essence, they are all centrally controlled, if not by Whitehall, then by the Scottish Office. This has left local government with a relatively minor role to play in terms of directing policy, but with major roles to play regarding the provision of services to the communities experiencing rapid growth because of the oil-related activities. Indeed, recent Acts of Parliament have further enhanced the central government's decision-making powers (see p. 61). A review of the available secondary sources seems to indicate that the events and developments of the 1970s have done more to enhance the central government than the local areas which are feeling the direct effects of these events and developments.

SUMMARY : CHAPTER 5

THE NAVAJO RESERVE

With an area of 25,000 square miles in three states and a population of 137,000, the Navajo Reserve is the largest Indian reservation in the United States. The reserve and its government are of particular interest as an example of ethnic government whose evolution has been tied directly to resource development.

Those resources include oil, natural gas, uranium and coal plus rich forest and terrain with tourist potential. The Tribe has "beneficial use" of the land and its resources although title is held in trust by the federal government. Reserve boundaries were effectively established prior to resource discovery.

Formation of the first all-Navajo Tribal Council in 1923 was authorized by the Secretary of the Interior in response to industry pressure for oil leases. Under 19th century treaties the consent of the Tribe as expressed by three-quarters of the Tribe or by "the council speaking for such Indians" was necessary before any part of the reserve could be ceded. After an initial flurry of activity development moved to other areas and did not resume until the 1950s.

Tribal government, however, continued to develop. The chapter system of local community councils introduced in one area of the Reserve in 1927, spread to others. Reorganization in 1938 established the basis for present tribal government. Changes at that time included the enlargement of the council to 72 members from its initial 12 and introduction of the secret ballot.

Tribal endeavours have expanded in the wake of increased royalty revenue since the 1950s. The Navajo Forest Products Industry is the tribal success story. Other initiatives include the Navajo Irrigation Project, the Navajo Agricultural Products Industries, the Navajo Community College and the Tribal Utilities Authority. More active participation in mineral resource production is being sought

through such avenues as the Tribal Energy Authority.

Dependence on royalties as the major source of tribal income for the provison of services associated with local government has limited the supply of investment capital needed to provide economic alternatives to diminishing natural resources. An imbalance in expenditure and employment patterns favouring government and the service sector has been noted by researchers and related to underdevelopment in the Navajo economy as opposed to overservicing.

Offsetting the benefits of resource development have been such costs as the loss of grazing lands for sheep which have provided the traditional mainstay of Navajo life, lung disease among Navajo miners and problems associated with mine wastes.

The Navajo, like most Reserve Indians in the U.S., have a unique status in the U.S. political structure, separate from the system of state and local governments.

Their prime link with the federal system is the federal Department of the Interior's Bureau of Indian Affairs (BIA). In addition to subjecting the tribe to the extremely broad administrative powers of the BIA, this special status has acted to limit tribal access to federal and state funding for services as well as to traditional sources of local government revenues.

Despite such federal legislative initiatives as the Navajo-Hopi Long Range Rehabilitation Act in 1950 and the 1975 Indian Self-Determination and Education Assistance Act progress toward self-determination and the attainment of living standards comparable to other citizens has been slow. Lack of success has been laid repeatedly at the door of the BIA. Because of a perceived linkage between the existence of the Bureau and protection of Indian rights, however, continued existence of the BIA has been championed by the Navajo, albeit in a reformed state.

SUMMARY : CHAPTER 6

ONTARIO AND NORTHERN AUSTRALIA

This chapter contains a summary review of regional government arrangements in Ontario and in Northern Australia.

Ontario

The more recent system of regional government can be termed a second generation of regional government which was established by the provincial government in the 1960s, with the intention of reforming certain counties and cities in order to create regional municipalities. On the whole, the regional municipalities located in southern Ontario contain a mixture of large urban centres, suburban municipalities and rural areas. These upper tier governments are responsible for those services which are considered to be area-wide in nature, generally water and sewerage systems, police services, capital borrowing for all municipalities in the region, regional parks and transportation. Regional governments do not levy taxes directly. The lower tier municipalities collect revenues to be passed to the regional governments. The method of appointment to regional government varies.

County governments are the older version of upper-tier government in Ontario, and again are found primarily in the southern part of the province. Lower tier units are townships, villages, and towns. In general, the county government is responsible for county roads which traverse municipalities, social services, and planning. County revenues come from two sources: provincial grants for specific purposes and property taxes which are received from towns, villages, and townships who are responsible for collecting the taxes and then passing them along.

Australia's Northern Territory

Like Canada, Australia is a federal system with both states (provinces) and territories. Self-government was granted to the Northern Territory in 1978, largely due to the commitment of the Labour Party to new approaches to regionalization. New departments and services were created to implement the goals of the ruling Labour Party, which also included the commitment to bring the Territories to a level of self-government.

The Northern Territory is home to some 30,000 Aboriginal peoples who are believed to have inhabited the area for at least 40,000 years. Following the period of white settlement the Aborigines were removed from much of their homelands and were reduced in numbers. It is only recently that the Australian government has developed positive policies regarding the Aborigines, and in 1973 a Land Commission was established to look into the question of local rights of the Aborigines in the Northern Territory.

The Aboriginal Land Rights (Northern Territory) Act of 1976 (summarized in Appendix E1) gave certain landholding rights to the Aborigines. However, minerals on Aboriginal lands remain the property of the Crown. Mineral exploration may take place only if approved by the appropriate land council who can exercise a veto power. This veto power can be overruled by the Governor-General if the matter is deemed to be in the national interest.

The Northern Territory (Self Government) Act, 1978 is described on p.88, where the basic functions and structure of the Territorial Government are outlined.

The Local Government Act, 1982 provides for local government and community councils. This Act is not yet available to libraries so only scanty details are known at this time. The thrust of the Act appears to be to provide mechanisms for local government services (with the exception of education, planning, and policing) in the non-urban areas inhabited by virtually all the Aborigines.

The community councils provide local government in a form that is more suitable to the Aborigines than a traditional form of local government. The effectiveness of this new Act is not yet known due to its very recent implementation.

CHAPTER 1. INTRODUCTION

This report describes and evaluates several examples of regional government existing outside of the Northwest Territories. It is intended to provide those considering the future form of government in the NWT, particularly in the western portion of the Territories, with some idea of the experience of other jurisdictions which have established regional arrangments.

A number of factors influenced the selection of jurisdictions for this comparative review. The role of native or indigenous peoples in developing regional arrangements was of interest. Of similar concern was the influence of pressure for development, particularly resource development, on the initiative to form regional governments and on the eventual relationship of regional structures to development interests. Four examples of regional government were selected for intensive review. These were: the North Slope Borough in Alaska, regional arrangements resulting from the James Bay and Northern Quebec Agreement, the Navajo Reserve, and regional arrangements within Scotland. Two other arrangements, regional governments in Ontario and Northern Australia, received limited study.

The research methodology consisted of a review of the recent literature and relevant legislation. It was not intended that there be any field visits undertaken as part of this study. Instead, the investigators used the internal resources and inter-library loan privileges of the main library of Queen's University, the Queen's University Government Documents Library, and the Queen's University Law Library.

To the greatest extent possible, the results of this research provide information on the following subjects for each jurisdiction:

1) a description of the structure, powers and jurisdiction of each regional arrangement and its relationship to other levels of government;

2) a description of the context within which each example emerged and the purpose each was intended to serve;

3) a discussion of the relationship between each example of regional government and other important events, interests or institutions in the area (for example, native claims, large-scale development of nonrenewable resources, etc.);

4) a discussion of issues which have emerged in relation to, or as the result of, the establishment of each regional structure; and

5) an assessment of the role played by each regional

arrangement in relation to the overall development of the area.

Chapters 2 to 5 of this report each deal with one of the four jurisdictions selected for special emphasis: James Bay, Alaska, Scotland and the Navajo Reserve. Chapter 6 contains a briefer overview of the two jurisdictions selected for limited study: Ontario and Northern Australia. Some general observations about points of particular interest concerning each of the jurisdictions studied and their possible interest to the people of the Northwest Territories are contained in Chapter 7. Finally, a series of Appendices reproduce particularly relevant sections of legislation, government documents, and/or other materials pertaining to each of the jurisdictions studied.

In reviewing all of this material, it should be kept in mind that the information was obtained from secondary sources and that full understanding of any of the arrangements described in the following pages can only be obtained by a more detailed enquiry involving field work. It can be suggested, however, that the basic research which is presented here does provide a useful point of departure for considering various approaches to regional government in the western part of the Northwest Territories.

CHAPTER 3: REGIONAL GOVERNMENT ARRANGEMENTS IN THE JAMES BAY AREA OF NORTHERN QUEBEC

Introduction

This chapter deals with regional government arrangements in the James Bay area of Northern Quebec. These arrangements are of interest because they have emerged in recent years in response to the concerns of the federal government, the Quebec government and local residents related to the area's development. Also the role of James Bay and Northern Quebec Agreement of November 11, 1975 is instructive. That agreement, (sometimes referred to as the James Bay settlement), signed by the Government of Canada, the Government of Quebec and the Cree and Inuit people of the James Bay Territory, is the only comprehensive land claims settlement negotiated in Canada to date. To a considerable degree, it has shaped the regional government arrangements which have emerged in the James Bay area.

The Context

The populations affected by the James Bay settlement were some 6,300 Cree and 5,200 Inuit for whom hunting and trapping on the lands of Northern Quebec provided traditional sustenance. It is useful, then, to briefly review the historical development of governmental relationships between the native peoples of Canada and non-natives during the process of national growth and development and also the particular events leading up to the James Bay and Northern Quebec Agreement of 1975.

The essence of this relationship has been the recognition since the earliest days of colonial settlement that native people had rights to the land which had to be dealt with before colonial settlement and development could take place[1]. Early agreements were negotiated by treaty in the same way that military or commercial alliances between nations were concluded. These included compensation for the loss of native rights and the establishment of specific areas for Indian use[2].

Similar to the way in which sovereignty over Navajo territory passed to the U.S. following victory over Mexico, sovereignty over Indian lands in New France passed from France to Britain in 1760.

Indian property rights under British sovereignty were affirmed in the Proclamation of 1763 which also centralized control over native people and their property rights[3].

Legislative authority for Indians, and lands reserved for

Indians continued to rest with the central government as established by the B.N.A. Act at Confederation. A special department was created by the new Federal government to deal with Indian affairs. Treaties negotiated during the period of national expansion and growth established reserves for exclusive Indian use, protected hunting and fishing rights and promised other benefits such as medical assistance, schools, cash payments and annuities. In return Indian interests in land were relinquished.

Territory amounting to about one-third of Canada, in Ontario, the prairie provinces and the Northwest Territories, was ceded by native peoples in this way.

Pressure from expansion eased and in 1921 the signing of Treaty No. 11 brought this process to an end. Further definition of the land question was provided by a 1926 recommendation from a Special Joint Committee of the Senate and House of Commons regarding B.C. Indians. In B.C., Indians had been allotted reserve land but had not signed any treaty guarantees. To compensate for the lack of treaty benefits the Committee recommended that the sum of $100,000 be spent annually for the benefit of B.C. Indians[4].

Indian efforts to obtain recognition of claims based on aboriginal title increased after World War II. Unilateral abrogation of hunting and fishing rights by Parliament in the 1960's brought attention[5]. In 1969 a federal government White Paper rejected special laws for native people as discriminatory and stated that only those native land rights guaranteed by treaty would be recognized[6].

Native peoples objected and turned to the courts. A turning point in federal policy came following a 1973 Supreme Court decision on a land claim brought by B.C.'s Nishga Indians who sought confirmation from the Court that their aboriginal title to their tribal lands had never lawfully been extinguished. The claim was rejected for technical reasons. On the merits of the claim, however, the opinion of the judges divided evenly. The attitude of the Government shifted. On August 8, 1973, the federal government issued a statement agreeing to negotiate a settlement of native land claims.

This federal statement of policy distinguished two categories of land claims: specific claims and comprehensive claims. As defined, specific claims deal with grievances with regard to fulfillment of obligations incurred under Indian Treaties, Agreements or Proclamations or with associated federal administrative practices. The second category, comprehensive claims, deals with native rights based on traditional land use and occupancy in areas where native claims not previously extinguished by treaty or superceded by law[7]. The claims of native populations in Northern Quebec, like those of the Yukon, most of British Columbia and the Northwest Territories fall into this second category.

P.A. Cumming in 1976 noted that Canadian case law has given Indian treaties a status similar to that of ordinary contracts which leaves them open to unilateral repeal by

Parliament[8]. More recently action has been taken by native peoples' organizations in an attempt to secure constitutional entrenchment of native rights.

Parliament exercises its Indian responsibilities through the Indian Act. Its effect on Indian life is considerable.

More Recent Developments

With the 1970s, interest in northern resources intensified. Formation of the OPEC cartel and possible shortages of gas and oil focussed attention on possible supplies in Alaska and the Canadian Arctic.

In Quebec, the Quiet Revolution provided the thrust for economic expansion. A grand plan to make Quebec a leading North American producer of hydro-electric power was unveiled by Premier Robert Bourassa in April 1971. The project was expected not only to supply Quebec's growing energy needs but might also supply power for Ontario and the northeastern US.

Following the Bourassa announcement action took place on several fronts. Counsel for the Cree, stressing settlement of Indian land claims prior to further development enlisted the support of the federal government's Department of Indian Affairs and Northern Development. The native view was subsequently confirmed by a joint Federal-Provincial Environmental Study Group in its study of the ecological impact of the James Bay Project. Set up in July 1971, the study group released its findings in February 1972, indicating the most serious impact to be that of the effect of the development on the native population.

Also, in July 1971, Bill 50, creating the James Bay Development Corporation (JBDC) was passed by the Quebec National Assembly with a mandate "to promote the development and exploitation of the natural resources of the territory"[9].This responsibility included the planning and management of all future development in the James Bay region with subsidiaries established for control in specific areas such as hydro-electricity, forestry, mining and tourism. Prime among these was the James Bay Energy Corporation, established to control hydro-electric development under part ownership of Hydro-Quebec and the JBDC. The Act also constituted the territory as a municipality to be administered by the Corporation.

Using federal grants the Cree and Inuit began to inform the James Bay population of development proposals. They also began negotiations with the Quebec government and JBDC. The province was initially unwilling to go beyond discussion of the impact of the project on native life and placed negotiation of the actual project off limits[10].

A course of unsuccessful negotiations and threats of court action by the Indians and Inuit met a response of continued work from JBDC and the province. In November 1973, almost one

year after the hearing into an injunction had begun, a judgment was delivered ordering work on the project stopped. Work resumed almost immediately, however, on the launching of an appeal.

Negotiations continued. An initial proposal from the Quebec government was rejected by native negotiators on the grounds that "it failed to recognize that the native peoples' primary interest was in land and the native way of life". Meanwhile, work on the project continued such that its effects were irreversible.

In November 1974, an agreement-in-principle was reached. A year later, following intensive negotiations, the James Bay and Northern Quebec Agreement was signed.

This case study deals with the land regimes and structures for regional government for Northern Quebec instituted by the James Bay Region Development Act of 1971 and the James Bay and Northern Quebec Agreement of 1975. The latter agreement recognizes essentially ethnic divisions both territorially and in terms of the provision of governing structures.

Land south of 55 degrees is home to Cree and local government retains tribal ties to the federal Indian Act and a proposed Cree Act. The region is known as the Municipality of James Bay. Land north of 55 degrees is mainly Inuit. Although there are some ethnically-defined structures, local government is essentially non-ethnic and integrated into the scheme of general legislation governing Quebec municipal affairs. The region is known as Kativik.

In addition to a new land regime and structures for local and regional government the Agreement also contained provisions related to health and social services, education, administration of justice, environment and development. Again, most provisions are separate for the Cree and Inuit. A separate, but similar, agreement affecting 400 Naskapi Indians concluded in January, 1978 has been excluded in the interests of brevity.

The comprehensive regime established is the product of the interaction between two major forces: Indian nationalism as expressed in the struggle for recognition of native land claims and Quebec nationalism as pursued in a gigantic development proposal for hydro-electric power. The magnitude of the project necessitated provision of governmental structures in previously unorganized territory and a reworking of the position of native peoples in the area.

Those involved were the Grand Council of the Crees representing the members of eight different Indian bands, the Northern Quebec Inuit Association representing the members of 14 communities, the Government of Quebec, the Government of Canada, and three Quebec Crown corporations - Hydro-Quebec, the James Bay Development Corporation and the James Bay Energy Corporation. The Indians of Quebec Association took part initially. They were replaced by the Grand Council of

the Crees.

Also affected by the agreement are 410,000 square miles of territory in northern Quebec.

Bill C-9, federal legislation giving effect to the James Bay Agreement was passed by the House of Commons on May 4, 1977 and entitled the James Bay and Northern Quebec Claims Settlement Act. Included in the preamble is the following statement of intent:

> ...the Government of Canada and the Government of Quebec have entered into an Agreement with the Cree and Inuit...and have assumed certain obligations under the Agreement in favour of the said Crees and Inuit; and whereas the Agreement provides for the grant to or the setting aside for Crees and Inuit to hunt, fish and trap in accordance with the regime established therein, the establishment in the Territory of regional and local governments to ensure the full and active participation of the Crees and Inuit in the administration of the Territory, measures to safeguard and protect their culture and to ensure their involvement in the promotion and development of their culture, the establishment of laws, regulations and procedures to manage and protect the environment in the Territory, remedial and other measures respecting hydro-electric development in the Territory, the creation and continuance of institutions and programs to promote the economic and social development of the Crees and Inuit and to encourage their full participation in society, an income support program for Cree and Inuit hunters, fishermen and trappers and the payment to the Crees and Inuit of certain monetary compensation...

In return the Agreement provides for "the surrender by the said Crees, the Inuit of Quebec and the Inuit of Port Burwell of all their native claims, rights, titles and interests, whatever they may be, in and to the land in the Territory and in Quebec".

THE CURRENT SYSTEM : LAND

The major elements of the James Bay and Northern Quebec Agreement have been identified by A.B. McAllister. These are attached as Appendix A-1. Relevant aspects of the settlement are described below.

The agreement set out new structures defining land use in terms of geography and spheres of influence in an attempt to adjudicate in the conflict between traditional land use and large scale development. In both cases Cree lands south of 55°, and Inuit lands north of 55°, the land is divided into three broad categories.

Cree Lands

In the case of the Cree some 2,158 square miles are classified as Category 1 lands. These are further separated into 1A, 1B and Special 1B land. Included are some areas covered by mining claims and development licences of the JBDC and others.

Category 1A lands (approximately 1,274 sq. mi.) are similar to reserve lands elsewhere. They are set aside for the exclusive use and benefit of the Cree and may be ceded or sold only to the province of Quebec. If sold or ceded, compensation must be paid to the Cree or the lands replaced. They are excluded from the James Bay municipality. The administration, management and control of Category 1A lands is transferred to Canada but Quebec retains bare ownership of the land and ownership of the mineral and subsurface rights. (Section 5.1.2.)

Category 1B lands (884 sq.mi.approximately) are owned outright by Cree corporations which may be either public corporations exercising a municipal control over such lands or private landholding companies. Membership in either case is restricted to members of the Cree community as defined by the Act. Again, lands in this category can only be ceded or sold to Quebec. In the case of expropriation by Quebec compensation must be paid in cash or land at the option of the Cree.

Special category 1B lands are parcels of 20-25 square miles situated on the banks of the Rupert, Eastman and Fort George Rivers, and Great Whale River. Expropriation by Quebec is permitted for such public servitudes as regional roads, airports, water systems, fire protection and public utilities provided that no more than ten permanent staff members per development are allowed. Other developments by the province require Cree consent. (Section 5.1.4.)

Category I lands ceded to or owned by third parties previous to the Agreement are subject to the by-laws of the Cree local

authority and eligible for such municipal services as are generally provided to other Category I lands, but are otherwise classed as Category III lands.

Lands within Category I areas presently the object of mining claims, development licences, etc. are treated as Category III lands but revert either to Canada (IA lands) or the appropriate Cree corporation (IB lands) unless expropriated under the Quebec Mining Act. In this case replacement land is provided by Quebec under the procedure for Category II land. (Section 5.1.5.)

Quebec is required to provide detailed information on existing mining claims, leases, etc. to both Canada and the Quebec Grand Council of the Cree within 90 days of the Agreement's execution.

The Cree have forestry rights in Category I lands for both personal and community use.

Evidence of efforts to control the influx of outsiders is seen in restrictions placed on public access to Category I lands. (Sections 5.1.11.and 5.1.12.)

Category II lands (approximately 25,130 square miles) continue under provincial jurisdiction. Exclusive hunting, fishing and trapping rights are held by the Cree. Provisions similar to those in Category I apply regarding lands sold or leased prior to the execution of the Agreement. Compensation in land or money is paid by the Province to the native people if Category II land is appropriated by Quebec for development purposes.

The James Bay Development Corporation has exploration and development rights in Category II lands as if they were Category III lands.

There is no compensation for the establishment of public servitudes in Category II lands.

The remaining lands south of 55 degrees, by far the largest portion, are classified as Category III lands. These are owned by Quebec and subject to general provincial legislation and regulations for public lands. No exclusive benefits are reserved for the Cree. Third party rights on Category III lands are not affected by the Agreement.

It is interesting to note that on both Category II and III lands native rights to soapstone are subordinate to other mineral rights. (Sections 5.2.5.(b) and 5.3.1.). Hunting, fishing and trapping rights on Category II and III lands are subject to the right to develop on the part of Quebec, Hydro-Quebec, the James Bay Energy Corporation, the James Bay Development Corporation and other authorized persons. Further, the developers may modify or regulate the flow of rivers on Category II or III lands which may have downstream effects on Category I lands. Hunting and fishing rights are, however, given consideration by the Environmental Regime to which all developers must submit applications.

Inuit Lands

Category I lands to which title is given to Inuit Community Corporations by Quebec comprise 3,250 square miles to be allotted equally among existing communities. Included are 120 square miles set aside for the Cree of Great Whale River. The land can be ceded or sold only to Quebec. Provisions similar to Cree Category Special IB lands govern Special Category I lands along rivers or bays opposite Inuit communities.

Similar to the Cree regime also are provisions governing establishment of public servitudes and associated compensation, and the required provision by Quebec of information concerning existing mining claims, leases, etc. for Category I lands.

Ownership of Category I land governed by existing mining leases, exploration permits, etc. under the Quebec Mining Act is transferred by Quebec to the Inuit Community Corporation concerned upon expiry or renewal of these rights. If any of these lands are taken for development, compensation in land or money will be provided by Quebec.

Any rents or fees payable to Quebec in regard to leases or occupation permits granted to third parties are turned over by Quebec to the Inuit Community Corporation concerned. (Section 7.1.8.)

Category II lands totalling 33,400 square miles are public lands over which Quebec retains title and jurisdiction. The Inuit have exclusive hunting, fishing and trapping rights on Category II lands.

Category III lands comprise the remaining territory north of 55 degrees. No exclusive rights are enjoyed by the Inuit.

Third party interests receive similar protection under both Cree and Inuit regimes. Category I lands owned by, ceded to or leased from third parties prior to the execution of the agreement are treated as Category III lands. Some protection is given the municipalities in that the zoning of the municipality will be considered by Quebec regarding any renewals. Conversely, however, the municipality is to consider existing leases when establishing a zoning plan. (Section 7.1.8.)

REGIONAL STRUCTURES

James Bay Municipality

The Municipality of James Bay, roughly 135,000 square miles in size, and located between the 49th and 55th parallels governed by the Cree land regime, was established in 1971 by the James Bay Region Development Act. Excluded at this time

from its jurisdiction were previously incorporated municipalities and Indian reserves. Under the James Bay and Northern Quebec Agreement (1975), Cree lands classed as Category 1A and 1B Cree lands reserved for the Inuit of Fort George are excluded. (JBNQA Section 5.1.2, 5.1.3.).

The municipality is governed by the Towns and Cities Act (Quebec) subject to the terms of Bill 50 and except for such other provisions as the Governor in Council may declare inapplicable. Under Bill 50, for example, the Council of the James Bay municipality is made up of the Board of Directors of the JBDC. Council orders take effect after approval of the Lieutenant-Governor in Council and publication in the Quebec Gazette.

The following are provisions applicable to the James Bay municipality:

1) where there is a permanent population of 500 as determined by the board of directors, a locality shall be constituted.

2) where a locality is established, the board of directors may appoint a local council of not more than five members or, alternatively, authorize the election of such a council for a term of three years.

3) in order to vote in such an election or to be eligible as a member of a local council, a person must be of full age, a Canadian citizen and domiciled in the locality for at least one year.

The board of directors also has the authority to establish a general council consisting of one member of each local council. Appointments are made annually by each local council as provided for by the board of directors. The council is advisory in capacity, meeting at least once a year to review the annual report of the board of directors and to make its comments and suggestions known.

The James Bay Regional Zone Council

As provided for in the 1971 Act (S.36) the JBDC board of directors has delegated its jurisdiction over Category II lands to the James Bay Zone Council. The Zone Council is a public corporation established under provincial law and is substituted for the board of directors of the James Bay Development Corporation in exercising the powers of the municipal council of the James Bay Municipality with regard to Category II lands. Subject to the James Bay Development Act, the James Bay Regional Zone Council exercises all the powers of a town under the Quebec Cities and Towns Act. It is composed of six members. Three represent and are appointed by the James Bay Municipality and three are appointed by the Cree Regional Authority as its representatives. The chairman is appointed annually from among the council membership. The appointment is made in alternate years by the James Bay Municipality and the Cree Regional Authority.

Cree Regional Authority

The Cree Regional Authority (CRA), a public corporation established under provincial legislation is made up of the Crees in each of the Cree communities and of the Cree corporations themselves.

The powers of the CRA are exercised by a council which consists of the mayor and one other member from each of the community corporations. They are implemented by by-law and include the following:

1) the appointment of Cree representatives on the James Bay Regional Zone Council and, where provided for, on all other agencies, bodies and entities established by the Agreement or an Act;

2) to give valid consent on behalf of the James Bay Crees when required under the Agreement or an Act;

3) at the request of a Cree village corporation or of a band, to establish, administer and coordinate on Category I lands, the services or programs established by or for that village corporation or that band;

4) through the Board of Compensation, to receive, administer, use and invest the compensation received under the Agreement and the revenues arising from it;

5) to relieve poverty, promote the general welfare and advance the education of the James Bay Cree;

6) to work toward the solution of the problems of the James Bay Crees and, for such purposes, to deal with all governments, public authorities and persons;

7) to carry out research and provide technical,

professional and other assistance to the James Bay Cree.

Board of Compensation

The Board of Compensation is an administrative department of the CRA which acts for it in all matters related to compensation from the Agreement. It is the Cree equivalent of the Inuit Makivik Corporation which is discussed subsequently in this chapter. The Board is composed of an equal number of representatives elected by the members of each of the Cree communities and of at least three members appointed by the CRA Council. Elected representatives must always be the majority. Until December 1987, two representatives appointed by the Quebec government and one representative appointed by the Minister of Indian Affairs and Northern Development will be included on the Board.

McAllister identifies two contributing factors to the development of the CRA as a "strong, central political/administrative Agency". The first is its responsibility through the Board of Compensation for the control and administration of the Agreement compensation funds. The second lies in its power of appointment of Cree representatives to other agencies and bodies. The degree to which program administration is delegated upward by bands and community corporations will further influence the CRA's development[12].

Cree Community Councils

Cree villages, located in Category IA lands, continue to be governed by elected band councils as provided for under the federal Indian Act. Section 9 of the Agreement provides for special federal legislation now being negotiated with the Crees concerning local government for the James Bay Crees on Category IA lands. This proposed Cree Act is to include:

- powers of the band council including those powers under the existing sections 28(2), 81 and 83 of the Indian Act and all or most of those under section 73 exercised by the Governor-in-Council as well as certain non-governmental powers, (see Appendix A-2);

- the powers of taxation for community purposes, in such manner and to such extent as may be agreed upon;

- the regulation and licensing of business activities, trades, occupations, merchants and work on the reserve;

- the general powers of the Minister of Indian Affairs and Northern Development to supervise the administration of Category 1A lands;

- the incorporation of each Cree band, membership to include all Crees eligible under the Agreement.

The Agreement also provides that Cree beneficiaries under the

Agreement who are not Indians under the Indian Act shall be entitled to live on the Reserve. The new Cree Act will modify the existing system. It will not integrate band government into the provincial municipal structure[13].

Cree Community Corporations

The Agreement provides for the incorporation under provincial legislation of each of the Cree communities for the purpose of surface ownership and management of their respective Category IB lands. Powers derive from the Cities and Towns Act as modified by the Agreement. The elected Band Council with jurisdiction over IA lands serves as municipal council for its respective Community Corporation. Powers of the Community Corporation include the right to levy real estate taxes if so desired by the individual council. In addition, Cree community corporations have the power to make by-laws for environmental and social protection. Such by-laws require approval by the Lieutenant Governor-in-Council. Only limited use has been made of this by-law to date[14].

Cree Health and Social Services

Under the Agreement, a Cree Regional Board of Health Services and Social Services to exercise the powers and functions of a Regional Council under Quebec Health and Social Services legislation (LQ. 1977, c.48) is to be established by Quebec.

This Board is responsible for the administration of appropriate health and social services for "all people normally resident or temporarily present" in Category IA, IB and Category II Cree lands.

Ownership and management of the existing hospital establishment at Fort George and any future facilities are now the responsibility of the Cree Regional Board. Where a new establishment is created the Board will regulate and supervise the election of a board of directors for the facility unless it chooses to act in this capacity itself.

The Cree Regional Board of Health Services and Social Services is to be established as follows:

1) one Cree representative elected from each of the recognized Cree (band) communities;

2) one Cree representative appointed by the CRA;

3) three representatives elected by and from among the clinical staff of a regional establishment;

4) one representative elected by and from non-clinical staff from the regional establishment;

5) the director of the community health department of a hospital associated with the Board or his nominee. Where there is more than one such facility, the CRA appoints this person;

6) the general manager of the regional establishment or a representative chosen from and by such general managers if there is more than one such centre.

The term of those elected is three years. Clinical and non-clinical staff representatives may serve no more than two terms consecutively. The Board chooses a chairman and vice-chairman from among its members. The Board is required to establish by by-law and determine the functions, powers and duties of an administrative committee.

Emphasis is on the Cree Regional Board for program and service responsibility. However, local bands may negotiate with the Board to continue band provision of such direct grant programs as may be agreed on.

Implementation of the provisions of the James Bay Settlement dealing with health and social services has proven difficult. Specifically, the Cree, the Government of Canada and the Government of Quebec have disagreed over the extent of services to be provided using Government of Quebec support. An associated dispute has centred on the continuing responsibility of the Government of Canada for the provision of health and social services under the Indian Act. Cree leaders have suggested that the federal government did not live up to its responsibilities in the early days of the agreement.

Cree Education

A single school municipality consisting of the eight Cree communities in Category I areas has responsibility for elementary, secondary and adult education for Crees in Category I and II lands and persons not qualifying as Crees but living in the above Cree communities or on Category III lands surrounded by Category I lands. Non-native settlements in Category II lands are excluded from its jurisdiction.

Subject to any provision in this section of the agreement (s.16), the Education Act (1964, R.S.Q. c.235 as amended) and appropriate Quebec laws of general application apply.

By-laws requiring Ministerial approval take effect 40 days after transmission to the Minister unless disallowed in writing by the Minister within that period. Special powers given to the Board subject to budgetary approval are contained in section 16.0.9 which is included as Appendix D-3.

Board membership is comprised of one representative appointed or elected from each of the eight recognized Cree communities and one additional commissioner named by the Cree "Native Party" from among its members.

School buildings, facilities, residences and equipment of Quebec and Canada are to be transferred to the Cree Band for their use. A tri-partite committee composed of the administrator of the School Board of New Quebec, a member of

the Cree School Board and a DIAND representative was to oversee Board operation during part of the transition process.

The Cree School Board is not obliged to levy school taxes. Operating and capital costs contained in annual budgets and approved by Quebec and Canada will be split 25:75 between Quebec and Canada.

A variety of other functions are provided for under the Agreement. These are summarized in Appendix A-3 and include:

- establishment of a James Bay Advisory Committee on the Environment (Separate federal and provincial bodies will also conduct environmental impact assessments on capital projects);
- a Hunting, Fishing and Trapping Coordinating Committee;
- special provision for the administration of justice;
- policing;
- establishment of a James Bay Native Development Corporation;
- establishment of a Hunters and Trappers Income Security Board to administer an income security program.

SOTRAC

SOTRAC is an example of a Cree-related environmental panel. In granting the 1973 stop-work injunction, Supreme Court Justice Malouf acknowledged that the proposed works would have devastating and far-reaching effects on an indigenous population dependent on animals, fish and vegetation.

With this danger in mind, Section 8 of the Agreement contains provision for a non-profit Quebec company, SOTRAC, to assess the impacts on the Cree from the La Grande Complex and undertake mitigating measures.

The board of directors of five members is made up of two voting representatives of the Grand Council of the Cree of Quebec and two voting members appointed by the James Bay Energy Corporation (JBEC). A fifth non-voting member is to be jointly agreed upon.

To be valid, any resolution by the board of directors requires the support of at least one voting member from each of the Cree and JBEC representatives plus the support of a majority of the directors present. In the case of a tie vote, submission to an arbitration committee is permitted, the terms of which are also described.

Potentially troubling is the provision for JBEC representatives to oppose measures they consider outside the defined permissible scope of remedial works and programs, proposals incompatible with future activity or incompatible

with rules and procedures governing the spending of public funds.

Financing for SOTRAC comes from the James Bay Energy Corporation which is committed to payments totalling $30 million by 1986. After this date and upon completion of that financial commitment, either group may withdraw from SOTRAC.

Provisions for Government North of 55°

Kativik Regional Government

Kativik Regional Government takes in the entire area north of 55°, approximately one-third of the province*. It acts as a local government and provides services in unorganized territory within its jurisdiction. As a regional government, those powers it possesses outright related to local administration, transportation and communications, justice, health, social services, education, economic development, the environment, resource and land use management are extremely limited, particularly when compared to those of local municipalities. Its powers tend to be regulatory and programatic in nature. For example, power is granted for setting minimum standards in areas such as housing.

Administration of such services as the local municipality decides may be assumed by the regional government, subject to the approval of the Minister of Municipal Affairs for renewable periods of two years. The regional government makes the ordinances governing the support program for hunters, fishermen and trappers and administers the funds received from Quebec for this purpose. It also provides advice on vocational matters to the federal and provincial governments.

The regional government may require each of the municipalities to pay a portion of its expenses. Other revenues include fees, licences, fines, revenues, taxes, subsidies and grants. Loans may be obtained on the authorization of the Quebec Municipal Commission.

The powers of the regional government are exercised by its council with the exception of those matters declared to be within the jurisdiction of the executive committee. The council must directly exercise the powers conferred on it by the Act. It cannot delegate them. Nevertheless, it may appoint committees from its membership whose recommendations are subject to council approval.

The Kativik Regional Government is headed by a council of 12 members. Each municipality is represented by one seat.

* With the exception of Cree Category IA and IB lands at Great Whale.

Regional Council Executive Committee

The executive committee consists of five members appointed by council resolution from among its membership. The speaker and deputy-speaker of the council may not serve as executive committee chairman or vice-chairman.

The functions of the executive committee chairman are those of a chief administrative officer. He directs the affairs and activities of the regional government and its officers and employees over whom he has supervision and control. It is his responsibility to see that the ordinances of the regional government and the decisions taken by it are carried out.

The executive committee functions as a management committee but it is required to relate to the regional council on a continuous basis. For example, draft contracts of over $5000 must be submitted to council for approval as must any expenditure not provided for in the budget.

Northern Village Municipalities

The Cities and Towns Act and the Municipal Code of Quebec provide the basis for provincial legislation incorporating 13 villages north of 55° as municipalities. Specific legislation governing both local and regional government north of 55° is found in the Northern Villages and Kativik Regional Government Act (Ch. V-6.1).

General authority to make by-laws for the peace, order, good government, health, general welfare and improvement of the municipality includes the power of expropriation. The elected council also has by-law powers relating to licensing and contract, public security, public health and hygiene, town planning and the provision of local public services such as roads and water. A full description of municipal powers is included in Appendix A-4.

A village council may also impose the following annual taxes:

1) a tax of not more than one percent of the estimated value of stock in trade or articles of commerce whether on display or in storage and including stocks of lumber and coal;

2) a tax of not more than eight cents on the dollar on the amount of rent paid by all tenants in the municipality;

3) a tax, not to exceed $300 per annum on "all trades, manufacturers, financial or commercial establishments, occupations, arts, professions, callings or means of earning a profit or livelihood carried on by one or more persons, firms or corporations in the municipality". Similarly, a licence or permit not exceeding $300 may be levied against merchants doing business in the municipality but living elsewhere.

Municipalities by resolution may apply to the Quebec

Municipal Commission to contract one or more loans on such terms and conditions as the Commission may decide.

The municipal council is composed of a mayor and not less than two or more than six councillors elected for a two-year term. The seat of each councillor is identified by number. The councillor occupying seat number 1 is the municipal representative in the regional government. Seat one is accompanied by the term "Regional Councillor" on the ballot paper at elections.

Those entitled to vote in municipal elections are: physical persons of full age and Canadian citizenship resident in the municipality for at least 12 months prior to the election, and corporations, commercial partnerships and associations if their head office or principal place of business has been located in the municipality for at least 12 months prior to the election. Their vote is cast by an authorized representative.

In the case of persons seeking office the residence requirement is three years.

McAllister notes the distinction between Northern Village Municipalities (non-ethnic) and individual Inuit Community Corporations which are made up of all Inuit affiliated with each community. "The Community Corporations are land-holding bodies, holding title to Category I lands for Inuit community purposes including commercial, industrial and other purposes. Moreover, it is the pertinent Inuit Community Corporation rather than the municipal council that determines whether equivalent land or compensation will be provided when land is expropriated for public purposes, and that grants or denies permission for new development on Category I lands"[15].

Kativik Health and Social Services Council

The Kativik Health and Social Services Council and the health and social service establishments north of 55° are governed by provincial legislation except as otherwise provided by the Agreement.

Its area of jurisdiction is the same as that of the Regional Government. In fact, the Council of the Katavik Regional Government exercises the powers given to the Katavik Health and Social Services Council.

The region is split into two for service provision, the Hudson Bay sector and the Ungava Bay Sector. Provisions governing boards of directors for health and social service establishments are similar to those for Cree facilities.

There is also provision for an annual public meeting at which members of the board of directors of each establishment must answer questions put to them respecting financial statements, the services the board provides and the relations it has with other establishments and with the Kativik Health and Social Services Council.

Kativik School Board

A single school municipality, the Kativik School Board, serves the territory north of 55°. It is governed by the Quebec Education Act and other generally applicable legislation except as otherwise provided in the Agreement. The School Board Grants Act (1964. SRQ c.237), for example, does not apply. Rather, Quebec and Canada share funding responsibility on a 75:25 ratio. This is a reversal of the funding relationship for the Cree and an indication of jurisdictional responsibility.

Membership on the Kativik School Board is similar to that for the Cree School Board. Each municipality has one representative on the Kativik School Board. In place of the "Native Party" representative on the Cree Board, the Inuit have a representative of the Regional Council. The Kativik Board is non-ethnic in its electoral requirements which are the same as those for the village municipal councils.

It is interesting to note that the Inuit of Fort George located south of 55° have the option to be under the jurisdiction of the Kativik School Board. The Cree community of Great Whale River north of 55°, on the other hand is obliged to be under the jurisdiction of the Cree School Board.

A parents' committee is required in each municipality. Its size is determined by the Kativik Board. The commissioner of the municipality is an ex-officio member without the right to vote or serve as chairman.

The principal and one or more teachers as determined by the parent committee shall also be members. They shall have voting rights only if the parent committee so decides. The parents committee is advisory except where responsibilities are delegated to it by the Kativik School Board.

Duties of the Kativik School Board include the hiring of teachers and, in consultation with the Minister, the negotiation of working conditions of its employees except basic salary, basic marginal benefits and basic workload which are negotiated at the provincial level.

There are a number of provisions related to advancement of the Inuit culture and the Inuit themselves.

Makivik Corporation

The Makivik Corporation is a non-profit ethnic association established under Quebec legislation to receive, administer, use and invest the compensation paid to the Inuit as a result of the Agreement, the revenues therefrom and other funds entrusted to it.

Other objectives are:

- to relieve poverty and promote the welfare and advancement of education of the Inuit;

- to develop and improve the Inuit communities and to improve their means of action;

- to foster, promote, protect, and assist in preserving the Inuit way of life, values and traditions.

The Corporation may transfer funds to wholly-owned corporate or non-corporate (with government approval) entities for the following purposes:

- to assist in the creation, financing or development of businesses, resources, properties and industries belonging to the Inuit;

- to provide opportunities for Inuit participation in economic development;

- to invest in the securities of any corporation owning property or carrying on business intended to relate directly to the economic or other interests of the Inuit;

- to set aside funds to be used exclusively for educational, community and other charitable activities of the Inuit.

Investments may not be used as real security or alienated. Assets must be used for the general benefit of the community and not for individual benefit.

A board of directors manages the Corporation. As is the case with other legislation dealing with the Agreement, the Act sets minimum and maximum numbers of members, 17 and 25 in this case. Each Inuit community is represented by at least one board member who must be affiliated (as defined in the Act) with the community he represents. Included until 1985 (with a possible two-year extension) are two representatives of the Quebec government and one appointed by DIAND. A transitional board includes two representatives of the Northern Quebec Inuit Association and four members appointed by the Cooperatives Federation of New Quebec.

The act provides for an annual general meeting after which newly-elected representatives take office. The term of office is limited to three years for elected members and to two years for Government representatives.

MAJOR ISSUES

Land Claim

The position of the native people in negotiating the claim while development progressed has been compared to negotiating under threat of expropriation.

The adversarial nature of the negotiation process due to conflicting claims has continued into the implementation process[16].

Implementation of the land claims settlement has been difficult to say the least. A federal joint committee of Justice and Indian Affairs and Northern Development Departments notes a failure "in both spirit and letter" in some cases[17]. The report further notes that none of the eight Cree villages have received the promised essential sanitation services, fire protection or community centre due to budget restraints[18].

A memo from a senior federal official in 1980 warned that the costs of implementation would be astronomical and beyond the means of DIAND. It was suggested that either funds be guaranteed at the outset or "both the Department and the Native People will face an intolerable situation"[19].

Provisions of the agreement were not accompanied by appropriations legislation. Nor were there non-compliance penalties.

No specific official was given responsibility for implementation. There was difficulty determining who should be doing what. Jurisdiction was divided between departments and even between governments who were not forced to coordinate or even respond to each others' efforts.

In addition, implementation has been affected by financial constraints. Energy sales, by contrast, continue[20].

The Agreement confirmed the province's right to develop. As a result of the agreement, native people have been excluded from the benefits of resource development and from the decision-making role that accompanies ownership. Native representatives are the minority on many of the environmental review panels.

Implementation of the agreement has resulted in a complex array of councils, corporations, boards, commissions and committees. There appears to be a bias in favour of administrative rather than political structures and processes. McAllister traces this bias to the federal government's refusal to deal with political development in the context of a land claims settlement[21].

A provincial spokesman makes the argument that the agreement integrates native people into provincial structures for education, health and community services rather than leaving them dependent on the federal government and the Indian Act[22]. Given the difficulties which have arisen to date, the full advantage of this situation appears yet to be realized.

The Issue of Ethnicity

Two factors, federal jurisdiction over Indian bands and the

ethnic raison d'etre of the land claim have resulted in an ethnic orientation to many of the governmental and non-governmental bodies created by the settlement.

Band councils providing municipal services in Cree communities, the Cree Regional Authority and the Cree School Board are examples. Non-governmental native community corporations established as a result of the Agreement's land regime or to manage compensation monies are others. Ethnic corporations (established as a result of the Agreement) have taken on a social and economic development role.

The importance of ethnicity is further recognized by the provision for exclusion from the systems of the region of ethnic communities located geographically within the boundaries of the other ethnic group. The Inuit community of Fort George is excluded from provisions of the settlement related to the Cree even though it is within the Cree area; the Cree community of Great Whale River is similarly excluded from those provisions pertaining to the Inuit.

Ethnicity appears to affect the environmental assessment regime. In the Cree territory, the James Bay Advisory Committee on the Environment has been established. It is composed of 13 members; four are representatives of the Cree Regional Authority, four represent the Government of Canada and four the Government of Quebec. The Chairman of the Cree Hunting, Fishing and Trapping Co-ordinating Committee is an ex-officio member. This Committee is consultative in nature, being linked to private and ethnic-based Cree organizations.

In contrast, north of 55° the Kativik Regional Government appears to be seen as a public non-ethnic government and is considered publicly accountable. McAllister suggests that this view accounts for the greater decision-making role for the Environmental Quality Commission of which Kativik is a part[23].

Development and Regional Government

Governmental organization for the Northern Quebec region was precipitated by the magnitude of the province's development proposals and the interaction with native peoples these provoked. Predominance of development interests is illustrated by the chronology of events - the James Bay Region Development Act, including provision for the Municipality of James Bay was passed in 1971. Only in 1975 did the land claims settlement agreement deal with other structures for government in the area.

Creation of the James Bay Municipality as an appendage of the development corporation further illustrates this point. The capacity of developers on Category III land to regulate or modify river flow which affects downstream Category I and II lands provides a practical example.

Footnotes

1. Indian and Northern Affairs, Office of Native Claims, Native Claims: Policy Processes and Perspectives, Opinion paper prepared by the Office of Native Claims for the Second National Workshop of the Canadian Arctic Resources Committee, Edmonton, Alberta, February 20-22, 1978, p.2.

2. Ibid., p.2.

3. Cumming, P.A. Canada: Native Rights and Northern Development. Paper prepared by P.A. Cumming, Professor of Law, Osgoode Hall Law School, York University, Toronto, 1976, p.10.

4. Native Claims: Policy Processes and Perspectives, Op.cit., pp. 2-3.

5. Cumming, P.A. Op.cit., p.11.

6. Cumming, P.A. Op.cit., p.11.

7. Native Claims: Policy Processes and Perspectives, Op.cit., pp. 5-6.

8. Cumming, P.A. Op.cit., p.10.

9. Bill 50 describes the affected territory as land "bounded to the west by the west boundary of the province of Quebec, to the south by the parallel of latitude of 49°.00' North, to the east by the electoral districts of Roberval, Dubuc and Saguenay and by the extension northerly of the west boundary of the electoral district of Saguenay and to the north by the parallel of latitude 55° 00' North".

10. McAllister, A.B. James Bay Settlement, Eastern Arctic Case Study Series, ILG (unpublished paper), 1982, p.4.

11. McAllister, A.B., Ibid., p.5.

12. McAllister, Ibid., p.21.

13. Ibid., p.19.

14. Ibid., p.20.

15. Ibid., p.22.

16. Makivik Corporation. Brief to the Standing Committee on Indian Affairs and Northern Development. Brief prepared on behalf of the Inuit of Quebec, setting out the position of the Inuit of Quebec with respect to the implementation of the James Bay and Northern Quebec Agreement, March 20, 1981. Page 5 details some of these attitudes.

17. Native People, 15:10, March 26, 1982.

18. Native People, Ibid.

19. Epstein, R.J., George, G.H., "James Bay Agreement Cracking at the Seams," Perception, Vol. 5, No. 16, Nov.-Dec., 1981, p.13. Mr. Epstein is assistant to Chief Billy Daniels of the Grand Council of the Crees.

20. Epstein and George. Ibid.

21. McAllister, Op.cit., p.7.

22. Dionne, G.M. Final Settlement of claims by the native peoples of northern Quebec. Paper prepared for the discussion group on Native and indigenous people - their employment and claims for the 36th Annual Conference of Provincial Ministers of Mines. Mr. Dionne is Manager of Mining Exploration for the JBDC.

23. McAllister, Op.cit., pp. 28 & 36.

24. Ibid., p.11.

CHAPTER 3. THE NORTH SLOPE BOROUGH OF ALASKA

INTRODUCTION

In 1959 Alaska became the 49th state of the United States of America. The new state's constitution provided for a 'borough' system of government. This system was a conscious departure from the typical city and county style of government in the lower 48 states. The borough system would create areas bigger than a city but smaller than a state, allowing for government on a regional basis. The factors which led to the decision may be of some use when considering the suitability of various structures for the Northwest Territories.

The native peoples of Alaska are the largest minority group, accounting for about 15 percent of the state's population. The three major groups, Indian, Eskimo, and Aleut peoples, although different from one another, have a common history of subsistence living which in recent years has been disrupted by the bureaucratic change resulting from the granting of statehood and the economic and technical changes resulting from the development of the oil and gas industries.

During the decades of territorial government, native Alaskans participated very little in political activities. The diverse native peoples were often isolated from one another, had differing bases of organization and leadership, and were not encouraged by federal or territorial agencies to participate in any sort of political or organizational activity. As will be seen, events in the post-statehood period altered this situation considerably.

In 1972 the North Slope Borough was incorporated, thus creating the first native, non-tribal regional government in the U.S.A. This followed the signing of the Alaska Native Claims Settlement Act (ANCSA).

This account traces the development of the Native land claims and the North Slope Borough. It should be noted that recently published source material has been somewhat limited.

This chapter is heavily indebted to the work of David Baker, (Eastern Arctic Study Case Study Series: "The Alaska Native Claims Settlement," 1982), Thomas A. Morehouse and Linda Leask, ("Alaska's North Slope Borough: Oil, Money and Eskimo Self-Government" in Polar Record, Vol. 20, No.124, 1980 and Gerald McBeath and Thomas A. Morehouse, (The Dynamics of Alaska Native Self-Government, 1980).

Historical Summary

Prior to the granting of statehood to Alaska there was little local control of either government or resources and little participation by natives at the territorial level or in community programs. Over 200 different federal and territorial agencies operated in the state with virtually all the critical decisions being taken in Washington.

In general, Alaska had been treated much like a colony, exporting raw products, importing finished products, and experiencing up and down economic cycles. Alaska had been purchased from Russia in 1868 but it was not until 1900 that a Civil Code was granted to Alaska which allowed for the establishment of municipal governments with limited powers. Territorial Status came to Alaska in 1912 providing Alaska with its own elected legislature. Self-government was limited, however, by the fact that the legislature's actions were subject to review by the courts and Congress. The Governor was a presidential appointee and a large number of the basic government functions and programs were undertaken by federal agencies.

Before World War II economic activity was limited and seemed unlikely to improve. Very little changed politically with minimal participation by Alaskan natives in the critical decision-making that affected the territory. Transportation links at this time were mainly confined to water routes and exploitation of natural resources was the order of the day, there being little effort made to promote sustained economic growth in the territory.

The Second World War is regarded as a major turning point for Alaska. The territory itself became a strategic area, military and civilian personnel arrived to construct highways, buildings and airfields, the railroad was modernized, and the population increased dramatically. During this decade there was increasing momentum for change in status to statehood prompted by the belief that territorial status promoted under-development and that statehood would have the opposite effect.

The withdrawal of large tracts of land (by federal agencies) for preservation purposes became a point of contention for development-minded Alaskans and further fueled the desire for more self-determination.

In 1959 Alaska was granted its statehood and although the Statehood Act (1959) which included a land grant of 104 million acres was quite generous, the federal government continued to play an important role. Ownership of the bulk of the land, managed by a variety of federal agencies was a prime method of maintaining the central government's control. This included the outer continental shelf enabling the federal government to maintain control over the best oil lands. As well, the Bureau of Indian Affairs and the Department of Transport (which managed the operation of the

Alaskan railroad) played important roles.

In addition to representation in the U.S. House of Representatives, and Senate, which resulted from statehood, Alaska was granted 104 million acres which were to be selected by the state by 1984. Substantial revenues (90 percent) from federal oil and mineral lease sales, rentals, and royalties were to be paid to the state. This provision, however, excluded the outer continental shelf which meant that the federal government retained full control of this important area.

It had been expected that there would be a period of strong economic development following the granting of statehood. This did not happen. Indeed, the state's finances were strained to the point that some were advocating the return to territorial status. However, the production of oil in the 1960s effected a successful turnaround in the state's fortunes and the economy began to stabilize.

The North Slope was not an area that gained tremendous benefits from these early post-war developments. In general the inhabitants lacked adequate means for the maintenace of a good standard of living. Privately owned homes lacked piped water and sewer systems, and many were without electricity. In the early 1970s Barrow, the largest native community on the North Slope, had a high unemployment rate (11%) relative to non-native centres, with the unemployment rate in many of the smaller villages reaching extraordinary levels, sometimes as high as 90 percent. This situation existed despite efforts by federal agencies in the 1960s to wage war against poverty and improve conditions generally.

THE LAND CLAIMS SETTLEMENT

The 1960s saw an increase in economic activity in the new state, and increased pressures for development. As well, there was increasing dismay among the native population due to the fact that the state had to power to select lands to be withdrawn from the public domain. Because of the potential disruption this selection could cause to native life, the native land claims movement gained momentum.

Native Political Activity

The history of native political activity in Alaska has been uneven, with some areas and groups exhibiting more initiative than others. Natives were permitted to participate in politics as early as 1915. For a number of reasons, native activity in this field was confined to the Indians in the southeastern area. The first native to be elected to the territorial legislature in 1924 came from this area. Native peoples in other parts of Alaska played a minimal role, both in their territorial government and at the local level. It should be noted that they were not encouraged to participate

by the federal and territorial agencies who apparently played the traditional paternalistic role.

Land Claims - The Setting

In general, the native land claims were based on aboriginal use and occupancy. In Alaska there had been no history of treaties made, reservations established, or conflicts producing a 'winner' or a 'loser'. The Alaska Organic Act of 1884 provided a firm basis for native land claims, stating that Alaska "natives were to be undisturbed in the possession of any lands actually in their use or occupation or now claimed by them". The matter of title claim and how this might be undertaken was left to future acts of Congress.

When Alaska achieved statehood some 75 years later, this issue still had received no attention from Congress. The 1959 Statehood Act did, however, reaffirm native rights. What was lacking was definition of those rights. Thus conflict was assured by both granting to the state its right to select lands and the reaffirmation of native rights to traditional lands.

The process of state selection of lands was long and complex and required a number of steps such as notification, adjudication of conflicting claims, surveys, approvals and the issuing of ownership patents. The Statehood Act (1959) had granted the state the right to select massive amounts of land. Yet, for various reasons, including the lengthy process required, by 1966, only a small proportion of the potential area had been selected. These selections, however, were enough to step up the assertions of native claims to lands. By this time native claims to lands conflicted with about one-quarter of the state-selected lands which by now totalled approximately 17 million acres. Some of these native claims affected state oil and gas leasing activities. Native protests regarding the state-selected lands were sufficient to prompt the Secretary of the Interior, Stewart Udall, to place a moratorium on transfers of federal lands to state jurisdiction pending the settlement of all native claims. The state was thus hampered in its efforts to acquire lands and generate economic activity. Indeed the state's land selection program came to a full stop in 1968 when Secretary Udall expanded the land freeze.

Emerging Native Activity

In the 1960s several factors prompted the increase in native political participation, the granting of statehood being one obvious factor. During the 1960s, natives gained experience through service in the armed forces, the Alaskan National Guard, and were employed in oil-related enterprises and in the construction of the DEW line. Major threats were proposed to the native way of life such as a massive hydro-electric scheme and an underwater nuclear explosion to create a harbour. Although these projects did not

materialize, they were sufficiently threatening to create fears and tensions, and to mobilize new native activity.

Organizations began to be formed throughout Alaska involving native groups that had been previously uninvolved politically. Interestingly, the development of native organizations was assisted by people and groups from outside Alaska. An important component of this 'outside' assistance was financial backing for organizational meetings and a state-wide native newspaper, Tundra Times. In 1963 an important settlement (Tyonek) regarding aboriginal rights transferred leasing rights from the Bureau of Indian Affairs to the Tyonek reserve. This helped establish the validity of native claims as well as effecting the transformation of the Tyoneks from an impoverished group to a modern, affluent people.

Also, as the 'outsiders' and the native groups were actively promoting native rights and involvement, the Bureau of Indian Affairs, in the late 1960s, began to delegate authority and to urge that village councils and advisory boards become more involved in local affairs. During the 1960s, some dozen regional native organizations were either formed or reactivated. The Alaska Federation of Natives (AFN) was formed in the late 1960s. This organization had the difficult task of working to overcome regional rivalries and presenting a united front in matters of critical importance to the native cause, the most critical being that of native land claims.

The Alaska Native Claims Settlement (1971)

The Alaska Native Claims Settlement Act (ANCSA) of 1971 was the last in a series of bills proposing settlement which had been presented to Congress between 1967 and 1971. The Secretary of the Interior's freeze on land transfers had been the encouraging factor in settling the land claims. The claims submitted by the various native groups were extensive and, in some instances, overlapping. Given the wording of the Organic Act of 1884 which protected native rights to subsistence activities, and the Statehood Act of 1959, the case for aboriginal rights was formidable. The native leaders were in a strong legal position to resist any attempts to provide the native people with token compensation. Considerable opposition to the first bills was based upon the insufficient size of the land settlement, the amount of proposed compensation, the proposed native share of income from state and federal mineral leases, and the proposed structures and authority relating to the administration of lands and funds.

Both the state and the proponents of development were dependent upon the continued development of resources. Delay in settling the land claims was costly, both to the state government, and to those involved in resource development. Of particular importance was the delay in the building of a pipeline to bring oil from the North Slope to Valdez. Proposals for a land claims settlement came from several

sources - the Department of the Interior, the Alaska Federation of Natives, and Senator Jackson, Chairman of the Senate Committee on Interior and Insular Affairs.

The extensive native claims to land and a percentage of the royalty revenues were both rejected vigorously by the Government of Alaska. The state's stand initially was supported by a variety of non-native, pro-development interests. Native leaders, however, lobbied actively in Washington and were supported in their efforts by various non-native interest groups.

Ultimately the oil companies recognized the necessity of settling the native claims in order to allow them to proceed with construction. In addition, native leaders were able to enlist the support of the Nixon administration. On December 18, 1971, the President signed the Alaska Claims Native Settlement Act (ACNSA).

The following summarizes the key items included in the bill.

The Alaska Native Claims Settlement

The Alaska Native Claims Settlement Act of 1971 is the largest single claims settlement in the history of the United States. The act is extremely complex and has been amended several times since 1971. All persons with at least one-quarter Alaskan Native blood and alive when the act became law are eligible to participate in the settlement. In essence, the act provides for the extinguishment of all outstanding Native claims to land, and to compensation arising from either previous treaties and statutes or aboriginal title based on land use and occupancy, in exchange for the following:

1) A total non-taxable grant of $962.5 million was to be made to Alaska Natives, $462.5 million to come directly from the federal treasury over an 11-year period, $500 million to come from a two percent royalty on state and federal oil, gas and certain other mineral revenues.

2) A grant was to be made to native groups of unrestricted title (fee simple) to 40 million acres to be selected from the public domain and distributed among Native regional corporations, village corporations, and individual Natives. Land selections were to be compact and continuous and largely from areas surrounding existing villages. Land already in private ownership or under mining claims, set aside for national parks, defence or other federal purposes, or already selected by the state but not yet patented to it could not be selected by the Natives. In cases where this resulted in insufficient land being available for selection around villages, land was to be selected from deficiency lands set aside for this purpose by the Secretary of the Interior. Villages on existing reserves could obtain full title to such reserves in exchange for the revoking of reserve status and giving up all other benefits under

ANCSA. Seven local corporations on five reserves voted to do this, thereby gaining title to 3.7 million acres and bringing the total land accruing to Alaskan Natives under ANCSA to almost 44 million acres.

3) Twelve Native regional profit corporations were created, whose boundaries cover the entire state and as far as possible include Natives of common heritage, plus a thirteenth corporation which was to receive settlement funds (but no land) for Natives not residing in any of the 12 regions. The regional corporations control the subsurface rights to all the land received under ANCSA and have complete title to over 16 million of the 44 million acres. This land was to be selected within four years and divided among corporations according to a complicated land loss formula which attempted to compensate those regions with a large area but a small number of Native enrolments. Money received under the settlement was channelled directly to the regional corporations on a per capita basis. For the first five years the regional corporations were to distribute at least 10 percent of the claims money directly to individuals and at least 45 percent to the village corporations, again on a per capita basis. Subsequently, the regional corporations were to distribute 50 percent of their income to the village corporations. The regional corporations were to be set up on the basic pattern of business corporations and each Native in the region was to hold 100 shares. Hence with the exception of Natives on certain revoked reserves which voted to accept full ownership of their former reserves and forfeit membership in ANCSA, all Natives became stockholders in a regional corporation. Natives cannot sell this stock or transfer any rights to it until December 1991. For the first five years after formation of the corporation, articles of incorporation and by-laws required the approval of the Secretary of the Interior, and financial reports were to be furnished to the Secretary and Congress. The regional corporations must share with other regional corporations 70 percent of the (taxable) revenues they receive from timber and subsurface resources, to be distributed on the basis of per capita enrolment; regional corporations must, in turn, redistribute 50 percent of all timber and subsurface receipts to village corporations within their regions.

4) Over 200 village corporations were to be established to receive and manage the surface estate of approximately 20 million acres of land. To be eligible for incorporation under ANCSA, a village had to have a Native population of at least 25 people, a population that was at least one-half native, and a traditional character unmarked by modern or urban features. Eligible villages were to select their land within three years of the settlement from land around the villages and elsewhere set aside by the Secretary of the Interior. The number of acres to which a village was entitled was determined by the size of Native enrolment in the village. Some of the village land was to be

transferred to individuals (for residences, businesses, etc.) to such private organizations as churches, and to federal, state and municipal governments. Villages pay no property taxes until 1992, except on profits from land which is developed or leased. As stated above, village corporations were to receive approximately half of the cash settlement plus whatever resource revenues are passed to them by their regional corporations, and in turn part of this money was to be distributed to individual Natives enrolled in the village corporation. Certain natives living outside the boundaries of the villages were designated 'at large' shareholders of regional corporations and received a larger cash payment since they did not participate in the benefits and land generated by the activities of a village corporation. Villages were to incorporate as either 'for profit' or 'non-profit' organizations, and were to submit their articles of incorporation and their first five annual budgets to their regional corporation for approval. Regional corporations were to assist the villages in their land selections and until December 1981 possess the right to 'review and render advice' to village corporations on 'all land sales, leases or other transactions'. Certain other provisions further augmented the power of the regional corporation vis-a-vis the village corporations: regional corporations could withhold any or all funds to be distributed to a village corporation until the latter submitted a 'plan for the use of the money that is satisfactory to the Regional Corporation'; regional corporations may require village corporations to undertake joint ventures with other villages; and regional corporations may provide joint regional-village financing of projects that they believe will be in the general interest of the region.

5) A conservation section, 17 d(2), allowed the Secretary of the Interior to select up to 80 million acres for study to determine if these lands should be added to existing national parks, forests, and wildlife refuges and to make recommendations to Congress in this respect. Such land was to be selected after the village corporations had made their selections and before the selections by the state and the regional corporations. ANCSA also authorized another withdrawal of 60 million acres by the Secretary of the Interior for study and classification of all lands in Alaska not withdrawn for other purposes or transferred to others (sec. 17 d(1)). Finally, the Act also required that easements be withdrawn by the Bureau of Land Management to assure rights of limited access for the public over Native lands. Under ANCSA a Joint Federal-State Land Use Planning Commission with federal, state and Native representation was established to provide information and to make recommendations to the governments of the United States and Alaska with respect to land use in Alaska. On the basis of these provisions, one writer concluded, 'the Act might more appropriately have the title 'Alaska Conservation Act of 1971''.

6) ANCSA removed the obstacle to pipeline construction posed by the land freeze by prohibiting state or Native land selections within a utility and transportation corridor which the Act suggested the Secretary of the Interior might want to withdraw.

Essentially, therefore, ANCSA consisted of a grant of money to compensate Natives for lands lost and aboriginal rights extinguished and a grant of land with which to protect their lifestyle and build their future. By giving individuals land ownership for their residences and businesses and by vesting the rights to the remainder of Native land in Native corporations, ANCSA instituted the concept of property ownership in the Native community of Alaska on a mass scale[1].

It is important to note that the Act did not provide assurance of continued communal use of lands, nor did it provide for a continuance of existing programs or rights. As well, there were no provisions in the Act for subsistence hunting on federal lands. Hunting and fishing regulations apply to both native subsistence hunters and non-native sport hunters.

Village Corporations

Most of the village corporations were incorporated as profit-making organizations and subsequently invested in a variety of projects, including such things as village stores, hotels, and other small businesses. Of late, village corporations have been experiencing significant problems, principally because they are too small to be viable. Some have suffered from being underfunded by the 1971 settlement. Many have merged with other village corporations and pooled their various resources in an attempt to solve their problems.

Although many of these profit corporations are facing financial crises, on the whole, the benefits are seen to outweigh the negative results. First, these corporations are directed by natives who are the only persons able to be directors and to hold shares. Second, substantial investment has been made in village areas which has meant both jobs and development at the village level. In his study, Baker noted that many of the village corporations are experiencing severe financial problems and many may soon be facing bankruptcy indicating that, although the village corporations have had many benefits there are still major problems to be solved.

Regional Corporations

The general role of regional corporations were set out in ANCSA, and are described in the extract from Baker's study.

Regional corporations were a concept that was readily acceptable to the native population who recognized that they needed to equip themselves to deal with the changes resulting from the developing oil and gas industries.

Regional corporations are of two kinds, profit and non-profit. The non-profit regional corporations had to be established to operate the various social programs that had been begun by native associations. The profit corporations were established to carry out economic activities and to provide a vehicle to receive the assets and land selections resulting from the ANCSA. In short, the native peoples, by means of these profit corporations, became entrepreneurs, and were able to participate in development activities on what could be regarded as an equal footing with other development interests. These regional corporations currently hold huge assets in land and cash, and have invested substantially in major projects throughout the state. Appendix B-1 lists the regional corporations as of 1980.

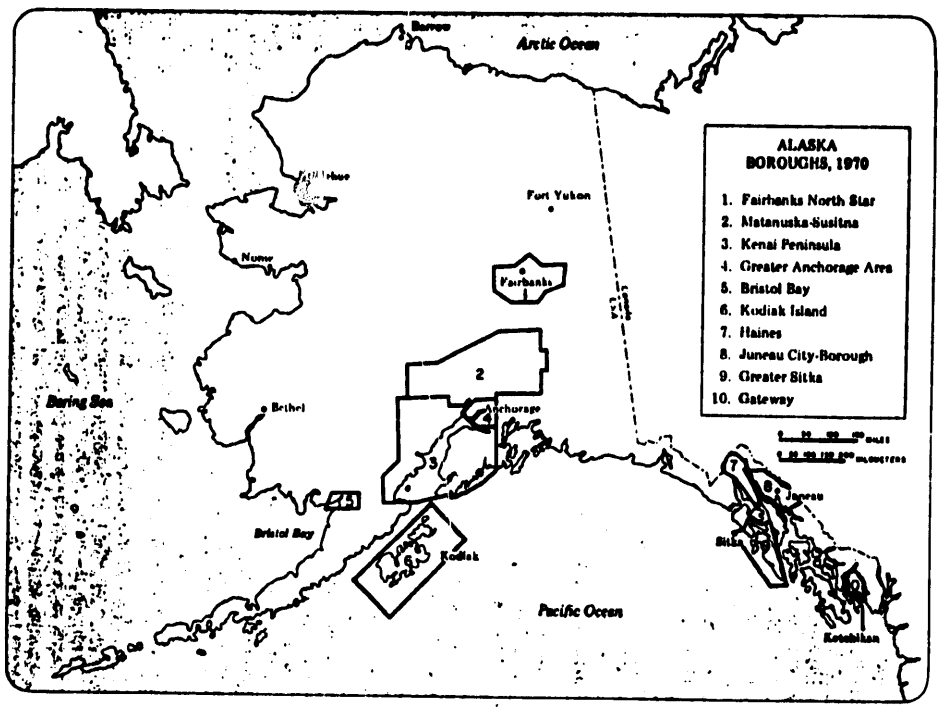
While not political in form or purpose these native corporations have become bodies of political influence in their regions. Many of the corporate officers were leaders during the native land claims movement, and had thus acquired experience which served them well in these new corporations. The corporations also provided the opportunity to continue to pursue some of the (native) community goals.

Perhaps the most important feature to bear in mind is that the Act did not make provision for native political organizations. The profit and non-profit corporations provided for in the Act were not intended to replace existing bodies of local organizations and governments. By the same token, the new native regional corporations were not to replace the existing regional structures, such as the Arctic Slope Native Association, nor were they linked to the existing structures in any way. They were simply vehicles for social and commercial undertakings.

GOVERNMENT ORGANIZATION AND ANCSA

At the time of the passing of ANCSA, the State of Alaska, as provided for in the Statehood Act (1959), was organized into a system of boroughs (see Figure 3-1). Prior to the passing of the Act, local tax bases existed only in Fairbanks, Anchorage, and their urban areas. Of the 40 cities, less than half had populations numbering more than 1000. Powers and duties were assigned to cities in accordance with their 'class'. By the end of the 1950's, there were four classes of cities as well as unincorporated native villages, education and public utility districts, and wholly supported rural settlements. Cognizant of the jurisdictional problems among local government that existed in the lower 48 States, the writers of Alaska's constitution chose to institute a 'borough' system of local goverment.

FIGURE 3-1 ALASKA BOROUGHS, 1970



Source: McBeath & Morehouse, The Dynamics of Native Self-Government

Alaska's Borough System

At the time of statehood, cities were the only units of general local government. When Alaska was preparing for statehood the population was just under 200,000, almost half of whom lived in the South-Central Region dominated by the urban centre of Anchorage. Another 40,000 lived in the Interior Region and the urbanized area of Fairbanks. Cities at that time were classified, first to fourth class, with each class having its own powers and responsibilities.

The Constitutional Convention which in 1955-1956 was debating the question of local government established certain guidelines to be used in formulating the first constitution.

- Provision should be made for subdividing all Alaska into local units (boroughs), though not all need be organized;
- units should be large enough to prevent too many subdivisions in Alaska; they should be so designed as to allow the provision of all local services within the boundaries of a single unit, thus avoiding multiplicity of taxing jurisdictions and overlapping, independent districts;
- the state should have power to create, consolidate, subdivide, abolish, and otherwise change local units;
- creation of units should be compulsory, with provision for local initiative;
- boundaries should be established at the state level and must remain flexible;
- units should cover large geographic areas with common economic, social, and political interests;
- local units should have the maximum amount of self-government and have authority to draft and adopt charters; organized units should have the authority to perform any function, to adopt any administrative organization, and to generally undertake any action that is not specifically denied to them by the legislature[2].

These guidelines were established because the delegates were anxious to avoid the problems they observed in the lower 48 states. It was also recognized that the Territory of Alaska presented varying conditions which would require a flexible system of local government. There was also a strong desire to have a unified system of local government. A number of proposals were presented and debated. One of the more controversial aspects was the position of the education function within the new state. Education had become the most expensive public function at the local level. The Bureau of Indian Affairs provided schools to serve the Native population, and territorial schools served the white population. District schools served everyone in the large

urban areas. Basically, this system continued after the Statehood Act of 1959.

Another focus of the constitution discussions was the role of the Public Utility District (PUD). At the time of statehood, seven of these existed for a variety of purposes ranging from warehouses to hospitals to dams.

The concept of local government that was adopted in the Constitution of the State of Alaska was that of a system of boroughs. This was deemed to be the system which could provide the flexibility needed as well as the powers and finances to provide services.

Types of Boroughs

Two types of boroughs were provided for: organized boroughs, which could be initiated by area residents and would provide a number of services, and unorganized boroughs, which would constitute the balance of the state and which would not be self-governing units. The state would be reponsible for services in the unorganized boroughs.

The PUDs that existed prior to statehood either were absorbed into new boroughs as special service districts or became new municipalities themselves. As boroughs were established, existing cities in the area of the boroughs were required to become part of the borough although they were permitted to retain their identity as cities. As was the case before the 1959 granting of statehood, cities were classified by category and functions. Appendix B-2 sets out this classification system in summary form. In accordance with the constitution, each borough was to establish the details of its own functions. Boundaries would be able to be changed as situations changed. The state legislature has the authority to determine what services are to be offered in an unorganized borough. Those who developed the constitution envisioned boroughs of different sizes - some predominantly urban, some regional - with differing powers and functions. Figure 3-1 indicates that this is what occurred.

The role of the state in local government was maintained by the Local Boundary Commission and the Local Affairs Agency, (earlier known as the Local Government Agency) each of which exercises some control over local government. The Local Boundary Commission has the responsibility to establish and revise local government boundaries. This function includes city boundaries. The legislature has veto power over the boundary revisions. The Local Affairs Agency is the only administrative agency that is specifically required under the Constitution, chiefly due to the belief that an effective state agency was required to ensure the success of local government. The Local Affairs Agency functions as a general purpose agency, providing technical and advisory services and appears to have little statutory power. It should be noted, however, that the review of recent literature revealed little commentary on this topic.

In addition the Constitution decreed that the state

legislature would play a continuing role, particularly in unorganized boroughs as previously mentioned. Federal agencies, particularly those with regulatory functions, also perform a function at the local level.

It is important to note that most of rural Alaskans live in the unorganized borough areas, with few services, and little or no self-government. Native Alaskans constitute a large percentage of the population of these rural areas and are therefore under-represented as recipients of services and participants in local self-government.

The borough system proved to be more contentious than anticipated primarily because of the new taxes and controls that were created as well as the apparent threat a borough would present to existing municipal structures and school boards. Thus, almost 10 years after statehood, only 10 boroughs had been incorporated, leaving vast areas of Alaska as unorganized and unserviced.

Part of the problem regarding borough formation was the fact that the state had not clearly defined the relationship of the boroughs to the overall political system, as the Constitution had implied it would do. The borough system also was an unfamiliar one which suggests another reason for its slow development. Because a large portion of the native population lived in rural areas and would thus be unaffected by borough development, there was no particular support for the system by native leaders. The borough system also did not receive a great deal of support from the urbanized areas. Of the 10 boroughs formed by 1968, eight had been the result of the Mandatory Borough Act of 1963, rather than the outcome of local initiatives. The Mandatory Borough Act required incorporation of boroughs in eight areas which contained public utility and independent school districts by January 1, 1964.

The North Slope Borough

The discovery of oil in the Kenai Peninsula in 1957 had been one of the major factors for the movement towards statehood. In much the same way the discovery of oil at Prudhoe Bay on Alaska's North Slope in 1968 prompted the local leaders to establish control by organizing a borough government. Borough formation required more than the discovery of oil, of course, and the North Slope area had been noted for its political and community associations and their activities. In particular, the city government of Barrow had built a substantial reputation for its local government. Native associations played a more vigorous role in community life than in other areas of the state. Thus a solid core of political and community leadership had developed. The new oil and gas discoveries at Prudhoe Bay could therefore provide the financial support for borough government.

Local initiative to organize a borough was not unopposed. The oil industry was opposed to the prospect of borough taxes on company properties, and the state exhibited a reluctance to

act upon the incorporation petition. At the time that the North Slope area was undergoing the process of borough incorporation, the native land claims activity was in high gear and drawing to a conclusion.

The proponents of the North Slope Borough were required to go through the lengthy process of borough incorporation, which involves five basic steps:

1) circulation of petitions;
2) investigation by the Local Affairs Committee;
3) one (or more) hearings by the Local Boundary Commission (LBC);
4) decision meeting by the LBC; and
5) area-wide election[3].

The Arctic Slope Native Association (ASNA) was a major participant in the borough formation process. The North Slope area had been badly neglected by the state government, and ill-used by the federal agencies and the private sector. The living conditions of native people were often deplorable. Clearly, there were several good reasons why more self-determination was a goal. The native peoples were supported in this goal by many of the white community leaders who also believed that with the potential revenues from oil and gas taxes the area would be in a strong position to make considerable improvements and finally bring some degree of prosperity to the people.

Incorporation did not come immediately. The oil industry took their objections to the courts in an effort to stave off the taxation that would result. At one point the state maintained that any tax revenues should accrue to the state because taxes were a tax on resources, not on property. The LBC was not impressed with the arguments of either the oil industry or the state and gave its approval for the borough formation process to go forward. This decision was appealed for judicial review in the Anchorage Superior Court which denied the review. This decision led to a further action in the Superior Court which ultimately found for the borough and the state. During this lengthy period of litigation the North Slope Borough, which was incorporated in 1972, had been operating without full legal sanction.

North Slope Borough - Structure and Powers

The governing body of a borough is the assembly. (See Appendix B-3, Section 4) In 1972 the North Slope Borough Assembly consisted of five elected members, the chairman (later mayor), the clerk, and the secretary. With the exception of a start-up grant of $25,000 from the Local Government Agency, the North Slope Borough was without immediate funds although substantial amounts were promised by outside sources. The borough had not been officially certified or incorporated so that it lacked the normal borough taxing powers. The early months were complicated by the ongoing litigation and disputes regarding the extent of

the borough powers.

The Alaska Constitution permits a "home rule borough or city to exercise all legislative powers not prohibited by law or charter". In other words, a home-rule borough's powers would not be limited to those specifically delegated by the state. The intention of the proponents of borough government for the North Slope had been to acquire the status of a home-rule borough. This was resisted by the LBC who decided to grant only the mandatory borough powers: area-wide education, planning and zoning, and assessment and taxes. North Slope political and community leaders realized that these limited borough powers provided few independent powers. The North Slope, with its large land area (88,000 square miles), but small population (approximately 4,300), and substantial native population could easily have been dominated by state and/or oil industry interests, had not the newly-formed borough worked to acquire more extensive powers. A year after the North Slope Borough had been formed the mayor and the borough assembly moved to establish a home-rule charter (see Appendix B-3, Section 9). One of the powers being sought in the home-rule charter was the power to tax energy resources. In addition, the home rule charter would enable the borough to enact ordinances that went beyond the municipal code, and provide significant benefits to the native population, (such as exempting all property valued less than $20,000 from property taxation).

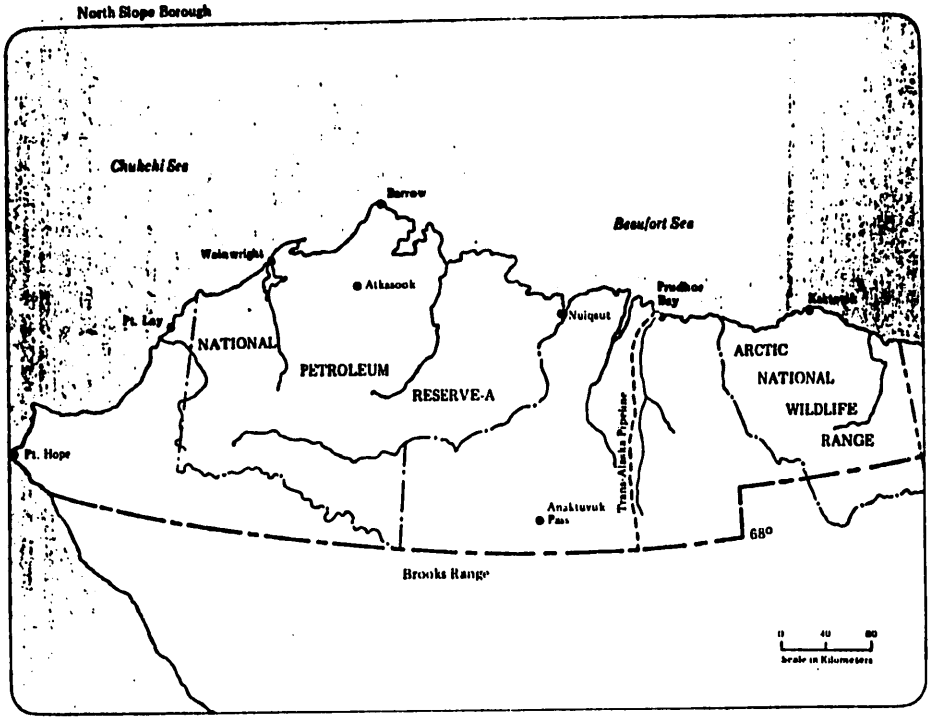
During the early 1970s there was considerable confrontation involving the oil companies who opposed the move to 'home rule', state officials, and the city of Barrow officials until a settlement was finally reached. The end result was that the borough obtained considerable taxing power, was able to extend its borough powers to outer villages, begin a Capital Improvements Program, and sell municipal bonds.

The eventual transfer of village powers to the borough resulted in a centralization of powers, enabling the borough to deal with the state and oil companies more effectively and to provide services more efficiently. The North Slope Borough has also been effective in pursuing native interests in three areas: the right to subsistence hunting and fishing, the development of capital improvements to improve living conditions, and the enhancement of native cultural identity.

It is worthwhile noting that the North Slope Borough which is by far the largest in Alaska includes two areas, the National Petroleum Reserve and the Arctic National Wildlife Range, which are under control of federal agencies, thus retaining a federal presence. This is illustrated in Figure 3-2.

As a direct consequence of the Alaska Native Claims Settlement Act new structures were introduced which have had varying degrees of success and acceptance. These new structures were the regional and village corporations which are described in the extract taken from Baker's study.

Figure 3-2 North Slope Borough, showing Reserves



Source: McBeath & Morehouse, The Dynamics of Native Self Government.

Regional Education Attendance Areas (REAAs)

The basic responsibility for services in organized boroughs lies with the state. However, a significant departure from this generalization was the formation of the REAAs. Local school boards were instituted as early as 1917. As well, schools for Alaska natives were operated by the federal government. Thus, the school system had developed along native/non-native lines.

The state constitution provided for decentralization and tied the focus of government in cities and boroughs to the development of educational systems. Following statehood, there was considerable pressure for community control of the education for Alaska natives. In 1976, 21 REAAs were created within the boundaries of the native regional corporations, with some regions containing more than one REAA. The school boards in these REAAs are responsible for budgetary, curriculum and personnel decisions at the local level. These REAAs are seen as an important early stage for unorganized boroughs that will later move to an organized borough status, and are considered to have had a significant role in the development of native self-government.

Summary

A decade has passed since the ANCSA was signed. In the North Slope Borough in particular, which is the only borough to have been established since 1971, substantial changes have taken place. As mentioned earlier, the North Slope Borough is the largest regional, native-controlled but non-tribal government in the U.S.A. McBeath and Morehouse state that:

> "the significance of borough formation on the North Slope is that it has resulted in increased native power at the regional level. And the regional corporation, which participates in borough government through membership in the borough assembly and interlocking relationships with borough administration, is a partner of the borough in the enterprise of Inupiat self-government"[4].

At the time of incorporation most natives were located in poor villages. The revenues from the Prudhoe Bay discovery have brought tremendous wealth to the area so that the North Slope Borough now has one of the richest local and regional governments in any of the 50 states. On the strength of its substantial tax base (about $20,000 per capita in 1980) the North Slope Borough launched a multi-million dollar capital improvements program. The Arctic Slope Native Association, which had existed prior to incorporation has played a major role in providing aggressive Native leadership at two critical times: during the land claims negotiations, and during the incorporation period when competing forces attempted to claim the revenue from the Prudhoe Bay discovery. The native peoples' success in this latter struggle was primarily because they were able to use constitutionally authorized powers of self-government. The end result could be characterized as an additional settlement with significant economic, social, and political benefits on

a par with those which might be included in a claims settlement.

Although the North Slope Borough has established itself as a strong municipal government, it continued to be challenged, in particular by the oil companies. In 1976, when the borough levied a property tax to service debts on general obligation bonds, the oil companies took the matter to the courts, maintaining that the borough was exceeding its authority. In 1978 the state Supreme Court found for the Borough.

The state, initially opposed to the formation of the North Slope Borough, has continued to exert controls, principally by restricting taxing powers. In spite of these difficulties the North Slope Borough has grown rapidly in terms of wealth, if not in population. In 1972 the newly incorporated borough had a budget of $500,000. By 1978, the borough had a budget of about $74 million and about 500 employees in school districts and general government. The borough itself has become by far the dominant employer, and has been able to provide both seasonal and full-time jobs for a large number of borough residents.

By the late 1970s the borough was moving to protect subsistence rights without impeding exploration and development. One method for this is to claim a share of regulatory powers over federal and state lands and waters. To date, this problem has not been resolved, nor has the borough come to grips with the absence of a tax base that is unrelated to oil and gas development. As yet there is no economy which is based on non-oil and gas activity. During the past decade, the state with its increasing affluence has undertaken to redistribute wealth by providing generous municipal grants.

Once the Prudhoe Bay resources are depleted, however, the North Slope Borough may well be in the position of having to depend on state grants. The apparent strength of the borough's current position, namely, it raises significant tax revenues and is able to influence the course of Arctic petroleum development, may well be masking its actual position of having to be dependent on Arctic petroleum development and on state policies for its future health and survival.

Footnotes:

1. This extract is reproduced from David Baker, The Alaska Native Claims Settlement, Eastern Arctic Study Case Study Series, Queen's University, Kingston, 1982.

2. Thomas A. Morehouse, Victor Fisher, Borough Government in Alaska, p.38, University of Alaska, Fairbanks, 1971.

3. Gerald A. McBeath, Thomas A. Morehouse, Dynamics of Native Self-Government, University Press of America, Inc., London, M.D., 1980.

4. Ibid., p.106.

CHAPTER 4. THE HIGHLANDS AND ISLANDS: SCOTLAND

INTRODUCTION

This chapter focuses on governmental development over the last 20 years in a region of Scotland known as the Highlands and Islands. This area is shown on the accompanying map (Figure 4-1). The Highlands and Islands is relevant for study because it has been subject to notable development pressures as a result of North Sea oil. Accordingly, particular structures have been put in place at the national, regional and local levels to deal with oil development and protect certain environmental and local socio-economic interests.

As will be seen, the Highlands and Islands are also subject to certain general planning, economic, and local government legislation which is applicable to all of Scotland or, in some cases, to the entire United Kingdom. Accordingly, a description of these broader regimes is necessary before dealing with measures specific to the area.

THE CONTEXT

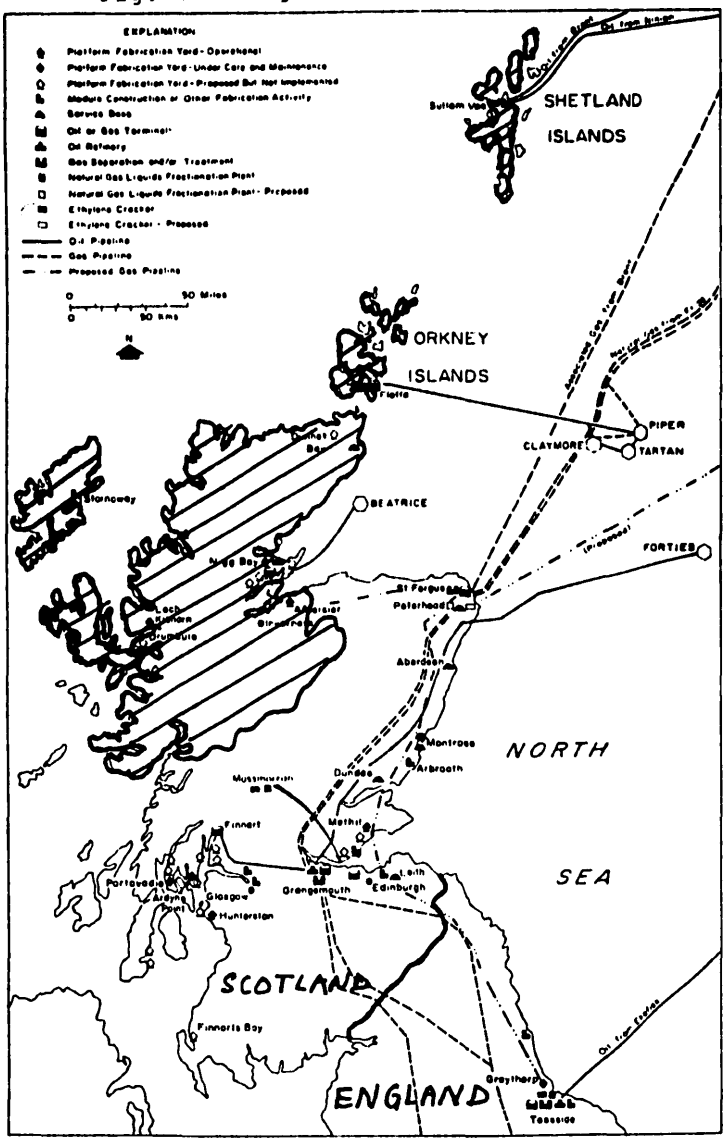
Before describing the contemporary situation, it is worthwhile to make brief reference to a few of the events in the overall history of Scotland which relate to the subject of regional development and government structures.

An obvious starting point is the Act of Union (1707) which linked Scotland politically, economically and administratively with England. Certain institutions retained separate identities, namely, the Scottish Presbyterian Church, the legal system and the universities. One result of this has been the necessity to enact the U.K. legislation separately for Scotland, and the separate existence of laws, courts and lawyers. These separate Scottish institutions also meant that a separate Scottish administration existed.

Immediately following the Act of Union, the Offices of the Secretary of State of Scotland and of the Lord Advocate were set up to share the responsibility for Scottish administration. However, in 1746, the former office was abolished and the responsibility for administration fell to the Lord Advocate.

By the mid-1800s, there had been a notable increase in local government responsibilities and various bodies were established to oversee these activities. In the latter part of the 19th century, Scottish nationalist feelings emerged and pressures increased to have direct Scottish control. In 1884, a bill was enacted which set up a Scottish Office and established a Scottish Secretariat.

Fig. 4-1 Highlands & Islands



Source: "North Sea Oil and Environmental Planning", I.R. Manners, 1982.
(Highlands & Islands shown cross-hatched)

Fig.4-2

SELECTED INDICATORS OF REGIONAL DISPARITY

	Unemployment Average Annual % 1960-6	Activity Rates 1966 (Male & Female)	Migration 1951-66		Personal Income per head 1964-5
			000s	as % of natural increase	as % of UK
United Kingdom	1.8	57.4	—	—	100
Northern	3.6	53.3	−113	38	82
North-West	2.0	58.3	−131	31	95
South-West	1.6	48.5	+212	112	91
Wales	2.9	48.5	− 41	28	84
Scotland	3.5	57.0	−476	89	88
N. Ireland	6.9	48.8	−131	53	64

Source: "Regional Policy in Britain", Gavin McCrone, 1969

Fig. 4-3

PERSONAL INCOME PER HEAD AS PERCENTAGE OF UK AVERAGE

	1949/50	1954/55	1959/60	1964/65
Northern Region	90	93	87	82
North-West	100	102	98	95
South-West	82	87	88	91
Wales	81	87	84	84
Scotland	90	93	87	88
Northern Ireland	58	63	64	64

GROWTH OF PERSONAL INCOME

1954/55=100

	1949/50	1954/55	1959/60	1964/65
Northern Region	74	100	134	174
North-West	74	100	135	182
South-West	68	100	139	204
Wales	71	100	136	188
Scotland	73	100	134	182
Northern Ireland	69	100	144	204
UK	73	100	139	194

Source: "Regional Policy in Britain Gavin McCrone, 1969

This new Scottish Office took over most of the Scottish functions of the Home Office as well as the responsibility for education. The Scottish Secretariat had to answer to Parliament for the areas under its jurisdiction and eventually the various boards were transferred to departments under its control. In addition, the Scottish Secretary of State became a member of the Cabinet. In 1939, St. Andrew's House, the headquarters of government administration in Scotland was opened in Edinburgh.

During the more than two centuries of union with England, Scotland benefitted from the connection with a leading industrialized country that was also a leading colonial power. During this period Scotland had access to the English markets and colonies and realized considerable economic growth. Scotland, however, always remained a region, both economically and culturally, of the United Kingdom.

It is argued by many that Union has acted to Scotland's disadvantage and that Scotland has chronically fared less well than the U.K.in general. Some figures would appear to bear this out, (Figures 4-2 and 4-3). The emergence of the Scottish Nationalist Party began in the 1920s, with strong demands for devolution. The later version of Scottish nationalism that developed in the 1960s was demanding independence and separation as the answer. Establishment of a Scottish Assembly is still an issue.

Focussing on Scotland as a Region

Scotland is a highly urbanized and industrialized region. Its land area is approximately one-third that of Britain although its population of some five million represents only about 9.4 percent of the national population. Agriculture accounts for only about five percent of the working population. Together, agriculture, fishing and forestry account for less than six percent of the Scottish GNP. Industrial growth has been clustered along a zone from Glasgow to Edinburgh, leaving large areas sparsely inhabited.

As evidenced by Figures 4-2 and 4-3 Scotland has had a higher degree of unemployment and lower per capita income than the U.K. in total, although, relative to the rest of Western Europe, its position improved substantially over what it had been when the Act of Union came into force.

In the early 1930s there was recognition by the British government that there were regions of the U.K. that were well below the national level, principally in economic terms, which would require specific policies to assist their development. In 1934, the Special Areas Act (amended in 1937) was passed which designated Scotland as a region to which policies and activities should be directed to dealing with its own unique set of problems. This Act provided a system of loans and other financial inducements which were formulated by the central government in an attempt to:

1. maintain a nation-wide control of industrial development;

2. direct growth from the congested areas to the development areas;

3. provide financial assistance by means of loans and grants;

4. establish non-profit state companies to provide factories and services, often in advance of clients.

In spite of these regionally-directed efforts, Scotland's unemployment and outward migration persisted. The net population of the country declined slowly but steadily, a trend which had begun in the late 1800s.

These early attempts to deal with problems on a regional basis were further augmented by a series of Acts and other measures. The most significant of these up to 1960 can be summarized as follows:

1945 Distribution of Industry Act

- Replaced pre-war legislation for Special Areas.
- Redefined development areas, added new areas including the Highlands of Scotland as part of a new British regional policy (i.e. England and Scotland).
- Policy responsibility given to Board of Trade.
- Powers to build factories, make loans, provide basic public services, reclaim derelict land.
- Power to control new factory development.
- Power to develop new urban areas (new towns).

1947 Town and Country Planning Act
(Amended 1962, 1968)

- All development subject to planning permission, development plans required.
- Local authorities required to have development policies, and exercise development control.
- Central government retained ultimate control.

1958 Distribution of Industry (Industry Finance) Act

- Loan and grant assistance extended.

1960 Local Employment Act

- Repealed Distribution of Industry Act.
- Development Districts replaced Development Areas.
- New building grants introduced.

It should be noted that all of these measures applied to most of Great Britain, principally England and Scotland, although separation of the two countries' legal systems meant that separate pieces of legislation were passed by Parliament at Westminster.

Recent Developments: The Highlands and Islands

Although this area, known for its superior beauty, has been a concern in connection with resource development, the original impetus for special consideration of the Highlands and Islands area of Scotland was not offshore oil development.

The Highlands and Islands of Scotland represent a substantial land area that is inhabited by well under 300,000 people, which is considerably less than its peak population of the mid-1800s of almost 400,000 people. Until very recently, most people were employed in very traditional ways. The basic characteristics of the region are:

- It is a remote region with few well-developed transportation links to the main centres.
- It is an extensive land area.
- It has a small and scattered population.
- It has significant nonrenewable resources.
- It has higher than average unemployment levels and lower than average income levels.
- It has little (non-oil) economic activity.

Beginning in the 1930s, central government in London initiated certain legislation that applied to all of Great Britain, and much later, some complementary legislation specifically regarding the Highlands and Islands. This was done to develop commercially viable industries and to stop the net outward migration. These various regional strategies were developed by central government because of the persistence of regional economic and social problems, as well as the concern regarding what was happening in the major urban centres, namely, physical deterioration, acute social problems, and local unemployment. Thus, the regional strategies developed were an attempt to solve problems on two fronts: the trouble-ridden urban centres, and the failing outer regions, a category which included the Highlands and Islands.

During the last half-century, a large number of acts and measures have been introduced by the central government concerning regional development strategies. Not all of these have had a significant impact on the area under study, but some have been of particular importance. As well, a succession of planning acts over the decades has substantially expanded the role of the central government, and of local authorities in land use planning, (see Appendix C-1).

Three acts relating to economic development in Scotland are of particular significance to the Highlands and Islands areas. These are: The Highlands and Islands Development (Scotland) Act (1965), The Scottish Development Agency Act

(1975), and The Offshore Petroleum (Scotland) Act (1975).

The Highlands and Islands Development Act of 1965 created the first regional agency of government to operate its own system of loans and grants for general economic development. The Highlands and Islands area had been the subject of special studies since 1947 when an Advisory Panel in the Highlands and Islands was appointed. However, it was not until the Scottish Plan was put forward in 1965 by the Scottish Office that policy guidelines appeared for this area. The most immediate result was the establishment of the Highlands and Islands Development Board which replaced the Advisory Panel. This Panel had never been given the powers to initiate economic activity.

This Act established a Board with a broad mandate and with extensive powers of grants, loans, equity participation and new factory building for a wide range of economic activities within the Board. The Board and its members are appointed by the Scottish Secretary of State, (see Appendix C-2). Accordingly, it is an agency of central government, not a government in its own right. Also, it has no formal link with local government. This board is assisted by a Consultative Council, appointed by the Secretary of State for Scotland.

In general, the Highlands and Islands Development Board (HIDB) has taken a multi-faceted approach to economic development and has attempted to diversify the economic basis of employment. It has therefore concerned itself with such economic activities as tourism, agriculture, fishing, extractive industries (including oil), light industry, etc. A prime concern has been to stem the flow of outward migration and to provide employment opportunities in the area, particularly for the younger portion of the working population. Another prime concern has been to develop a strong economy with long-term benefits for the region.

The Scottish Development Agency Act (1975) established a Scottish Development Agency and a Scottish Development Advisory Board. These organizations, whose members were to be appointed by the Secretary of State for Scotland (see Appendix C-3), were to further the development of Scotland's economy and improve its environment.

A third act, The Offshore Petroleum Development (Scotland) Act, 1975, enabled the Secretary of State for Scotland to acquire certain lands, and to carry out certain works to facilitate the operations of exploration and exploitation, and provided the Secretary of State with certain powers regarding the planning procedures, (see Appendix C-4). The most significant aspect of this act with respect to local government was the fact that it gave the Secretary of State for Scotland the power to circumvent normal planning procedures[1] and to force acceleration of planning procedures.

Two other forces have contributed to the current shape of government in Scotland and, most particularly so in the Highlands and Islands.

Figure 4-4

Administrative Authorities in Scotland (Local Government [Scotland] Act, 1973)

Authority	*Population (1974)*	*No. of Districts*	*Planning Functions*
Regional councils:			
Central	267,029	3	Two-tier structure;
Fife	337,690	3	planning functions divided
Grampian	447,935	5	between region and district
Lothian	758,383	4	
Strathclyde	2,527,129	19	
Tayside	401,183	3	
	4,739,349	37	
Borders	99,105	4	Regions and general
Dumfries and Galloway	143,711	4	planning authorities;
Highland	178,268	8	districts have no planning
	421,084	16	responsibility
Island authorities:			
Orkney	17,462		No districts; single-tier
Shetland	18,445		administrative and
Western Isles	30,060		planning units
	65,967		

Source: I.R. Manners, North Sea Oil and Environmental Planning

The first of these is the local government reform movement of the 1970s. This period can be characterized as one of ferment and change in the local government system throughout the United Kingdom. Separate royal commissions examined the systems of local governemnt in England and Wales as well as in Scotland. From the perspective of the central government which established these royal commissions, there was a desire to change boundaries, reallocate responsibilities between local government and central government, and generally "modernize" the local government system in keeping with modern economic, social and political realities.

The commission studying Scotland set out four major objectives for reform with a somewhat populist ring:

- To give local government a more important role in society.
- Effectiveness in the exercise of functions in the interests of the people.
- Local democracy, leaving decision-making with an elected council directly accountable to the electorate.
- Local involvement[2].

By the time the reorganization of local government in Scotland was completed in 1975, 430 elected local authorities had been consolidated into nine regional, 53 district, and three island authorities, (Figure 4-4). It should be noted that none of these newly-created administrative authorities was co-terminus with the area known as the Highlands and Islands. The functions of these authorities are described subsequently in this chapter.

The final dominant influence on the system of governance in the Highlands and Islands has, of course, been the exploration for and development of North Sea oil since the 1970s.

Development came quickly and on a scale which saw local authorities unprepared to deal adequately with the situations that arose, particularly with respect to the review and approval of development applications. Local authorities were on the whole relatively unsophisticated and thus ill-equipped when it came to dealing with large national and international companies. They had neither the staff nor the experience to function as equals in the negotiations that took place. They also had the problem of trying to ensure that their local interests were not totally overwhelmed by the national interests of the day. In most instances, the local communities were overwhelmed by the developments that took place as a result of the North Sea oil finds. Speculation became a major problem for many communities, especially for those who attempted to regain control by land purchases only to find that the price of land had escalated almost beyond their reach. One writer, in describing the fishing port of Peterhead noted that, "Peterhead was more a commodity than a community to its users"[3]. This is probably a very apt description of those communities who have discovered that

their concerns do not merit much significance in the context of the national requirements for oil. Out of the pressure of this situation emerged a number of policies and pieces of legislation designed to deal variously with the perceived need for central and local control over resource development. These measures form the final component of the current system of government in the Highlands and Islands.

THE CURRENT SYSTEM

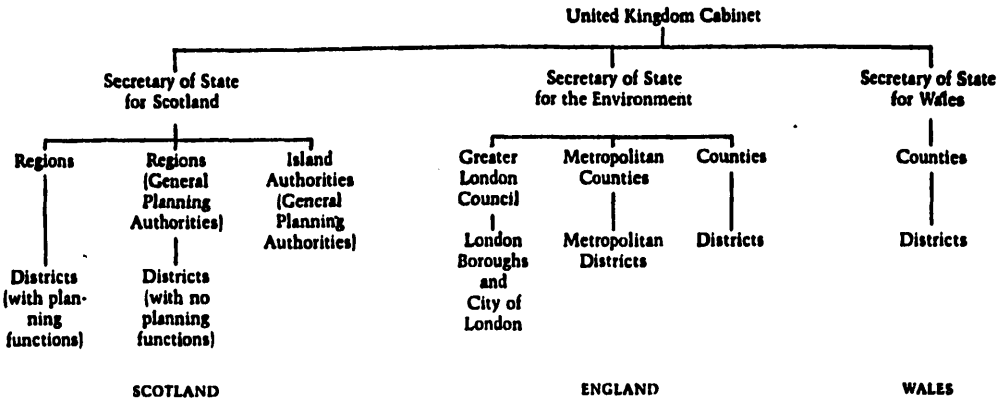
Although early recognition of regional interests in the United Kingdom was based on the desire for regional economic development, recent local government reforms and specific initiatives related to the management of offshore oil are equally, if not more prominent, when considering the Highlands and Islands case. In addition, all three of these concerns interrelate. For example, the earlier-mentioned Offshore Petroleum Development Act of 1975 which confers certain powers on the Scottish Secretary of State concerning land requirements related to offshore oil contains certain provisions which relate explicitly to the Town and Country Planning Act of 1972 and subsequent legislation. The concern of local government with town and country planning is reflected in the consolidation of this latter act with the Local Government (Scotland) Act of 1973 to form the Local Government Planning and Land Act in 1980. The previously-mentioned Scottish Development Agency established in 1975 and the Highlands and Islands Development Board, established in 1965 oversee general concerns related to regional economic development. Because the main focus of this particular review is on regional government arrangements, the current system will be described from the perspective of the relevant local government arrangements in existence in the Highlands and Islands and the relationship of the local government system to offshore oil development and other aspects of regional economic development.

Local Government in the Highlands and Islands

It is important to note that although the Highlands and Islands has been designated as a region of Scotland, it is not a single area of government. This regional designation exists only for purposes of economic activity. In fact, the Highlands and Islands are composed of six counties and several islands. The six counties make up one administrative authority, known as a regional council, and the Islands are in three separate groupings, each of which is a separate local government known as an Island Authority. These local authorities function within an overall structure which includes England, Scotland and Wales, (Figure 4-5).

In general, local authorities in Scotland are now much larger than formerly and are served by fewer councillors than under the old system when there were three rather than one councillor per ward. In one area, Strathclyde, which contains over 47 percent of the Scottish population, the ratio of representation is 1:24,000 whereas in the less populated regions, the ratio is much smaller. In general, the regions

Figure 4-5



United Kingdom: Local Government Structure

Source: I.R. Manners, North Sea Oil and Environmental Planning

Figure 4-6

LOCAL GOVERNMENT FUNCTIONS IN SCOTLAND

Level	Number	Planning	Personal, Social	Housing	Protective	Environmental	Amenity
Regions Islands	9 3	Major planning, transport, water tourism	Education, social work		Fire, police, consumer, coast works		Recreation, culture
Districts Islands	53 3	Local planning, building control, tourism		Housing		Public health and sanitation	Recreation, culture

Total 65

Source: D.C.Rowat (ed.) International Handbook on Local Government Reorganization

and districts have been structured to correspond with genuine communities.

The regions, (see Figure 4-6) have responsibility for education, police, water, sewerage, social work, roads, fire and consumer protection services. Districts are responsible for housing, refuse collection, libraries and museums, environmental health and housing. Some powers are shared by regions and districts such as parks and recreation, and planning. Three exceptions to this are the regions of Borders, Dumfries and Galloway, and Highland, where planning, libraries and museums, building control, and parks and recreation are regional functions. The Island Authorities, because of their isolation, are single, all-purpose authorities. They must rely on regions, however, for police and fire services. Most functions of local authorities are the responsibility of the (Scottish) Secretary of State, through the five departments: Education, Home and Health, Development, Economic Planning, and Agriculture and Fisheries.

One of the important functions of the District Authorities was to prepare schemes for the formation of Community Councils which were to concern themselves with matters of local interest. There are now well over 1000 of these. They have no statutory powers and no guaranteed financing, but are free to raise their own funding or seek grants.

Every region and every Islands Authority is divided into electoral divisions; every district is divided into wards. Each division and each ward returns one councillor every four years. Elections take place every second year for regional and district councils alternately.

Local authorities in Scotland rely on rating (property tax) for income, as well as government grants, and other miscellaneous receipts. Regional and Islands councils are able to levy their own rates; however, distict councils are not rating authorities and issue requisitions to regional councils.

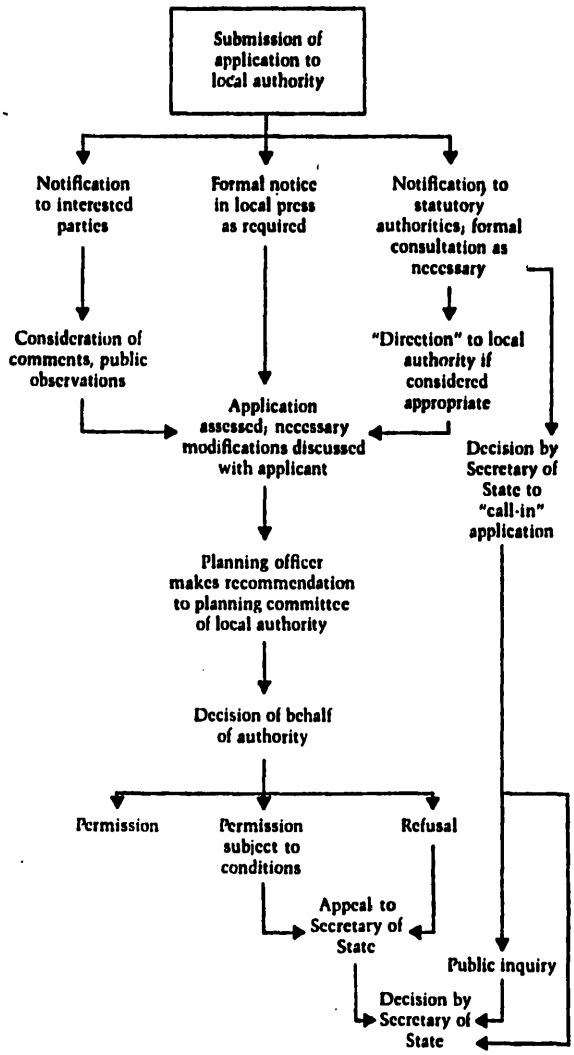
The Rate Support Grant (RSG) that is given by the Scottish Office is based on three elements: needs, resources, and domestic. The aggregate grant to authorities is first established, and then the individual authorities' amounts determined and then distributed in a three-stage process. It is first distributed between islands and regions, then between regions, and finally between regional and district councils within the region.

Capital expenditure in local authorities is controlled by the Secretary of State. In 1977-78, Scottish local authorities were given block allocations of capital funds, thus acquiring a greater degree of control. It is not yet known how successful this system has been.

In general, all local authorities are concerned with land use planning. The potential conflict between local interests and what are deemed national interests is reflected in the strong

Figure 4-7

Onshore Development: Land Use Planning in the United Kingdom



Planning Application Procedures (adapted from Ardill, 1974,

Source: I.R.Manners, North Sea Oil and Environmental Planning

residual powers of the Secretary of State for Scotland.

Earlier planning and local government legislation pertaining to all of Scotland was consolidated in the previously mentioned Local Government, Planning and Land Act of 1980. This act was designed to relax controls over local and certain other authorities, and to promote greater efficiency in local government. The local county or district (or island) authority has the power to approve, disapprove, or to approve with conditions, any application for development. The 1980 Act modified approval procedures, allowing local plans to be adopted in advance of the overall structure plans for a broader area. The general nature of the planning regime is outlined in Figure 4-7. A very important element in the approval procedure is the ability of the Secretary of State for Scotland to 'call in' applications which are deemed to be in the national interest and in fact override the local decision. In most cases, the 'call in' has had the effect of overriding negative local decisions and the Secretary's decisions have allowed development to go forward.

This dominant position of the Secretary of State in planning with particular reference to offshore oil is reinforced in the Offshore Petroleum Development (Scotland) Act of 1975 which empowers the Secretary of State to acquire by agreement or expropriation any land in Scotland for any purpose connected with the exploration for or exploitation of offshore petroleum. The Secretary of State is also empowered to dispense with public enquiries into expropriations or acquisitions under this Act.

The Zetland County Council: A Special Case

A notable special case in the Highlands and Islands area is the Zetland County Council (later to become the Shetland County Council). The Shetland Islands number almost 100 and house a permanent population of some 20,000 in several small communities. There has been a long history of distinctive cultural identity. Thus, the prospect of rapid development was viewed with some misgivings because of the possible disruption or even destruction of a highly valued lifestyle. In the early 1970s, the Zetland County Council took the unusual step of promoting a Special Order, later to become an Act of the British Parliament, to acquire additional planning powers to supplement what it believed to be inadequate authority in the face of development pressures related to offshore oil.

The Zetland County Council Act of 1974 resulted from a private member's bill and, accordingly, is not reproduced in consolidated statutes. Unfortunately, secondary sources reveal little information about its origins, the debate (if any) concerning its provisions, and its implementation. It appears, however, that this initiative was unique. Possibly it was spearheaded by vigorous community leaders with a particularly aggressive attitude toward the oil industry. It has also been suggested that Parliament's positive response to the private member's bill stemmed from a desire to speed up the process of North Sea oil production following the

embargo and rise in oil prices in late 1973[4].

In any event, the Zetland County Council Act (1974) gave extensive powers to this local authority such as: allowing it to license works and dredging, to create a harbour authority in the areas around such work, to acquire lands, to invest in securities of bodies corporate, and to create a reserve fund. It should be noted that the Zetland County Council possesses powers over oil and gas development that are unavailable to any other local authority. The Zetland County Council was also authorized to collect a barrelage tax as compensation to the Islanders for "disturbance and inconvenience" caused by the oil industry. The Council's direct revenues from oil then are from taxes, rent, "disturbance payments", and joint-venture profits. These revenues will be used to meet infrastructure needs and to establish a regional development fund to diversify and stabilize the Islands' economy and to protect traditional industries. The overall goal is to ensure a smooth transition to a non-oil future.

One source of revenue, a non-profit body with representatives from the council and the oil industry in equal numbers was established to run the terminal built at Sullom Voe. The Zetland Finance Company was created by the council to raise funds for the construction of this terminal and to enter into partnership to provide a variety of industry-related services. It is suggested by Manners, in his book, North Sea Oil and Environmental Planning (1982) that the Zetland model is unique in the powers regarding oil and gas development and is unlikely to set a precedent for other local authorities. The major benefit appears to be the fund raising ability the council acquired by this act, both in terms of front-end financing and ongoing revenues.

Local Government and Regional Economic Development

With the important exception of the Zetland County Council, local government in the Highlands and Islands, and, for that matter, in all of Scotland, plays a minor role in economic development. This is true in the case of dealing with offshore oil and in other areas of economic endeavour.

Offshore oil development has been strongly controlled by central government under legislation such as the Offshore Petroleum Development (Scotland) Act of 1975. Aside from the Zetland case, the role of local governments seems to be to supply secondary infrastructure and social services required as a result of oil development.

Other avenues for economic development appear to be controlled from the centre. For example, the Highlands and Islands Development Board consists of central government appointees and acts as its agency. Since the advent of offshore oil, the HIDB has concentrated its efforts in other areas of potential development such as crofting, fishing and tourism.

In summary, the literature and legislation pertaining to

Scotland in general and the Highlands and Islands in particular records a variety of regional agencies and initiatives, and local government structures and planning regimes. The most dominant characteristic of these is that they are virtually all centrally controlled. In addition, it appears that central government decides if and when initiatives will be coordinated. This indeed has happened, as evidenced by the Local Government (Scotland) Act (1973), the Offshore Petroleum Development (Scotland) Act (1975) and the Local Government Planning and Land Act (1980), all of which added to the central government's decision-making powers.

The exception to this seems to be the Shetland Islands. Manners relates the course of the Shetland Islands Council's acquisition of enhanced development control in considerable detail. It appears that the Shetland Islanders saw early on the inevitability of oil development and its potential threat to their valued lifestyle. Their response was to try to obtain control over development in order to minimize its negative effects and to make the most of its potential for providing revenues and infrastructure for the future.

Footnotes

1. Ian R. Manners, North Sea Oil and Environmental Planning, pp. 224-227, University of Texas Press, Austin, Texas, 1982.

2. C. S. Page, "Britain: Scotland", in International Handbook on Local Government Reorganization, Donald C. Rowat, ed., p. 178, Greenwood Press, Westport, 1980.

3. Robert Moore, The Social Impact of Oil: The Case of Peterhead, p.167, Routledge & Kegan Paul Ltd., London, 1982.

4. Manners, op.cit, p. 263.

Suggested Reading

1. Gavin McCrone, Regional Policy in Britain, George Allen & Unwin Ltd., London, 1969.

2. David Turnock, Scotland's Highlands and Islands, Oxford University Press, 1974.

3. Edward Page, "Why Should Central-Local Relations in Scotland be Different from Those in England?" in New Approaches to the Study of Central-Local Government Relationships, G. Jones(ed), Renouf/USA, Inc., 1980.

CHAPTER 5.

THE NAVAJO RESERVE

INTRODUCTION

This chapter deals with the emergence and evolution of tribal government on the Navajo Reserve in the United States. As can be seen on the accompanying map (Figure 5-1) the reserve is spread over parts of three states, Arizona, New Mexico and Utah. Its 25,000 square mile area makes the Navajo Reserve the largest Indian reservation in the United States. The Navajo people on the reserve number approximately 137,000[1] and account for one of every six or seven of the U.S.Indian population.

The reserve and its government are of particular interest as an example of an ethnic government whose evolution has been tied directly to resource development. Natural resources on the reserve include: oil, natural gas, uranium, coal, rich forest reserves and a 'visually magnificent' terrain with tourist potential.

THE CONTEXT

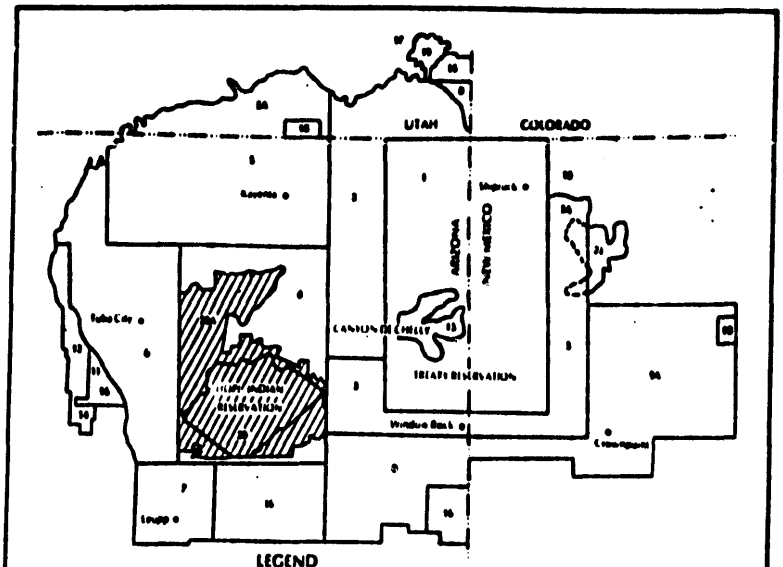
Prior to the discovery of oil on the Navajo Reserve in 1922, no single deliberative body existed to represent all Navajo.

The Navajo people or Dine belong to the Athabasca language group which migrated from Asia and gradually moved into the southwestern United States between A.D. 700-1000. Initially, farming and hunting formed the basis of tribal existence. The Navajo adopted Pueblo farming techniques but remained nomadic because of the uncertainty of water supplies.

Contact with the Spaniards in the 17th century introduced sheep to the Navajo economy. Sheep raising soon became the mainstay of Navajo life and central to social and economic development. Today, livestock grazing is still the major land use with over 90 pecent of Navajo land used for this purpose co-existing in some cases with uses such as forestry, recreation and homesites.

Navajo land was acquired by the United States in 1848 as a result of victory over Mexico. An 1850 treaty with the Navajo placed the tribe under exclusive control of the Government of the United States. The period from 1850 to 1868 can be described as one of conflict between the Navajo, settlers in the area and the US Army. Following an unsuccessful relocation attempt a new treaty was signed between the United States and the Navajo in 1868. In return for keeping the peace between the Navajo and the United States the tribe was granted a reserve of 3.5 million acres for their exclusive use. An Indian agent (an employee of the federal Bureau of Indian Affairs) was to oversee the tribe and implementation

Figure 5-1 Navajo Reservation



LEGEND

1. Treaty Reservation 1 June 1868
2. Executive Order (EO) 29 October 1878
3. EO 6 January 1880
3A. EO 17 May 1884 and EO 24 April 1886
4. EO 16 December 1882; Joint Use Area
5. EO 17 May 1884
5A. The Paiute Strip. Originally part of 5. In 1892 restored to public domain; in 1908 withdrawn for Indian use; in 1922 restored to public domain; in 1929 again withdrawn; in 1933 transferred to Navajo Reservation
6. EO 8 January 1900
7. EO 14 November 1901
8. EO 10 March 1905
9. EO 9 November 1907
9A. Originally part of 9. Restored to public domain by EO 30 December 1908, EO 16 January 1911, and subsequent EOs
9B. Jicarilla Reservation overlap
10. EO 1 December 1913 set aside Navajo land for San Juan Boarding School
11. EOs 7 May 1917 and 19 January 1918
12. Act of 23 May 1930
13. Act of 14 February 1931
14. Act of 21 February 1931
15. Act of 1 March 1933
16. Act of 14 June 1934
17. Act of 18 April 1948 authorized sale of Navajo land for use by St. Christofer's mission
18. Act of 7 September 1949
19. Act of 2 September 1958 authorized exchange of Navajo land at Page for this land
20. Public Law (PL) 93-531 provided for award of 20 to the Hopi and division of the Joint Use Area between the Hopi and Navajo tribes
20A. Land awarded the Hopi by PL
21. Navajo Indian Irrigation Project (NIIP)

Source: Navajo Department of Land Operations quoted in Reno, P. Mother Earth, Father Sky and Economic Development, University of New Mexico Press, Albuquerque, 1981, p.27.

of the treaty. Violators of the peace, whether "bad Indians" or "bad whites" were to be turned over to the United States. Other provisions included an individual allotment of 160 acres to any family wishing to farm; compulsory attendance of all children aged 6-16 in a "white-oriented" school; annual provision by the agent of goods which the Indians were unable to manufacture themselves and a per capita cash allotment for Indian benefit to be allocated at the discretion of the agent. This treaty has been described as setting the pattern for federal relations with the Navajo, a position of inferiority and dependency[2].

The original allotment of reserve land represented about one-fifth of the area previously required by the Navajo for subsistence. Beginning in the 1880s, additional land was granted to them by President Roosevelt (much of which was returned to federal control by President Taft). This initial period of expansion made the reserve too large to be administered as a single unit by the Bureau of Indian Affairs. Accordingly, by 1908 it had been split into six federal jurisdictions or agencies.

The federal government bowed to pressure from white settlers in the area and announced that there would be no further expansion of the reservation in 1918 without congressional approval. The end of expansion created problems of overgrazing which affected the growing livestock population and, ultimately, the ability of the agriculture-reliant human population on the reserve to survive.

Problems with stock reduction persist. However, implementation of the first planned reduction coincident with formation of the first Navajo Tribal Council caused distrust not only of the Council but of subsequent federal programs aimed at improving Indian welfare[3].

The event which prompted the development of the Navajo Tribal Council was the discovery of oil on the reservation in 1922. Prior to the discovery of oil on the Reserve, no single deliberative body existed to represent all Navajo. Instead Navajo organization was of matriarchal families or bands of people. Leaders, called naat' annii or speechmakers, were chosen by the group or clan and removed by the same process. Decision making was a consensual process with discussion continuing until all agreed.

The first formal tribal council, composed of six delegates was formed in 1923 at federal instigation to make possible the negotiation of oil leases. Under the Treaty of 1868 no part of the Navajo Reserve could be ceded without the consent of three-quarters of the Tribe. According to legislation passed in 1891, authority for the leasing of Indian mineral lands could be exercised by "the council speaking for such Indians". Business influence on the formation of local government is illustrated by the terms "business councils" and "chairman" which were used. Early oil activity centred around the San Juan agency in New Mexico. The

superintendent, whose responsibility it was under the 1891 legislation to approve leases authorized by "the Council speaking for such Indians" reported no knowledge of any council meeting in the previous 15 or more years. He requested advice and was informed that the general procedure developed to deal with prospectors involved a request to the Commissioner of Indian Affairs for a meeting with the Council. If the request was approved the prospector then applied to the local agent who set the date and called all adult males to a meeting at the agency office. Once the request was heard the Council disbanded and did not meet again unless another request for a Council was approved.

Under this ad hoc arrangement, a number of requests for oil leases were refused by a San Juan council in May 1921. Then in August another council was called and a lease was granted to the Midwest Company. It appears that those present at this Council wanted to know if oil really existed on the reserve[4]. Midwest was also willing to hire Navajo and pay what appeared to be high wages. This approval brought pressure from other companies. The superintendent was advised by the Bureau to obtain a general delegation of authority from the Indians either for himself or "certain representative Indians" to authorize leases. This marked a shift from the Bureau policy of lease by lease approval by councils. The Indians, however, were unwilling to negotiate further leases until it had been determined whether oil in fact existed since oil discovery would increase the value of subsequent leases.

Pressures continued and in January 1923 the Secretary of the Interior created the office of Commissioner to the Navajo responsible for the entire reservation. The Secretary also formed a continuing council representing all Navajo. One delegate and one alternate from each of the six jurisdictions were to be elected for a four-year term on the council within thirty days after the directive was made public. If a jurisdiction failed to elect a delegate, one would be appointed by the Secretary of the Interior. No meeting of the Tribal Council was to be held without the presence of the Commissioner. The Secretary of the Interior reserved the right to remove any member of the council upon proper cause being shown.

Fear that the San Juan Navajo, who were opposed to giving other jurisdictions a voice in the oil question, would boycott the council is the reason given for the Secretary's power to appoint delegates. A number of changes were made at the suggestion of the new Commissioner, H.J. Hagerman, before the regulations went into effect in April 1923:

- the numbers of delegates and alternates were increased to 12 to accommodate scattered populations;
- provision was made for a quorum;
- provision was made for interpreters;
- provision was made for a means of succession in the event a vacancy occurred in the office of Chairman or

Vice Chairman between elections;

- the Secretary's power to remove members was deleted.

Subsequently, the powers of the Commissioner were broadened to include responsibility for minerals, timber and the development of underground water as well as oil.

In summary, establishment of the Navajo Tribal Council from which today's system of government on the reserve has evolved, appears to have been instigated by the desire of the US federal government to have a more predictable approval system for oil development with more direct access to senior federal officialdom through the Commissioner. In the ensuing years, various issues have emerged which have prompted changes in this basic system of tribal government. As these have occurred, it is interesting to ponder the relative interest of the Navajo people themselves, the federal government, state governments and non-Indian private interests in using or modifying the system to deal with these issues.

THE CURRENT SYSTEM

The system of tribal government and the nature of tribal endeavours have expanded since 1923. This section describes the various elements of tribal activity which now exist. A subsequent section deals with some of the issues related to these activities. As will be seen, the issues which have emerged often concern the relationship of the Navajo with the federal and state governments. The particular status of the Navajo in their relationship with these governments warrants some general introductory remarks.

Navajo and State Governments

As indicated earlier, the Navajo reserve occupies part of three US states. However, most Reserve Indians, including the Navajo, occupy a unique position in the political structure of the United States. In the view of the courts, Indian tribes are separate nations within the US which, as a result of conquest and treaties, have given up complete independence and the right to go to war in return for federal protection, aid and grants of land. Based on this assumption, it is further held that a State may only exercise such specific powers over the Indians as have been expressly granted to it by Congress. Under Title IV of the 1968 Civil Rights Act, States may assume civil and criminal jurisdiction over Indians only after the approval of a majority of Indians is given in a special election. Indian tribes, therefore, are not political subdivisions of the States nor are they local governments within the meaning of most state and federal statutes[5].

Navajo and the United States Government

Created by the War Department in 1824 and subsequently

transferred to the Department of the Interior in 1849, the Bureau of Indian Affairs has been responsible on behalf of the federal government for the 'government-to-government' dealings with Indian tribes. Its powers in this regard are extremely broad. Federal law governing Indians is set out in Title 25 of the U.S. Code and contains more than 2000 provisions. It has been suggested by one observer that repeal by Congress of all but two of these would leave existing tribal powers intact and "eliminate most Bureau functions"[6]. In any event, the Bureau of Indian Affairs has itself been identified repeatedly by successive Commissions investigating Indian affairs and by no less a person than the President in 1970 as a major stumbling block to native economic development and self-determination.

A major responsibility of the Bureau is the fulfillment and execution of the federal government's trust obligation to Indian tribes and Alaskan native groups. Over the years the definition of the Indian tribe as a "dependent nation" was expanded to imply federal guardianship or wardship on behalf of native people. Under the trust relationship the Navajo have "beneficial use" of the land including mineral resources but legal title rests with the Government of the United States. Land may not be sold without an authorizing act from Congress. In the early days particularly, this provision helped protect the Navajo from dispossession by white settlers and railroad interests. It has since come to symbolize all that is wrong with the tribal-federal relationship.

The special status of Indian tribes as separate nations has some undesirable effects in intergovernmental dealings even at the federal level when legislation does not specifically refer to Indian tribes. As an example, access by the Navajo Tribe to a road building allocation available to state and county governments from the Federal Highway Administration has been denied on these grounds. In another case, the tribe was forced to pay a federal excise tax on the purchase of police cars. State and county governments are exempt. This anomaly also gives rise to 'buck passing' between state and federal agencies regarding the provision of services to the tribe with each claiming the other responsible. It means also that the tribal government has been denied access to such traditional sources of local government revenue as the property tax, the ability to issue tax exempt municipal bonds, and more recently to monies from state lotteries and off-track betting. In 1975 hearings before the US Commission on Civil Rights it was the testimony of a Bureau of Indian Affairs expert that "there can be no significant economic development for the Navajo Nation until the political questions surrounding the tribe's legal status are resolved"[7].

The Development of Navajo Government Since 1923

As indicated earlier, a change in federal legislation in 1923 created the Navajo Tribal Council, consisting of one delegate and one alternate elected from each of 12 electoral areas

covering the entire reserve. The main original purpose of the Council was to approve oil leases. In carrying out its deliberations, the Council was to relate to a single Commissioner to the Navajo, appointed by the Secretary of the Interior.

This new regime did not, however, mean the elimination of the six agency jurisdictions set up within the reserve in the early 1900s. These agencies continued to exist, and one of these, the Leupp area, was the point of origin of the next important governmental development. This was the formation of community councils or chapters.

The Leupp area superintendent found contact with the Navajo limited largely to their visits to the agency office. He called a meeting of all adult Navajo in the Leupp jurisdiction in 1927 as a means of meeting on a broader basis with the Navajo to explain government programs and also "to find out what the Navajo want". Approximately 150 attended the first meeting and numbers rose at subsequent meetings. These were judged too big and local groups were formed with elected Navajo serving as president, vice-president and secretary. By 1934, 530 chapters had been formed. The settling of disputes and decision making on community land use were primary functions of the chapters when first formed[6]. This development can be seen as integrating the old Navajo process of dispute-settling into a new governmental structure.

Regulations formulated in a reorganization in 1938 established the basis for present Navajo tribal government. Changes included enlargement of the Council to 72 and the introduction of the secret ballot but did not set out council jurisdiction or authority any more clearly than had been done in the past.

The next major legislative initiative was the Navajo-Hopi Long Range Rehabilitation Act of 1950. It aimed:

> "to further the purposes of existing treaties with the Navajo Indians, to provide facilities, employment and services essential in combating hunger, disease, poverty, and demoralization among members of the Navajo and Hopi Tribes*, to make available the resources of their reservations for use in promoting a self-supporting economy and self-reliant communities, and to lay a stable foundation on which these Indians can engage in diversified economic activities and ultimately attain standards of living comparable with those enjoyed by other citizens."

The Act provided an appropriation of $88,570,000 to be spent over 10 years on school construction, road improvement, hospital and health facilities, irrigation construction and improvement, soil conservation and resettlement of those Navajo who chose voluntarily to leave the reserve. Also included was a clause on Indian preference in hiring and

* The Hopi Tribe is a smaller tribe with the joint use reserve occuping part of the overall Navajo Reserve.

FIGURE 5-2 ORGANIZATION OF EXECUTIVE BRANCH OF TRIBE 1969

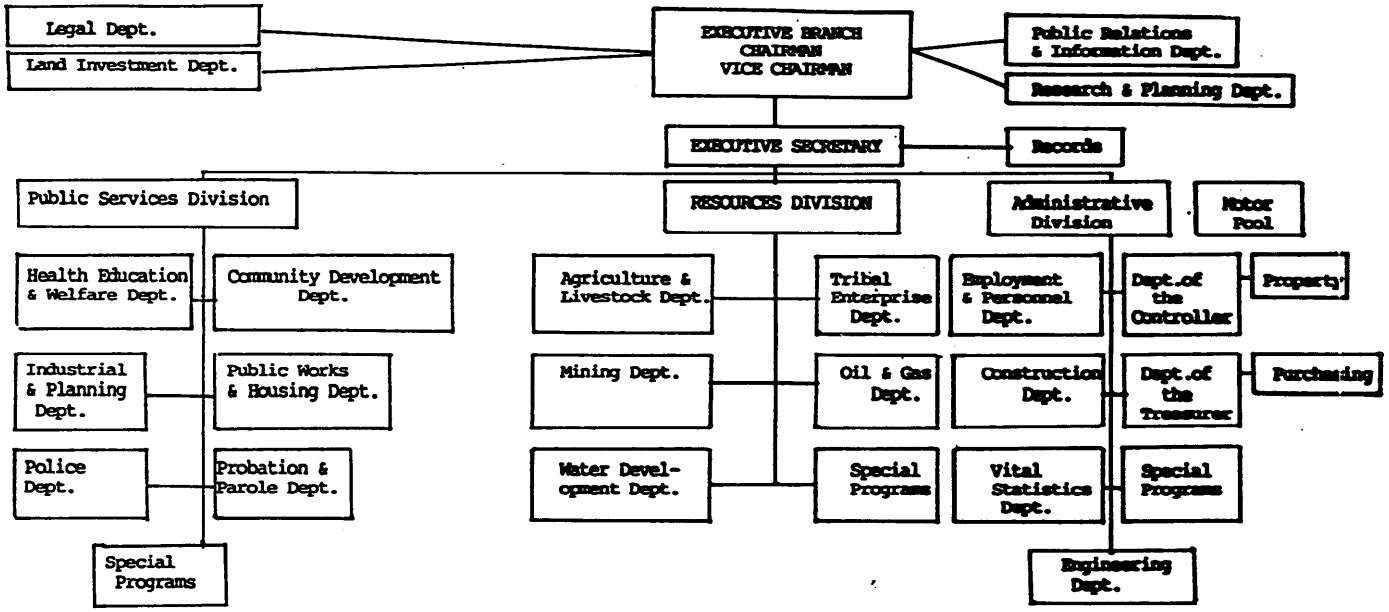


Figure 5-2 Source:
Williams, A.W.Jr., Navajo Political Process, Smithsonian Institution Press, 1970, p.22.

on-the-job training. "In order to facilitate the fullest possible participation by the Navajo tribe" adoption of a tribal constitution was authorized.

> "Such constitution may provide for the exercise by the Navajo tribe of any powers vested in the tribe or any organ thereof by existing law, together with such additional powers as the members of the tribe may, with the approval of the Secretary of the Interior, deem proper to include therein. Such constitution shall be formulated by the Navajo Tribal Council at any regular meeting, distributed in printed form to the Navajo people for consideration, and adopted by secret ballot of the adult members of the Navajo Tribe in an election held under such regulations as the Secretary may prescribe, at which a majority of the qualified votes cast favor such adoption. The constitution shall authorize the fullest possible participation of the Navajos in the administration of their affairs as approved by the Secretary of the Interior and shall become effective when approved by the Secretary. The constitution may be amended from time to time in the same manner as herein provided for its adoption, and the Secretary of the Interior shall approve any amendment..."[9].

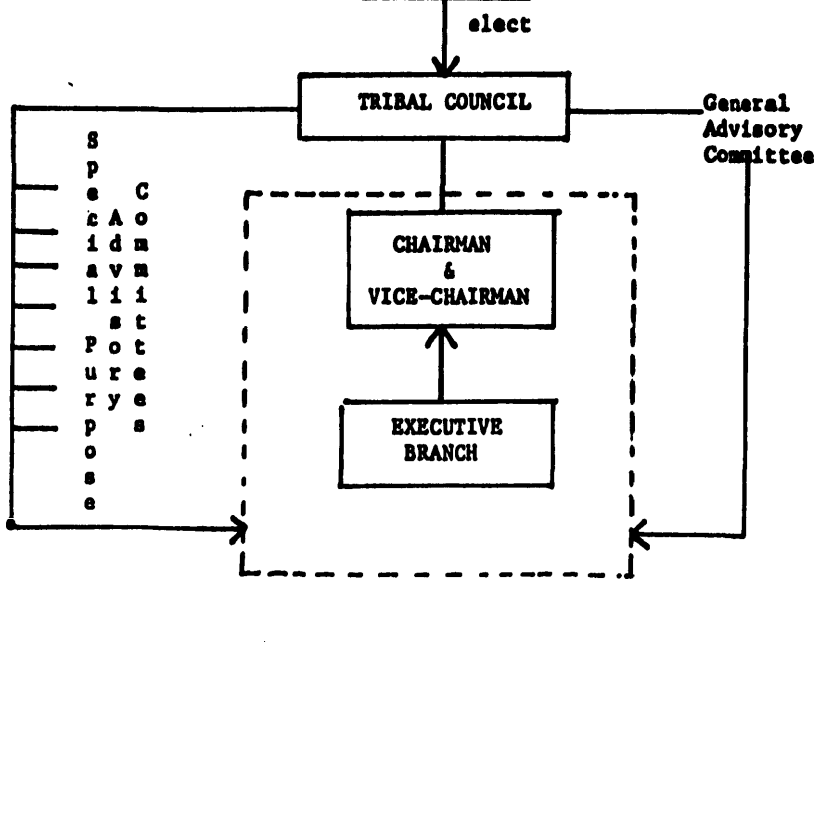
The Act provided for consultation with the tribes on program development and through agreements with the States of Utah, Arizona and New Mexico, extended the benefits of Social Security to the Navajo for the first time. Control over tribal funds and future earnings from resource royalties deposited with the federal Treasury were given to the Tribal Council, although subject to approval by the Secretary of the Interior. The Indian Self-Determination and Education Assistance Act of January, 1975, which provides for the possibility of the federal government contracting out program services to Tribal Councils has provided further impetus for local self-government by the Navajo.

By 1962, the Tribal Council had broadened its interests and activities considerably, as evidenced by the existence of standing committees to deal specifically with:

- Budget and Finance;
- Health;
- Resources;
- Education;
- Scholarship;
- Youth;
- Alcoholism;
- Navajo Police;
- Relocation;
- Loans;
- Trading;
- Judiciary;
- Welfare.

The Council also developed an Executive branch under the Tribal Council Chairman. This branch houses what is, in

FIGURE 5-3 THE NAVAJO SYSTEM OF GOVERNMENT



essence, the Navajo civil service. The complexity of the Executive branch's mandate is reflected in the organization chart which existed as early as 1965. This is shown in Figure 5-2. In addition there was a Parks Commission, a Fair Commission and a Tribal Utilities Authority[10].

As closely as can be determined, the standing committee system remains essentially unchanged.

As of 1978, the Navajo Tribal Council consisted of 74 Councillors, representing specific chapters of the Tribe, 65 Councillors are elected from within the reserve; the remainder represent members residing outside. The Chairman and Vice Chairman are elected by popular ballot of all Navajo voters. All serve four-year terms.

The Council meets in full four times per year. In addition to the standing committees listed above which deal with specific functions, an 18-person Advisory Committee relates to the Executive Branch and deals with day-to-day business. The broad outline of the current system is shown in Figure 5-3.

The main source of revenue for the Navajo Tribal Council is resource development royalty payments. These amounted to approximately $17 million in the late 1970s. An important limitation on the ability of the tribe to expand its revenue base, for example, through taxation of large businesses on the reserve, has been the tendency for commercial interests to challenge such levies in the courts. The tribal council has also contended that the federal government has placed overly strict[11] limits on tribal economic development initiatives.

The Courts

Navajo courts with Navajo judges were established as early as 1882. However, in their early days judges were selected by the Bureau of Indian Affairs. Some lessening of control occurred in 1951 when Indian judges became elected by popular vote. In 1959, a further shift occurred in terms of the relationship of the court system to the Navajo Tribal Council. That year, the Navajo Tribal Council (with the necessary approval of the US government) created its own judicial branch. From that time, judges have been appointed by the chairman of the Tribal Council subject to approval by a vote of the full Council[12]. Today the Navajo Courts of Indian Offenses exercise broad criminal and civil jurisdiction, including suits by outsiders against Indian defendants.

Economic Development

Like municipalities and regions generally, the Navajo are interested in attracting industry to their area. For example, General Dynamics Corporation which has operated an assembly plant on the Reserve since 1967 and in 1982 employed 100.

Government incentives such as training funds are drying up

under the Reagan administration and tribes are looking into sources of private funding for industry, including charitable foundations, and for loans to be paid back with dollars from tribal leases on resources. Unlike counties and cities, tribes have not had the ability to issue bonds or access to property and income taxes in order to generate an economic infrastructure. There have, however, been some interesting examples of economic development initiative by the tribe.

Reorganization of the Navajo Forest Products Industries (NFPI) provides one example of tribal economic development. Navajo forestry development has had a long history, beginning with a portable sawmill provided by the BIA Indian Service in 1880. The Navajo Reservation Branch of Forestry was created by the Indian Service in 1929, and continued with assistance from New Deal and measures and demands created by World War II. A new master plan for forest management to deal with an over-mature stock of trees was adopted by the Tribal Council Chairman and approved by the Commissioner of Indian Affairs in 1953.

As a result of studies and development proposals by outside consultants, revisions were approved in 1958-59 by the Tribal Council and the NFPI was created to be run as nearly as possible like other large profit-making corporations. A management board composed of five non-Navajo with logging and business experience and four Navajo was established. Potential members were interviewed by a task force. Selection of four Navajo and four non-Navajo was made by the Tribal Council Chairman and approved by the Tribal Advisory Committee. These eight members selected the ninth member and elected a chairman.

Preparation of ten-year management plans and revisions undertaken by consultants and the BIA and approved by the Tribal Council are a regular feature of the management process. A new sawmill and development of a new townsite were major initial components. A particle board plant was added in 1977 and a furniture factory is planned.

The original $12.5 million for the new mill and housing came from the Tribal General Fund, mainly, oil revenues. Subsequent expansion at a similar cost came from retained earnings with loan assistance from the Federal Economic Development Administration (EDA) in the amount of $3.285 million and a grant of $1.885 million. Assistance for housing was also received from Housing and Urban Development (HUD). As approved by the Tribal Council, NFPI is responsible for operation of the residential and community facilities of the new town of Navajo. By 1976 the assets of NFPI were listed at $26 million. An additional benefit of this activity has been the construction and maintenance of some 400 miles of roads.

Other tribally-owned industries are the Navajo Agricultural Products Industry, the Navajo Irrigation Project and the Navajo Tribal Utility Authority.

In 1980 the Tribe formed the Navajo Energy Authority to

acquire, own and operate energy production interests on behalf of the Tribe. As a result, the Tribe has begun negotiations with the Tennessee Valley Authority for a service contract under which TVA would help the Tribe mine uranium and purchase the ore.

Of all Tribe-owned industries, only the NFPI is a regular profit-maker. The tribe's priority seems to be not profit itself, but the creation of native industry and jobs.

The Navajo Business Development Corporation gives technical advice to small business and has promoted a major management training program at the Navajo Community College to overcome another obstacle to development - lack of business management skills. It has turned recently to philanthropic organizations in its search for "seed capital".

ISSUES

The system of government within the Navajo Reserve appears to have evolved in a way that responded to tribal needs and interests. For example, it seems that the Navajo Tribal Council has taken considerable advantage of the Navajo-Hopi Long Range Rehabilitation Act of 1950 and the more general Indian Self-Determination and Education Assistance Act of 1975 to expand its activities into areas such as health, education and economic development. As a result, Navajo government has become more multi-faceted. The Tribal Council, first established by the US government as a means of facilitating oil leasing arrangements, seems to have developed into a local-oriented endeavour whose main purpose is to serve the varied needs of the Navajo Tribe.

The increasingly positive role of the Navajo Tribal Council and its associated parts has not erased the existence of certain fundamental problems. Any categorization of these is arbitrary, but for the purposes of this report outstanding issues have been identified as:

- the legal status of Indian people in the United States as it affects the Navajo;
- specific issues related to the Bureau of Indian Affairs;
- specific issues related to financing Navajo Tribal Council initiatives;
- the relationship of economic development activities to social service activities.

Obviously, these are not mutually exclusive areas for consideration. While each will be addressed below, it is interesting to note that none of the issues identified concerns the basic political organization or the internal management of the Navajo Tribal Council. Relying on secondary sources, these very important aspects of governmental development seem to be well in hand, at least from the perspective of the people themselves. Ongoing

issues related to the relationship of Navajo government to the Bureau of Indian Affairs suggest that the Bureau is reluctant to acknowledge that a fully developed Navajo government exists. Certain pressures for control remain.

The Impact of the Legal Status of US Indians on the Navajo

As indicated earlier, Unites States law regards Indian tribes, in general, as separate nations which, as a result of conquest and treaties, have given up complete independence in return for federal protection, aid and grants of land. Aside from the particular nature of the relationship of tribes such as the Navajo with the federal government which has resulted from this view (and which will be dealt with shortly), profound implications result from the relationship of the tribe with the three state governments whose land area is occupied by the Navajo reserve. Basically, there seems to be little, if any, relationship[13]. This is despite the fact that state governments are the immediate providers of certain services, such as education, which are of considerable importance to the tribe. Similarly, the tribe, by virtue of its treaty agreements, has rights to certain resources, such as water, which are of major importance to state and local interests outside the reserve.

In fact, the absence of a direct tribe/state relationship has had at least two effects on the Navajo. First, as mentioned previously, there has been a certain amount of buck-passing from the state to the federal level over the provision of state-type services to the tribe. Second, and perhaps more important, has been the ability of local and state governments to deal directly with the federal government to obtain resources and develop infrastructure using Navajo resources without recourse to the tribe. Water is a case in point.

Despite the quasi-sovereign status accorded Indian tribes by law, the Navajo were not consulted or included in either the inter-regional water allocation compact of 1922 or the inter-state allocation of 1948. Water from the Colorado River, for example, now serves such large urban areas beyond its natural drainage system as Los Angeles, Denver, San Diego and Salt Lake City. In contrast, many Navajo still travel miles to community wells. Legal forces are being assembled as the Navajo start to reclaim water allocations for agricultural and other development[14].

The Relationship of the Navajo to the US Federal Government

The evolution of Navajo government has occurred in the context of a system of stringent federal government control. Issues related to the style and administration of the Bureau of Indian Affairs will be dealt with subsequently. But to put the position of the tribe in a more general federal context, it must be noted that developments in the political,legal, economic and social life of tribe members are, with the exception of health services, all subject to

approval by the BIA in addition to various federal government departments such as Health and Human Services, Education, Justice, and Energy. This situation appears to continue despite the important legislation such as the Navajo-Hopi Long Range Rehabilitization Act of 1950 and the Indian Self-Determination and Education Assistance Act of 1975 which allowed for greater local initiative.

Under the trust relationship established by treaty, the Navajo have "beneficial use" of the land including mineral resources (and the royalties derived from their development, which are held in trust by the federal government). Despite this important arrangement, which is the principal source of Navajo Tribal Council revenue, legal title to all land on the reserve rests with the Government of the United States. Land may not be sold without an authorizing act from Congress.

The Bureau of Indian Affairs

As mentioned previously, the main responsibility for the "government to government" relationship between the United States and Indian tribes rests with the Bureau of Indian Affairs in the Department of the Interior (BIA).

The three-fold mission of the BIA can be summarized as follows:

- to recognize and preserve the inherent rights of tribal self-government, to strengthen tribal capacity to govern and to provide resources for tribal government programs;
- to pursue and protect the sovereignty and rights of American Indian tribes and Alaskan Native groups in dealing with other government entities and the private sector;
- to fulfill and execute the Federal Government's trust obligation to Indian tribes and Alaskan Native groups.[5]

The BIA has a significant power to appropriate federal funds to carry out its role. Its legislative authority also includes veto power over all relevant contracts involving tribes.

BIA program functions related to self-government cover a broad area. Carried out through Indian Services programs they include assistance in the development, adoption and implementation of tribal codes or constitutions, enhancement of tribal legislative processes, resolution of election questions, institution of law enforcement capabilities and maintenance of tribal judicial systems. Management of tribal facilities and the administration of personnel operations come also under its supervision. It is the Bureau's responsibility to respond to Indian tribes through the grant

and contract mechanisms of the Indian Self-Determination and Education Act and to work closely with tribes in the development of tribal budgets.

BIA program responsibilities in other areas are similarly wide ranging. Educational responsibilities include schooling from kindergarten through post graduate, contributions to local non-Indian public school systems, adult and vocational learning and the operation of boarding schools. Social services and economic development come under its umbrella; also included are road construction and maintenance, housing improvement, protection and development of natural resources, real estate management, management of trust monies, water use and the operation of revolving loans and loan guarantees for business development. Under the Indian Self-Determination and Education Assistance Act of 1975 tribes were given the right to take over programs administered by the BIA by contract. Contracts entitle the tribe to reimbursement for direct and indirect administrative expense and provide for funding at the same level as the Bureau would receive. The choice of program to be taken over is up to the tribe. Similarly programs may be returned to Bureau Administration by tribal decision[16].

How has this worked in practice? 1980 testimony by a representative of the Navajo Area School Board Association illustrates a major problem area in endeavours of this kind. The law's requirement that the BIA develop a policy statement on education was greeted favourably. However, the resulting statement that "it is the responsibility, and goal of the Federal government to provide comprehensive educational programs and services for Indians..." and it is the "mission of the BIA, Office of Indian Education Programs... to provide quality educational opportunities from early childhood through life.." was termed so general as to be meaningless. "The basic question of what the Federal government's role in Indian education is has not been answered because the policy regulations assert that its role is to do everything." Further, the statement seemed to contradict the unwritten policies of so many years under which the Bureau was gradually turning over responsibility for Indian education to the States. Additional confusion exists between the law which refers to mandatory standards and the regulations under which they are voluntary[17].

Prior to enactment of the 1975 Self Determination legislation the following were among recommendations made by the Navajo chairman:

- creation of an Assistant Commissioner for self determination responsible for developing and implementing jointly with tribal officials plans for affecting self-determination;

- full participation for tribes in the budget and policy formation process;

- provision of mechanisms for BIA accountability under the Act for review of BIA decisions and to ensure full two-party negotiations in contracting.

It appears that these suggestions have not been acted upon. Accordingly, the BIA remains the essential link between the Navajo and the federal government. Despite all of the acknowledged shortcomings of the BIA, Navajo appear unwilling to cut off the agency completely because, on a more positive side, it can represent special tribal interests within the federal system. It is feared that termination of the BIA would result in the end of special status for Indians. Accordingly, the modern relationship between the tribe and BIA seems to be one of love-hate. In the face of immediate pressures, the BIA can be seen as a Navajo advocate within the federal government. Over the long term, the Navajo seek a reduction in BIA control and reform in its operation.

FINANCIAL ISSUES

The main source of revenue for the Navajo Tribal Council is royalty payments from various types of resource development. For example, tribal income from uranium rose from $66,000 in 1950 to $650,000 in 1954. Oil royalties rose from $50,000 in 1955 to $9,750,000 in 1959. Natural gas and coal also found markets. By 1960, gas and oil had contributed $100,000,000 to the tribal treasury.

Production has declined since 1967. In 1975, largely due to a substantial increase in oil prices, tribal income from this source was $12,860,000. A 1979 estimate places Navajo reserves at 80 million barrels. Allowing for some new oil discovery, the Tribal Office of Minerals Development estimated that production would be down to 3 million barrels a year by 1985. This compares to 10.3 million barrels in 1975[18].

The apparent independence and richness of the tribe must be measured against the extent of services offered and activities undertaken by the Tribal Council. Its varied involvements are perhaps more extensive than many US state and local governments.

Beyond royalties, sources of Navajo revenue are limited, subject to court decisions over tribal power to tax business endeavours on reserves.

On the expenditure side, the control of the federal government remains a powerful influence. This appears to be particularly true in the case of new tribal initiatives. Accordingly, many efforts to provide infrastructure for economic development or Navajo commercial ventures are subject to scrutiny. This can result in important delays, if not in the elimination of such efforts. For example, the Credit Committee of the tribe which is made up of five council members has authority to approve housing loans for $10,000 and other loans to $5,000 from the Navajo Revolving Credit Fund. The BIA Director must approve all others, including loans under $5,000 to government employees and loans for educational purposes.

Social Service Needs versus Other Activities

As is evident, the Navajo Tribal Council is engaged in a wide range of activities. The scope of its efforts appears to have been broadened in response to the needs of the Navajo people as those needs are interpreted by the Council.

An important area of concern has been the education and health of the people. By the early 1970s this was reflected in federal government and tribal spending and in Navajo employment patterns. For example, the BIA budget for the Navajo area was $108.9 million in 1972. Of this, 70.2 percent was spent on education and welfare. The Indian Health Service budget for the area was an additional $26 million. The $7.9 million budget of the Office of Navajo Economic Opportunity was spent mainly on services such as pre-vocational training, head start and alcohol problems. About one-third of the tribal budget of $23.8 million was spent similarly on human development and education.

There are also many jobs in the social service category such as social service aide, legal aide, teacher aide. A 1967 study found that of 8,300 wage or salary Navajo earners 65.8 percent were employed in the government or service sector, excluding tribal employees in activities such as the tribal forest products industry. Figures compiled by Arizona in 1969 repeated the finding with a total of 68.3 percent - 32.9 percent in the federal service, 11.9 percent in state and local government and 23.5 percent with tribal government. Navajo tribal data for 1974 show 66 percent of those earning salaries or wages employed in public services. Further comparisons illustrate that this is not because the Navajo are overserviced, for example, they have half as many doctors per person as the population generally, but because other opportunities are lacking[19].

Several reasons have been suggested for this apparent imbalance in spending and employment in favour of public service activities. They include the above-mentioned tight federal control over Navajo economic development initiatives, the shortage of tribal funds after social and governmental expenses have been met, and the influence of the prevailing system both in providing jobs and providing role models. In addition, it has been suggested that the BIA is subject to pressure not to interfere with development of the natural resources on the reserve by outside interests. Bureau unwillingness to make full use of preferential hiring policy has also been criticized.

It appears that there is a continuing need for a heavy commitment to public service by the Navajo people. However, the means to achieve an appropriate balance between social service type activities and other endeavours necessary to achieve a viable life for the people over the long term has yet to be assured.

Footnotes:

1. U.S. Commission on Civil Rights, "The Navajo Nation: An American Colony," September, 1975, p.2.

2. U.S. Commission on Civil Rights, "The Navajo Nation: An American Colony," September 1975, p.16.

3. Kelly, L.C., The Navajo Indians and Federal Indian Policy, University of Arizona Press, 1968, pp.167-170.

   The Navajo voted to reject application of the Indian Reorganization Act (1934) which contained provisions for Indian self-government and financial assistance in addition to a clause empowering the Secretary of the Interior to regulate livestock grazing.

4. Letter from Agent Estepp to Commissioner of Indian Affairs, August 16, 1921, referred to by L.C. Kelly (above), p.51.

5. U.S. Senate. Select Committee on Indian Affairs, June, 1981, p.3.

6. Barsh, R.C. and Henderson, J.Y., The Road, University of California Press, 1980, p.228.

7. U.S. Commission on Civil Rights, The Navajo Nation: An American Colony, September, 1975, p.7.

8. Williams, A.W., Jr., Navajo Political Process, Smithsonian Institution press, 1970, p.15.

9. U.S. Statutes, Vol. 64, p.26.

10. Williams, A.W.Jr., Op. cit, p.26.

11. Indian and Northern Affairs, Office of Native Claims, Native Claims: Policy, Pprocesses and Perspectives, Opinion Paper prepared by the Office of Native Claims for the Second National Workshop of the Canadian Arctic Resources Committee, Edmonton, Alberta, February 20-22, 1978, p.21.

12. Shephardson, M., "Problems of the Navajo Tribal Courts in Transition," Human Organization, Vol.24, 1965, p.250.

13. This is not the case with all tribes. The Menominee Reserve, for example, is considered a Wisconsin county. Location of the Reserve in three states is a complicating factor for the Navajo.

14. Black, W.D. and Taylor, J.S., "Navajo Water Rights: Pulling the Plug on the Colorado River?" Natural Resources Journal, 1980, Vol.20, p.90.

15. U.S. Senate. Select Committee on Indian Affairs, June, 1981, p.3.

16. Ibid., pp.4-6.

17. U.S. Senate. Select Committee on Indian Affairs. Indian Education Oversight, July 24, 1980.

18. Reno, P. Mother Earth, Father Sky and Economic Development, University of New Mexico Press, Albuquerque, 1981, pp.125-129.

19. Kunitz, S.J., "Underdevelopment and Social Services in the Navajo Reservation," Human Organization, Vol.36, 1977, p.399.

CHAPTER 6. ONTARIO AND NORTHERN AUSTRALIA

Introduction

This chapter contains a summary review of regional government arrangements in Ontario and in Northern Australia. As in the case of material presented in the previous chapters, these summaries are based on secondary sources. However, it should be noted that the authors, as residents of Ontario, are somewhat more familiar with the Ontario case than with the Northern Australian experience.

Regional Governments in Ontario

The Context

Regional government has existed in Ontario (or Upper Canada) since the Baldwin Act of 1849. That Act created a two-level or tier system of local government with the upper tier or county government designed to cover a broad area and exercise jurisdiction over an extended territory.

The second generation of regional government development in Ontario emerged in 1966 with the reform of certain counties and cities to create regional municipalities. These regional governments have attracted considerably more attention in recent years than county governments.

The County System

The county system in Ontario has remained virtually unchanged since 1849. Found predominantly in southern Ontario, the county is an incorporated municipality just as are other classifications of municipalities such as townships, villages and towns. The county, however, is designed to be the upper tier unit of government in a two-tier municipal system. Lower tier units are all of the townships, villages and towns within the broader county area. These lower units come under the jurisdiction of the county for certain purposes.

Although county government does extend over certain built-up areas, such as villages and towns within its boundaries, there are notable exceptions to county jurisdiction. It is particularly important to note that county jurisdiction does not extend to any of the cities or certain designated 'separated towns' within county boundaries. The separation of county government from city government was originally intended to reflect what was seen as the distinct interest of urban units of government (cities and separated towns) from the more rural interest of townships and the smaller towns and villages.

Within the county system itself, there is a division of

powers between the upper tier (county) and lower tier units. In general, the county is assigned responsibility for services which are deemed to extend beyond the interest of individual local municipalities. These have come to include county roads which traverse municipalities, social services, and planning.

The county is governed at the upper tier by a county council which consists of representatives who have been elected to specified positions within the constituent lower tier municipalities. All reeves, and where the municipality is entitled by virtue of its total number of electors, deputy-reeves of the constituent townships, villages and towns within a county make up the county council.

County revenues are derived from two sources. First, the provincial government gives grants to county governments to carry out particular activities. The second form of revenue is the property tax. County governments are not empowered to levy property taxes directly. Instead, they place an annual demand on their local municipalities (the townships, villages and towns) for the funds required for county purposes. The lower tier municipalities then add in the amount of the county levy with their own needs to form the total local property tax levy which is presented to residents.

Regional Municipalities

As indicated above, the second generation of regional government in Ontario dates back to 1966. Regional governments in Ontario have been established almost totally on provincial government initiative. The provincial government established these regional municipalities to modernize the structure of local government over areas experiencing rapid urban growth. Its objectives in establishing these regions included:

1) the establishment of an area-wide goverment with an adequate financial base;

2) the establishment of an area-wide government capable of developing and operating the necessary infrastructure for a major urban or urbanizing area;

3) the development of a government capable of planning for a major urban or urbanizing area.

As of today, there are 10 regional municipalities in the Province of Ontario plus one regional district (the Regional District of Muskoka), plus one restructured county (the County of Oxford).

With the exception of the Regional District of Muskoka, all regional municipalities in the Province of Ontario contain a mixture of large urban centres, suburban municipalities and rural areas. The District of Muskoka contains no dominant urban area. It was established in response to planning and environmental concerns of the provincial government. Muskoka contains extensive lake areas which were under severe development pressure.

Aside from Muskoka, the main distinction between regional government and county government in Ontario is that regions contain cities as an integral part of their governmental structure. As such they recognize the increasing interdependence of urban and rural areas and the impact of urban development on suburban and rural life.

With the exception of the Regional Municipality of Thunder Bay, all regional governments consist of two levels of government. The regional level has been made responsible for those services deemed to be of an area-wide nature while lower tier or area municipalities have been assigned responsibilities for particular services which are deemed by the provincial government to be of more local interest. The precise designation of service responsibility between upper and lower tiers varies from region to region. A general pattern which has evolved, however, is for the upper tier or regional governments to be responsible for integrated water supply and sewage disposal systems, police, capital borrowing for all municipalities in the region, regional parks, and public transportation. As is evident from this general list, regional governments are somewhat stronger than county governments in that they have more responsibilities assigned to them.

Vestiges of the county system remain in terms of the systems of representation and finance for regional governments. With some exceptions, regional councils are indirectly elected in much the same fashion as county councillors. Regional governments also do not levy taxes directly but instead place a tax demand on their lower tier municipalities who must collect the revenue and pass it to the regional government.

Assessment

It is noteworthy that county government in its original form was thought to be inappropriate and unnecessary in northern Ontario[1]. It was thought that the sparse population of northern Ontario and the distances between settlements made it impracticable to establish a county system. This view seems to have carried over into the second generation of regional government. With the exception of the Regional Municipality of Sudbury (which is based on the major urban centre of Sudbury) and Thunder Bay (which is also based on an urban centre) regional governments in Ontario are generally found in the south[2].

Northern Ontario continues to be divided into Territorial Districts which are geographic areas used for the administration of certain functions by the Ontario government. Indeed, developments such as recent provincial legislation enabling residents of a northern area to establish a very basic board to provide certain local services (known as a Local Service Board), indicate that the establishment of local government systems in northern Ontario is still in its embryonic stage.

Australia's Northern Territory

The Context

Australia is much like Canada in that it is a federal system with both states and territories. Although state and local governments were well established in Australia several decades ago, self-government was granted to the Northern Territory only in 1978. Local government in the six states has received considerable attention from both state and federal governments although until 1972 local government had been a state responsibility. A change in government - a Labour government, replaced the Liberal Country Party - resulted in a change in the relationship between the federal and local governments.

The Labour government prompted the idea of regionalization and created new departments and programs for delivery at the regional level. This program of regionalization created severe problems of coordination. It also was not wholeheartedly accepted by all federal departments and commissions.

These problems were particularly noticeable in the two federal territories - the Australian Capital Territory, and the Northern Territory. The federal government was committed to bringing the Territories to some level of self-government, yet many federal departments worked to create their own strong individual presence in the Territories. These problems notwithstanding, the Northern Territory, the traditional homeland for some 30,000 Aborigines, was established as a self-governing territory in 1978.

The Northern Territory is a large area (1.3 million square kilometres) which was first colonized in the early 1800s. It is believed to have been inhabited by the Aboriginal peoples for some 40,000 years. A permanent white establishment dates from the late 1860s. The Territory, which has a harsh climate and is remote from Australia's major population centres, was originally administered from South Australia. As a result of the Northern Territory (Administration) Act, 1910, the Territory was administered by the Australia federal government from 1911 to 1978.

An amendment to this Act in 1947 created a Legislative Council of seven officials and six elected members, with the Territorial Administrator serving as President. Two other later amendments altered the composition of the Council so that by 1974 the Legislative Assembly had 19 elected members. Laws passed by the Legislative Assembly were presented to the Territorial Administrator for assent who, in turn, passed laws on specific subjects to the Governor-General to refuse or grant his assent.

Darwin, the capital, was governed by a district council from 1874 to 1915. A town council then governed the city until

1929 when the mayor and council resigned over the issue of adult sufferage. An appointed council managed the city's affairs until 1937. After that year the federal government provided services to the municipalities through its various agencies. The Darwin Town Council was re-established in 1957.

As has been stated earlier, the Aborigines have inhabited Australia for thousands of years. It is estimated that in 1788 there were some 300,000 Aborigines in Australia. They lived by food gathering and hunting. Different groups of Aborigines claimed identifiable land areas as their own. The Aboriginal culture has been characterized by a strong spiritual bond between the people and their land. During the history of white settlement, many of the tribes were removed from their lands.

The modern history of the Aborigines is not a happy story, nor is it unique. Indigenous peoples in various parts of the world have been treated similarly harshly. More recently, however, the Australian government has committed itself to positive policies regarding the Aborigines, including the policies of self-management, equality before the law, and the granting of freehold rights to former reserve lands.

In 1973, a Land Commission was set up to report upon "the appropriate means to recognize and establish the traditional rights and interests of the Aborigines in and in relation to the land, and to satisfy in other ways the reasonable aspirations of the Aborigines to rights or in relation to land"[3]. To a large extent the Commission was concerned with the question of the land rights of Aborigines in the Northern Territory. The Commission presented its second (and final) report to the Governor-General in May, 1974. This included an extensive list of drafting instuctions for proposed legislation. The Commissioner noted in his report that he had been unable to make recommendations on three important areas: the ownership of minerals (in the land claims areas), the extension of reserve boundaries from the coastline to 12 miles out to sea, and the traditional ownership of land subject to pastoral leases.

The System

The evolution of government in the Northern Territory is perhaps best summarized by a review of significant acts of Parliament. The Aboriginal Land Rights (Northern Territory) Act 1976 provided statutory recognition to Aboriginal customary law in relation to lands and made traditional rights legally enforceable in the courts. It also gave traditional Aboriginals inalienable freehold title to fomer reserve lands in the Northern Territory, and provided a procedure for claiming title to other areas of unalienated Crown land. The Act is summarized in Appendix E1.

By 1982, approximately 27 percent of the Northern Territory was Aboriginal land or in the process of becoming Aboriginal land, with an additional 18 percent still in dispute. Titles

to Aboriginal lands are held by Aboriginal Land Trusts, and the lands are administered by the Aboriginal Land Councils.

Minerals on Aboriginal lands remain the property of the Crown. However, mineral exploration can only be undertaken with the approval of the appropriate land council, acting on behalf of the Aboriginal owners. This veto power can be overruled by the Governor-General if the matter is deemed to be in the national interest. Royalties are paid into an Aboriginal Benefits Trust Account and distributed to land councils for administrative expenses, to communities affected by mining developments, and to other Aboriginal communities.

The Northern Territory (Self-Government) Act, 1978 provided for the transfer of most of the powers of the Commonwealth of Australia to the Government of the Northern Territories, creating a government similar to that of the Australian states.

An Administrator is appointed by the Governor-General, and is advised by an Executive Council comprised of all Northern Territory Ministers. The legislature consists of 19 members who are elected for four-year terms. The transferred powers are administered through a number of departments and authorities which are staffed by the Northern Territory Public Service.

Major matters not transferred by the Act or later amendments were the mining of uranium and other prescribed matters, and Aboriginal land matters. The Northern Territory is represented in the Parliaments of the Commonwealth by one member in the House of Representatives and two Senators.

The Act also transferred responsibility for the provision of major services to the Aborigines to the Northern Territory, including such essential services as water and power supply, health and education, and support for local government. Housing remains the responsibility of the Commonwealth.

The Local Government Act 1982[4] provides for local government and community councils. Local government exists in Darwin and regional centres. Municipal councils are elected by universal adult sufferage and are limited to areas incorporated around the four major urban centres. Municipal services to other areas are provided by either community advisory councils, or the Northern Territory Government.

For the most part, the Aboriginal peoples live in the non-urban areas of the Northern Territory. The traditional forms of local government were considered to be unsuitable for these people so a system of community councils was established to provide a form of self-government.

The Act allows local government to provide most local functions, with the exception of planning, education, and policing. The community councils are able to provide any of 13 functions which are listed in the Act, including provision for communications, community amenities, and the undertaking of commercial development. Community councils also act as a vehicle for delivery of programs to small communities of mixed races. These councils are chosen by election, and are influenced by traditional Aboriginal patterns of leadership.

A Department of Community Development has been established to assist and supervise local governments, and to deliver works programs to community government councils and Aboriginal communities. It also acts as an important source of funding of various kinds and provides municipal services to communities with no local government structure.

Because both the granting of self-government to the Northern Territory, and the Local Government Act are relatively recent, it is not yet possible to provide an analysis of what is actually happening or how effective either or both of these acts are. The most difficult problem has been to accommodate the values and needs of both the Aboriginal and white Australians. More time is needed to determine the success of these acts in meeting these needs.

Footnotes:

1. See R. Tindal, You and Your Local Government, The Ontario Municipal Management Development Board, Toronto, 1982, p.13.

2. Some would argue that the District Municipality of Muskoka is in northern Ontario. Howevr, its origins are so unique and stem from southern-generated pressures for development as to make it of little interest in this context.

3. Second Report, Aboriginal Land Rights Commission, April, 1974, p.1.

4. This Act is not yet available in Queen's University Law Library.

For suggested reading, see:

R. Tindal, You and Your Local Government, Ontario Municipal Management Development Board, Toronto, 1982.

Lionel D. Feldman and Katherine A. Graham, Bargaining for Cities, Institute for Research on Public Policy, Montreal, 1978.

T.J. Plunkett, "Canada: Ontario" in Donald C. Rowat (ed), International Handbook on Local Government Organization, Greenwood Press, Westport, 1980.

G.R. Weller, "Local Government in the Canadian Provincial North", Canadian Public Administration, Vol. 24, No. 1, Spring, 1981.

Annual Report, 1981-1982, Dept. of Aboriginal Affairs.

Australia Year Book, 1982, Vol. 66, The Northern Territory.

"Local Government in Australia's Northern Territory", by Michael Wood, in Urban Focus, Jan.-Feb., 1983, Vol. 11, No. 3.

CHAPTER 7. OBSERVATIONS AND CONCLUSIONS

Basic information concerning the form, structure and powers of the various arrangements reviewed has been set out in previous chapters. Similarly, certain issues which have arisen in the context of each regional arrangement have already been discussed. This chapter offers some concluding observations concerning the six jurisdictions studied. These observations are best set out in relation to each particular jurisdiction. By dealing with each jurisdiction separately, it is hoped that readers of this report will be able to better determine those aspects of each arrangement which might be of further interest. In addition, some more general conclusions have been reached by the researchers. These broader considerations are set out at the end of this chapter.

James Bay

The James Bay case is of particular interest because it incorporates different forms of regional government which co-exist with various other arrangements which have resulted from a land claim settlement. As indicated in chapter 2, the James Bay settlement is the only comprehensive land claims settlement in Canada to date and, accordingly, suggests some important lessons about the positive and negative effects of different structural arrangements.

The James Bay case is also relevant to the Northwest Territories because of the fact that the terms of the James Bay and Northern Quebec Agreement, as well as some of the pre-existing regional structures in the area were stimulated, at least in part, by the external pressure for development of the James Bay hydro-electric project. As in the Territories, resource development was an important issue.

As a result of the James Bay and Northern Quebec Agreement and pre-existing arrangements such as the James Bay Region Development Act of 1971, Inuit and Cree in northern Quebec have a greater degree of control over land and administration in areas outside of the James Bay hydro-electric development. The extent to which Inuit and Cree have the ability to control future development as the result of the arrangements which have been concluded is open to question. This is because the James Bay hydro-electric project seems to be the only major development initiative in the area to date.

Inuit and Cree sit on various commissions and committees dealing with environmental quality and social impacts of development. However, these bodies appear to be more advisory in nature with local residents occupying a minority position. The extent to which this is really a hindrance to the realization of interests of local residents might be the

subject of further enquiry.

Another aspect of the James Bay case which deserves further enquiry is the apparent proliferation of structures at the regional and local level. As indicated in chapter 2, this proliferation is due partly to the separation of arrangements for James Bay Inuit and Cree as necessitated by the particular relationship between the Cree people of James Bay and the Government of Canada. The impact of the particular status of Cree, under the Indian Act, on the separation of structural arrangements which have emerged to deal with public issues and to deal with issues which pertain only to Indians is relevant in the western part of the Northwest Territories. The relationship of band councils to local governments in the NWT and, more recently, the suggested relationship between regional tribal councils and other governments in the western part of the Territories have emerged as important issues.

The approach taken in James Bay to separating public and Indian concerns bears close attention. It would be particularly important to pursue further the extent to which the separation of public and Indian structures causes problems of coordination and the extent to which it fosters or hinders action.

Regardless of whether one considers the particular arrangements established for the Cree of James Bay or for Inuit people, the proliferation of structures as the result of the James Bay and Northern Quebec Agreement is such as to make governmental arrangments in the area difficult for researchers trained in government research to understand. The complexity of the system in James Bay must therefore be considered in terms of the extent to which people in the area can understand the various arrangements which affect their daily lives. One of the lessons emanating from the James Bay experience might be how to balance the need for a regional government system which is comprehensive with the need for a government system which is capable of being understood by the people it is intended to serve.

A further point relating to the James Bay case concerns the importance of transition. The James Bay and Northern Quebec Agreement came into effect on November 11, 1975. The comprehensive nature of the agreement and the fact that it provided for somewhat different arrangements for two different peoples in the area and a different intergovernmental role for the Governments of Quebec and Canada have made the process of implementation a challenge. Without going into the specifics of the difficulties encountered, it is appropriate to note by way of conclusion that a period of transition seems to have been important for all parties to the agreement. The Cree and Inuit people of James Bay required a transitional period in order to establish the structures set out in the agreement and to adjust to their role in those structures. The Governments of Quebec and Canada also required a period of transition in order to adjust their activities. The Quebec and federal governments had to relate themselves to the new structures established through the agreement and also deal with the

transition of responsibility from the Government of Canada to the Government of Quebec and from both governments to the Inuit and Cree of northern Quebec. Recognition that transition and implementation activities are an integral part of establishing any form of regional arrangement should be one of the lessons learned from the James Bay experience.

Alaska

As in the case of James Bay the settlement of native claims in Alaska related, at least in part, to the need to reconcile Native interests and rights with pressures for resource development. The particular developments which occurred on the North Slope were influenced by oil development which occurred with similar intensity to oil development which occurred in the North Sea. Accordingly, the Alaska case provides an interesting bridge between the James Bay and Scottish experience.

Similar to the James Bay case, the Alaska Native Claims Settlement is very important. It incorporates a similar separation between claims-related structures and structures of public government similar to that found in the James Bay case. This seems to have led to a situation of considerable complexity, particularly in the early days after the passage of the Alaska Native Claims Settlement Act. However, problems of coordination, at least as they affect the Native community in Alaska, seem to be less prominent with the passage of time.

Perhaps the outstanding feature of regional government arrangements in Alaska is the development of the borough system, particularly in the North Slope area. It is important to note that the borough system appears to have been developed by Alaskans in response to what they view as the particular needs of the State for regional government. Accordingly, in contrast with more traditional local government arrangements found in the United States and elsewhere, there seems to be a general emphasis on flexibility in determining the boundaries and powers of boroughs. The extent to which this flexibility exists and its impact might be explored further.

In addition, the process by which an area moves from becoming an unorganized borough to becoming organized might be further investigated. It is apparent that this movement is to be initiated by area residents. It seems that in the past, however, residents have not been overly enthusiastic about achieving organized borough status because of the prospect of taxation which would result. It should be noted that this reluctance, if it does exist, is not dissimilar to the reluctance of residents in other parts of Canada to achieve greater organization at the local or regional level. For example, outside the metropolitan area of St. John's, Newfoundland and other built-up areas such as Cornerbrook, the people of Newfoundland have consistently

been reluctant to embrace any system of local or regional government. The process of achieving organized borough status in Alaska is of interest in the NWT context if there is a perceived need in the Northwest Territories to implement regional government arrangements in a flexible manner.

If further enquiries are made about the borough system in Alaska, the key distinction between the home rule status of borough government in Alaska and the delegated powers of local government in Canada should be kept in mind.

Initially under the British North America Act and, subsequently, under the Constitution Act of 1982, Canadian local governments can exercise only those powers specifically delegated to them by their respective provincial government or, in the case of the Territories, by the federal and territorial governments. This is in basic contrast with the home rule system of local government found in certain parts of the United States, including Alaska. A home rule government can basically seize the initiative to undertake any activity. This accounts, in part, for the ability of the North Slope Borough to initiate its taxation regime for oil development and to undertake its massive endeavours in areas such as health, education and housing. Despite this important distinction between the delegate and home rule status of Canadian and American local governments, the evolution of the North Slope Borough and its relations with native corporations set up under the Alaska Native Claims Settlement Act and with resource development companies, might be worthy of further enquiry.

Scotland

In general, the development of regional arrangements in Scotland differs from the other cases. The Scottish experience is that of a somewhat depressed area within the United Kingdom being subject to efforts by the central government in London to undertake regional development. By and large, central government efforts have been oriented toward regional economic development through the establishment of agencies such as the Scottish Development Agency. In this regard, certain central initiatives pertaining to Scotland have been similar to regional economic initiatives for other parts of the United Kingdom.

Control by central government seems to be all-important in the Scottish case. In the most general terms, this is perhaps the result of the fact that the United Kingdom is governed under a unitary system rather than as a federal state. The importance of central government and the absence of any sovereign state or provincial governments in the United Kingdom has resulted in a centralist orientation. As indicated in chapter 4, for example, regional development agencies, such as the Scottish Development Agency and the Highlands and Islands Development Board are agencies of the central government rather than of local governments or other local interests. In the other important area of land use

planning, while provision is made for planning at the local and county level, central government retains essential control over the planning process. Its specific ability to "call in" particular initiatives, determined to be of national interest and override local planning is very significant.

The Zetland or Shetlands area of Scotland appears to be somewhat different from the general Scottish case. The Zetland example suggests an effort by indigenous people to protect a valued lifestyle in the face of significant resource development. It would appear that people in the Shetlands Islands recognized that development would proceed so that the best approach would be to try to protect their environment and gain for the future through the collection of special revenues from North Sea oil. Unfortunately, there is virtually nothing on the public record about the particular conditions which led to the passage of the Zetland County Council Act. In addition, the Act itself is not available in Canada. These two aspects of the Zetland case might be pursued but this would require on-site investigation. The Beaufort Sea Community Advisory Committee has visited the Shetlands Islands. Accordingly, the BSCAC might have further information on the Highlands and Islands area.

The Navajo Tribal Council

As with the James Bay, Alaska, and Zetland County Council examples, the development of the Navajo Tribal Council is linked directly to resource development. It should be noted, however, that in contrast with the Alaska case, the initial impetus for establishment of the Navajo Tribal Council came from central government. The United States government wanted to promote oil and gas development and viewed the establishment of a permanent Navajo Tribal Council as a method of speeding up the development process under existing treaties. Accordingly, the establishment of the Navajo Tribal Council can be seen to contrast with the more local initiative to establish borough government in Alaska.

Despite the early objectives of the US government in establishing the Navajo Tribal Council, the Council itself has evolved over the years beyond its limited original purpose to become a comprehensive government engaged in a variety of service functions and economic initiatives. Its ability to do this has been largely because of the royalties received by the Navajo people from resource development.

While the Navajo Tribal Council appears to be responding to the needs of the Navajo people in a comprehensive way, a number of outstanding issues remain which may limit its effectiveness. These include:

1) The special status of Navajo people as Indians in the United States. Their particular relationship with the federal government has acted to limit the extent to which the Navajo have participated in state and even federal programs available to other citizens.

2) Ongoing problems which have been experienced with the Bureau of Indian Affairs. Basically, the BIA has been consistently described as a burgeoning bureaucracy with programs far less effective than they should be.

3) Despite the range of initiatives undertaken by the Navajo people through the Navajo Tribal Council, there appear to be important limitations on the extent to which Navajo can undertake economic development activities. Specifically, all aspects of economic development are ultimately under the control of the US federal government and the Bureau of Indian Affairs. Further, lack of access to sources of income available to state and local governments and consequent reliance on royalties from diminishing resources for municipal purposes limits investment capital. The more general problems related to the Bureau of Indian Affairs referred to above particularly apply in the case of economic development.

Despite these limitations on Navajo initiative, the Navajo Tribal Council has evolved almost continuously over the years, taking on new functions and reorganizing. Accordingly, the Council and its related organizations might most usefully be considered in terms of their internal organization and how the range of activities which are undertaken are managed.

It should be noted that at present little is known about the relationship of the Navajo Tribal Council to chapters. The only recent information available indicates that chapters have evolved to become constituencies from which members are elected to the Navajo Tribal Council. The particular role of chapters might be probed further. Of particular interest might be the role, if any, of local chapters in the economic development process.

Ontario

Regional government arrangements in Ontario are not particularly relevant to the Northwest Territories case. Even within Ontario, county governments were deemed to be inappropriate to the northern areas of the province. The more recent generation of regional governments has been established using urban centres as the anchor for organization of regional municipalities. For its part, local government in northern Ontario seems to be less well developed at present than local government in the NWT.

Despite the apparent contrasts between the Ontario case and the NWT two considerations emanating from the Ontario experience might be of interest. Certain of the regional governments established in Ontario since 1966 have one dominant central city which overshadows other lower tier municipalities in the region. The difficulties encountered in these regions, such as Ottawa-Carleton and Hamilton-Wentworth, have been significant. Basically,

intense rivalry has emerged from time to time between the dominant urban centre and other municipalities. This rivalry has occasionally brought government in the region to a virtual standstill. This experience suggests the importance of balancing any regional arrangement so that one municipality does not dominate.

The second point of interest about the Ontario case is that regional governments, especially those established since 1966, are popularly seen as an arm of the provincial government rather than as agents of their member area governments. This can be described as the popular perception of regional governments in the province. This perception exists despite the fact that, according to legislation establishing them, regional governments theoretically enable greater local autonomy in areas such as planning. The extent of local understanding of and enthusiasm for regional government in Ontario can therefore be described as limited.

Australia

The Northern Australia case is potentially of interest. However, information on recent developments concerning self-government in the Northern Territory and the Local Government Act of 1982 is very scarce in Canada. The most basic observation which can be made about the relevance of the Australian example is that developments seem to be occurring quickly in the Northern Territory. Further, the developments which have occurred seem to represent an attempt to balance the national interest with the need to acknowledge aboriginal rights. In this way, the Australian experience might be quite similar to the Canadian. However, further observations would require considerably more information.

General Conclusions

Although all of the material in this report has been presented on a case-by-case basis, certain general themes have emerged from the review. These are interesting in the sense that they might represent some general lessons to be learned from the experience of others.

Perhaps the most fundamental theme which emerges from the material is the importance of achieving a balance between central (federal and territory) and local interests in the development of any regional structure. Central and local interests can be defined in a variety of ways. For example, in the Canadian context, we have the so-called national interest in resource development which has certainly affected the development of the NWT and its government. As is evident from the other cases, the national interest is also a prominent concern in countries such as the United Kingdom, the United States and Australia. There is a so-called local

interest, sometimes of indigenous or aboriginal peoples. These interests are also important and, sometimes, differ from what has been defined as the national interest. On the most general level, it is, of course, this balance between the national and local interest which is sought in most jurisdictions. One result of an attempt to achieve a balance between national and local interests can be the emergence of regional arrangements or structures to try to mediate between the two. If such regional arrangements are to be succesful, they must be seen to have some relevance to local interests and not simply be agents for central control.

Achieving the balance between local interest and central control through the establishment of regional structures appears to require the passage of time. Certainly, this is evident in the case of the Navajo Tribal Council and, to some extent, regional arrangements in Alaska. These examples plus the James Bay case strongly suggest that a period of implementation and transition, during which regional arrangements are modified according to practical needs, is almost as important, if not equally important, as undertaking intense deliberations before establishing the arrangements. More general experience suggests that very often governments, particularly central governments, expend great effort in planning to establish new structures, but pay scant attention to implementation issues. A concerted effort in implementation will be essential to the success of any regional government arrangement which emerges in the NWT.

A final theme which emerges from the literature review but which may not have surfaced completely in the chapters dealing with specific cases is the importance of leadership to the success of any regional government initiative. The James Bay, Alaska, and Scottish cases particularly indicate that a strong local leadership with commitment to making the regional arrangement relate to local interests is crucial for the regional arrangement to be responsive to local interests. In addition, strong local leadership and commitment is important for the development of a positive relationship with other levels of government, particularly with central governments.

The development of regional government arrangements is an art, not a science. To be fully effective, any regional arrangement must first reflect local conditions and needs and relate them in a realistic way to the interests of central governments. Each case is different. Accordingly, it is suggested that the material presented here and any subsequent research on other jurisdictions be considered from the perspective of approaches to particular problems and lessons to be learned rather than from the perspective of how to transfer particular arrangements to the Northwest Territories.

MAJOR ELEMENTS OF THE JAMES BAY AND NORTHERN QUEBEC AGREEMENT

Note: Section numbers refer to sections in the James Bay and Northern Quebec Agreement.

Compensation (Section 25)

$225 million: $75 million to be paid over 10 years beginning March 31, 1976. Canada to pay $32.75 million of this, Quebec $42.25 million.

$75 million to be paid by Quebec as Hydro-Quebec royalties beginning one year after first turbine-generator is in commercial operation, and until 1997.

$75 million to be paid by Quebec in the form of provincial debentures over five years beginning in 1975.

Taxation (Section 25)

Principal payments to Cree and Inuit exempted from federal and provincial taxation, but revenues from them subject to general tax legislation.

Legal Entities (Sections 26 and 27)

Cree and Inuit corporations (to be incorporated by Quebec) to receive and administer compensation. Canada and Quebec to have minority positions on the boards of directors for eight years for Inuit, ten years for Cree.

Administration of compensation to be subject to a 20-year period of control on investments and expenditures, incuding a 25 percent limit on investments in native business ventures, education, community and charitable purposes, with the remainder to be placed in specified types of investments. No per capita distribution to be permitted.

Land Regime, Cree (Section 5)

Category Ia lands: Cree to receive 1,274 square miles. Administration, management and control to be under Canada's jurisdiction, with bare title being retained by Quebec.

Category Ib lands: Cree to receive 821 square miles. These lands are to be owned outright by the Cree Community Corporations under provincial jurisdiction. They can be sold only to Quebec.

Category 1 lands (a and b) total 2,095 square miles. Quebec will maintain mineral rights in this area, while the Cree will have exclusive use of forest resources. These lands are subject to public servitudes with compensation in land or money.

Source: McAllister, A.B. James Bay Settlement, Eastern Arctic Study Case Study Series, (Unpublished paper), ILG, 1982, p.46-50.

Category II lands: Cree to have exclusive hunting, fishing and trapping rights over 25,130 square miles. Quebec will retain title to and jurisdiction over these lands. They will be subject to public servitudes without indemnity and may be taken for development, subject to compensation or replacement.

Land Regime, Inuit (Section 7)

Category I lands: Inuit to receive 3,250 square miles. Title is to be vested outright in Inuit Community Corporations. They may be sold only to Quebec and Quebec will retain mineral rights over them. They are subject to public servitudes with compensation in land or money.

Category II lands: Inuit to have exclusive hunting, fishing and trapping rights over 33,400 square miles. Quebec will retain title to and jurisdiction over these lands. They may be taken for development, subject to compensation in land or money.

Local Government, Cree (Sections 9, 10 and 11)

On the Cree Category Ia lands, the federal Department of Indian and Northern Affairs will be negotiating the terms and conditions of local government, and will be preparing legislation specifically for this purpose. This legislation will provide for such items as incorporation for local government purposes; increased powers for Band Councils, including those described in Section 28(2) and all or most of Section 73 of the Indian Act; all other powers as may be incidental to the effective exercise of local government.

Each local government authority shall be deemed to be a public corporation under Quebec law for the purpose of ownership, management and administration of Category Ib lands. Each corporation will have the powers of a municipality under the Quebec Cities and Towns Act.

There will be a Cree Regional authority, composed of all corporations with jurisdiction of Cree Ib lands. This Authority will be a corporation with full powers within the meaning of the Quebec Civil Code, and may co-ordinate and administer all programs on Category I lands if the bands so delegate.

There will be a Cree Zone Council composed equally of representatives appointed by the Regional Authority and the James Bay Municipality. It will exercise the powers of the James Bay Municipality over all Cree Category II lands within the area covered by Bill 50.

Local Government, Inuit (Sections 12 and 13)

Local and regional municipal governments will be established under provincial jurisdiction and by special acts for the area north of the 55th parallel. They will not be ethnic in character. Each will have powers at least equal to those of non-chartered municipalities in Quebec.

The Department of Indian and Northern Affairs will continue to bear responsibility for some program costs at existing or lower levels.

Environment and Future Development, Cree (Section 22)

A James Bay Advisory Committee on the environment will be established which will advise on the need for new and revised legislation and other protective measures. It will consist of four federal government representatives, four Quebec representatives, four representatives from the Grand Council of the Cree, and the chairman of the Hunting, Fishing and Trapping Coordinating Committee.

In addition, the Environment and Social Impact Review Committee (Provincial) and the Environmental and Social Impact Panel (Federal) will carry out impact assessments on all capital projects in the Territory.

Environment and Future Development, North of 55 (Section 23)

An Environmental Quality Commission (EQC), to be composed of four regional government representatives (at least two of whom will be Inuit) and four Quebec representatives with an alternating chairman, will provide impact assessment for all projects proposed by Quebec in the area.

An Environmental and Social Impact Review Panel, to be composed of two Inuit and three federal representatives, will provide impact assessments for all development projects sponsored by Canada in the area.

An Environmental Advisory Committee, to be composed of three regional government representatives, three federal representatives and three Quebec representatives, will be a consultative body for all environmental matters affecting the territory.

Hunting, Fishing and Trapping (Section 24)

Native people will have exclusive hunting, fishing and trapping rights on Category I and II lands. On Category III lands, native people will not be subject to closed seasons and will have exlusive rights to certain species except for migratory birds and marine mammals, but non-natives may hunt, fish or trap all other species subject to closed seasons.

Native people will have the exclusive right to own outfitting operations on Category I and II lands, and will have the right of first refusal on Category III lands for 30 years.

A Hunting, Fishing and Trapping Coordinating Committee, to be composed of six native and six government members, will advise both levels of government on the legislation and its administration, and will oversee research done on native harvesting during the 1973-79 period.

Health Services, Cree (Section 14)

A Cree Regional Board, to be established under Quebec jurisdiction, will administer health and related social services on Category I and II lands.

The Department of National Health and Welfare will transfer its facilities to the board during a transitional period ending in 1981.

Health Services, Inuit (Section 15)

A council composed of representatives of the regional governments in the area north of 55' will serve as the Kativik Health and Social Services Council. This Council will be under Provincial jurisdiction to provide Health and related social services north of 55'.

The Department of National Health and Welfare will transfer its facilities to the council during a transitional period ending in 1981.

Education, Cree (Section 16)

A Cree School Board, representing the eight Cree communities in the Territory and the Grand Council of the Cree will be established for Category I areas and for Cree in Category II areas.

School board to be subject to the Quebec Education Act.

Cree and English or French to be the languages of instruction.

Canada and Quebec to transfer education facilities to the board over a three-year transition period. Staff to be transferred during 1978-79. Canada and Quebec to pay operating and capital costs in a 75-25 ratio.

Education, Inuit (Section 17)

A Kativik School Board, representing each municipality and the regional government in the area north of 55', will be established for that area. To be subject to the Quebec Education Act.

Inuktituut and English or French to be the languages of instruction.

Canada to transfer education facilities to the board over a three-year transition period. Staff to be transferred during 1978-79. Canada and Quebec to pay operating and capital costs in a 25-75 ratio.

Administration of Justice, Cree (Section 18)

Special provisions for the administration of justice provide that:

- courts and tribunals may sit in Cree communities;
- the Judicial District of Abitibi be expanded and modified;

- the rules of procedure established by the Justices of the District are to be set in consultation with the Cree;
- there be written and oral translation of all proceedings into Cree on request;
- training programs for court functions be established;
- places of detention be established north of the 49th parallel.

Administration of Justice, Inuit (Section 20)

Special provisions for the administration of justice provide that:

- courts and tribunals may sit in Inuit communities;
- a circuit court be established;
- Judicial District of Abitibi be expanded and modified;
- rules of procedure established by the Justices of the area take into account Inuit customs and lifestyles;
- there be written and oral translation of into Inuktitut on request;
- training programs for court functions be established;
- places of detention be established north of the 49th parallel.

Police, Cree (Section 19)

Cree units of the Quebec Police Force to be composed of special constablishes, to be established;

- Cree communities may also establish and operate their own police forces;
- Canada and Quebec to enter into a cost-sharing agreement to provide for the direct costs of policing services provided by the Cree special constables.

Police, Inuit (Section 21)

Kativik Regional Government authorized to establish and maintain a police force within its area or jurisdiction.

Constables to be hired and placed in Inuit communities on a 1 to 500 population basis. Inuit not formally qualifying may be appointed as special constables.

Economic and Social Development, Cree (Section 28)

A James Bay Native Development Corporation to be established with Quebec funding to promote native business ventures. Trapping, tourisms and crafts to be encouraged.

A Federal-Provincial-Cree Economic and Community Development Committee to be established with assessment and advisory roles vis à vis the corporation.

Income Security for Cree Hunters and Trappers (Section 30)

Province and Cree to establish a Hunters and Trappers Income Security Board to administer an income security program. Benefits to be limited to families

engaged primarily in hunting, fishing or trapping: $1000 per annum for the head of the family; $1000 for the spouse; $400 for each dependent; $10 per day per adult while fishing, trapping or hunting to an annual maximum of $2400.

Economic and Social Development, Inuit (Section 29)

Quebec to pay $9000 to Inuit hunters to provide food for the aged and handicapped.

There to be one hunter per community plus one percent of the total population.

Quebec to provide hunting, fishing and trapping equipment.

There to be two Federal-Provincial-Inuit Committees on Economic and Social Development and Manpower and Training.

Selected Extracts from the Federal Indian Act

Grants, etc. of reserve lands void

28. (1) Subject to subsection (2), a deed, lease, contract, instrument, document or agreement of any kind whether written or oral, by which a band or a member of a band purports to permit a person other than a member of that band to occupy or use a reserve or to reside or otherwise exercise any rights on a reserve is void.

Minister may issue permits

(2) The Minister may by permit in writing authorise any person for a period not exceeding one year, or with the consent of the council of the band for any longer period, to occupy or use a reserve or to reside or otherwise exercise rights on a reserve. R.S., c. 149, s. 28; 1956, c. 40, s. 10.

POWERS OF THE COUNCIL

By-laws

81. The council of a band may make by-laws not inconsistent with this Act or with any regulation made by the Governor in Council or the Minister, for any or all of the following purposes, namely:

(*a*) to provide for the health of residents on the reserve and to prevent the spreading of contagious and infectious diseases;

(*b*) the regulation of traffic;

(*c*) the observance of law and order;

(*d*) the prevention of disorderly conduct and nuisances;

(*e*) the protection against and prevention of trespass by cattle and other domestic animals, the establishment of pounds, the appointment of pound-keepers, the regulation of their duties and the provision for fees and charges for their services;

(*f*) the construction and maintenance of water courses, roads, bridges, ditches, fences and other local works;

(*g*) the dividing of the reserve or a portion thereof into zones and the prohibition of the construction or maintenance of any class of buildings or the carrying on of any class of business, trade or calling in any such zone;

(*h*) the regulation of the construction, repair and use of buildings, whether owned by the band or by individual members of the band;

(*i*) the survey and allotment of reserve lands among the members of the band and the establishment of a register of Certificates of Possession and Certificates of Occupation relating to allotments and the setting apart of reserve lands for common use, if authority therefor has been granted under section 60;

(*j*) the destruction and control of noxious weeds;

(*k*) the regulation of bee-keeping and poultry raising;

(*l*) the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies;

(*m*) the control and prohibition of public games, sports, races, athletic contests and other amusements;

(*n*) the regulation of the conduct and activities of hawkers, peddlers or others who enter the reserve to buy, sell or otherwise deal in wares or merchandise;

(*o*) the preservation, protection and management of fur-bearing animals, fish and other game on the reserve;

(*p*) the removal and punishment of persons trespassing upon the reserve or frequenting the reserve for prescribed purposes;

(*q*) with respect to any matter arising out of or ancillary to the exercise of powers under this section; and

(*r*) the imposition on summary conviction of a fine not exceeding one hundred dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a by-law made under this section. R.S., c. 149, s. 80.

Source: Statutes of Canada, Ch. I-6

may by-laws

83. (1) Without prejudice to the powers conferred by section 81, where the Governor in Council declares that a band has reached an advanced stage of development, the council of the band may, subject to the approval of the Minister, make by-laws for any or all of the following purposes, namely

(a) the raising of money by

(i) the assessment and taxation of interests in land in the reserve of persons lawfully in possession thereof, and

(ii) the licensing of businesses, callings, trades and occupations;

(b) the appropriation and expenditure of moneys of the band to defray band expenses;

(c) the appointment of officials to conduct the business of the council, prescribing their duties and providing for their remuneration out of any moneys raised pursuant to paragraph (a);

(d) the payment of remuneration, in such amount as may be approved by the Minister, to chiefs and councillors, out of any moneys raised pursuant to paragraph (a);

(e) the imposition of a penalty for non-payment of taxes imposed pursuant to this section, recoverable on summary conviction, not exceeding the amount of the tax or the amount remaining unpaid;

(f) the raising of money from band members to support band projects; and

(g) with respect to any matter arising out of or ancillary to the exercise of powers

triction on penditures

(2) No expenditure shall be made out of moneys raised pursuant to paragraph (1)(a) except under the authority of a by-law of the council of the band. R.S., c. 149, s. 82; 1956, c. 40, s. 21.

REGULATIONS

Regulations

73. (1) The Governor in Council may make regulations

(a) for the protection and preservation of fur-bearing animals, fish and other game on reserves;

(b) for the destruction of noxious weeds and the prevention of the spreading or prevalence of insects, pests or diseases that may destroy or injure vegetation on Indian reserves;

(c) for the control of the speed, operation and parking of vehicles on roads within reserves;

(d) for the taxation, control and destruction of dogs and for the protection of sheep on reserves;

(e) for the operation, supervision and control of pool rooms, dance halls and other places of amusement on reserves;

(f) to prevent, mitigate and control the spread of diseases on reserves, whether or not the diseases are infectious or communicable;

(g) to provide medical treatment and health services for Indians;

(h) to provide compulsory hospitalization and treatment for infectious diseases among Indians;

(i) to provide for the inspection of premises on reserves and the destruction, alteration or renovation thereof;

(j) to prevent overcrowding of premises on reserves used as dwellings;

(k) to provide for sanitary conditions in private premises on reserves as well as in public places on reserves;

(l) for the construction and maintenance of boundary fences; and

(m) for empowering and authorizing the council of a band to borrow money for band projects or housing purposes and providing for the making of loans out of moneys so borrowed to members of the band for housing purposes.

Penalty

(2) The Governor in Council may prescribe the penalty, not exceeding a fine of one hundred dollars or imprisonment for a term not exceeding three months, or both, that may be imposed on summary conviction for violation of a regulation made under subsection (1).

Orders and regulations

(3) The Governor in Council may make orders and regulations to carry out the purposes and provisions of this Act. R.S., c. 149, s. 72; 1956, c. 40, s. 19.

Appendix A-3

Cree School Board: Special Powers

Section 16 Cree Education

16.0.9 The Cree School Board shall also have the following special powers, subject only to annual budgetary approval:

a) to make agreements with Canada for education and training programs not provided by Québec, in accordance with the laws and regulations relating to such agreements;

b) to determine, in conjunction with the Québec Department of Education, the school year and school calendar limited only by the total number of days per year required by law and regulations;

c) to make agreements for post-secondary education for the persons specified in paragraph 16.0.6;

d) to acquire, build and maintain residential facilities for its teachers;

e) to determine, in conjunction with the Québec Department of Education, the number of Native persons and non-Native persons required as teachers in each of its schools;

f) to arrange, with the Québec Department of Education, for the hiring of Native persons as teachers notwithstanding that such persons might not qualify as teachers in accordance with the standard qualifications prevailing in the other areas of the province;

g) to select courses, textbooks and teaching materials appropriate for the Native people and to arrange for their experimental use, evaluation and eventual approval;

h) to develop courses, textbooks and materials designed to preserve and transmit the language and culture of the Native people;

i) to make agreements with universities, colleges, institutions or individuals for the development of the courses, textbooks and materials for the programs and services that it offers;

j) to give instruction and guidance to its teachers in the methods of teaching its courses and in the use of the textbooks and teaching materials used for such courses;

k) to establish courses and training programs to qualify Native persons as teachers;

l) to establish courses and training programs for non-Native persons who will teach in its schools;

m) to make agreements with universities, colleges, institutions or individuals to provide training for the Cree School Board's teachers and prospective teachers.

Source: Quebec. James Bay and Northern Quebec Agreement, 1976, Section 16.0.9

CHAPTER II

BY-LAWS WITHIN THE JURISDICTION OF THE COUNCIL

DIVISION I

GENERAL POWERS

By-laws of council.

166. The council may make by-laws to secure the peace, order, good government, health, general welfare and improvement of the municipality, provided such by-laws are not contrary to the laws of Canada and of Québec nor inconsistent with any special provision of this act.

Joint competence.

Such by-laws shall not be contrary to the ordinances of the Regional Government in matters of joint competence.

1978, c. 87, s. 166.

Permit, certificate.

167. Where the application of a by-law contemplated in one of sections 173, 174, 176, 179, 188 to 198, 201 or 202 involves, to have effect, that certain persons should hold a permit or a certificate, the council may provide for the issuing of such permit or certificate, against payment of certain fees of which it establishes the tariff.

1978, c. 87, s. 167.

Agreements.

168. Any municipal corporation may, by by-law of its council previously approved by the Minister, make with the Regional Government, any public body, a municipal corporation, however constituted, a community, an association and a school board, agreements respecting the exercise of its jurisdiction; it may then carry out such agreements and exercise the rights and privileges and fulfil the obligations arising therefrom, even outside its territory.

Agreements with Govt. of Canada and public body outside of Québec.

It may also, by by-law of its council previously approved by the Gouvernement, make similar agreements with the Government of Canada, any body thereof, or any public body mentioned in the foregoing paragraph and situated outside of Québec.

Joint committee.

The council may provide in the agreement contemplated in the first or second paragraph for the establishment of a joint committee and may delegate to such committee all or part of its powers in respect of the subject matter of such agreement.

Third parties.

Any agreement made in virtue of the present section shall be without prejudice to third parties.

Interpretation.

For the purposes of the first paragraph, the word "community" and "association" include any group of persons formed for the pursuit of a common object in Québec, but not having civil

Source: Quebec. Northern Villages and Kativik Regional Government Act (amended) Ch V-6.1

personality nor being a partnership within the meaning of the Civil Code.

Agreement regarding the establishment of municipal service.

Any municipal corporation may also, by by-law of its council previously approved by the Minister, make an agreement with the Regional Government for the delegation to the Regional Government of the implantation of a municipal service the establishment of which is decided by the corporation, the administration of a municipal service established by the corporation or the coordination of such a service with a service or programme of the Regional Government or of another municipal corporation. Such an agreement may be made for a period not exceeding two years, buy it may be renewed.

1978, c. 87, s. 168; 1979, c. 25, s. 141.

Powers.

169. The council may, by complying with the provisions of sections 170 and 171 and the expropriation procedure established by law,

(*a*) appropriate any immoveable property, any part thereof or any servitude required for the execution of works ordered by it within its jurisdiction;

(*b*) appropriate the whole or part of any road in the municipality and belonging to persons, firms or private corporations;

(*c*) appropriate any immoveable property, any part thereof or any servitude it may need for any municipal purpose.

Mutual agreement.

The foregoing provisions of this section shall not be regarded as restricting the right which the council may otherwise have to acquire, by mutual agreement, immoveables for the same purposes.

1978, c. 87, s. 169.

Expropriation.

170. The council may not, without the authorization of the Government, expropriate the following properties:

(1) property belonging to Her Majesty, or held in trust for her use;

(2) property occupied by the Government of Canada or Gouvernement du Québec;

(3) property held or occupied by railway companies, fabriques, or religious, charitable or educational institutions or corporations;

(4) cemeteries, bishops' palaces, parsonages, and their dependencies.

1978, c. 87, s. 170.

Special notice.

171. A special notice of the petition to obtain the authorization contemplated in section 170 must be served on each owner concerned and such notice shall state that after thirty days the petition will be submitted to the Government and that any opposition must be forwarded in writing to the Minister within such delay.

1978, c. 87, s. 171.

Census. **172.** The council may make by-laws to take a census of the inhabitants of the municipality, for the purpose of ascertaining their number, and of obtaining statistics regarding their social and economic condition.

Birth, death certificate. The council may also make by-laws to exact that, in all cases of birth or death, a certificate be deposited in the office of the municipal corporation.

1978, c. 87, s. 172.

DIVISION II

PUBLIC SECURITY

By-laws: **173.** The council may make by-laws:

Inspection of property; (1) to authorize an officer designated by it to visit and examine all moveable and immoveable property, as also the interior or exterior of any house, building or edifice, to ascertain if the by-laws of the council are executed or for the purpose of adopting any measure deemed necessary for public security, and to require the occupants of such property, buildings and edifices to admit such officers of the municipal corporation;

Classification of immoveables; (2) to classify, for purposes of regulation, dwellings, commercial and industrial establishments and all other immoveables, including public buildings;

Submission of plans; (3) to compel the prior submission of plans for the construction or alteration of buildings and projects for changes of the destination or use of an immoveable or for the moving of a building, to the council, for security and sanitary purposes;

Certificate prior to occupation; (4) to provide that no immoveable newly erected or altered, or the destination or use of which has been changed shall be occupied before a certificate is issued by the municipal authority establishing that this immoveable is in conformity with the by-laws of the municipal corporation;

Building permit; (5) to decree that no building permit shall be granted,

(*a*) unless the ground on which each proposed structure, including its dependencies, is to be built forms a separate lot on the official cadastral plan or on the subdivision plan made and deposited in accordance with article 2175 of the Civil Code;

(*b*) unless the lot on which a structure is to be erected is adjacent to a public street;

Abandoned buildings; (6) to define what shall constitute abandoned, dilapidated or decayed buildings or structures and regulate the restoration or demolition of the same; the reconstruction or restoration of any building or structure shall be carried out in accordance with the by-laws in force at the time of such reconstruction or restoration;

Overcrowding, of premises; (7) to adopt measures to prevent the overcrowding of premises used as lodgings;

Protection of life and property; (8) to protect the life and property of the inhabitants and prevent accidents such as may be caused by natural catastrophe, fire, mechanical defect or failure, or contamination from noxious substances;

Fire department; (9) to organize, maintain and regulate a fire department and fire brigade; to appoint all officers and persons necessary for the extinction and suppression of fires and for the protection of persons and property from fire;

Demolition; (10) to authorize the demolition of buildings, houses and fences, when deemed necessary to arrest the progress of fire, and to empower the mayor, the chief of the fire brigade or other officers to exercise this power; if there is no by-law, the mayor may, during a fire, exercise this power by giving special authority;

Blasting and shooting; (11) to regulate or prohibit blasting, and shooting with guns, pistols or other fire-arms, or arms discharged by means of compressed air or any other system;

Animals; (12) to regulate the keeping of animals or to prohibit the keeping of certain species specified in the by-law;

Pounds. (13) to establish pounds under the supervision and control of the council.

Motion to court. When the construction of a building is not or has not been made in conformity with the by-laws adopted under this section or under paragraph 2 of section 176, or when it is or has been done without obtaining a permit or certificate required under those by-laws, a judge of the Superior Court having jurisdiction in the territory may, upon motion, order appropriate modifications or that the building be demolished within such delays as he fixes, and order that on failure to do so within such delay the municipal corporation may effect such modifications or demolition at the expense of the owner of the building.

1978, c. 87, s. 173.

DIVISION III

PUBLIC HEALTH AND HYGIENE

By-laws: **171.** The council may make by-laws:

Food; (1) to provide for the inspection of food and other products and their containers, and for the seizure, confiscation and summary destruction of any such products or containers as are unsound, spoiled, or unwholesome; to prohibit the bringing into the municipality of such products and the keeping or selling of such products;

Food; (2) to regulate the construction and maintenance of places where food-stuff are prepared, stored or sold;

Fuels; (3) to regulate the construction and maintenance of places where fuels and noxious substances are stored or sold;

Fuels; (4) to regulate or prohibit the storage or sale of fuels or noxious substances;

Public and private property; (5) to ensure the sanitary condition of public and private property and regulate or prohibit unwholesome undertakings and establishments;

Ice-houses, cold-storage; (6) to inspect and regulate ice-houses and cold-storage establishments;

Hides; (7) to regulate the location, construction, management and cleansing of storing places for hides and, generally, all places or establishments in which animal matter is dealt with;

Cemeteries; (8) to regulate the establishment of cemeteries and burial sites and the burial and disinterment of the dead;

Pollution of waters; (9) to prevent the pollution of the waters within or adjacent to the municipality and to provide for the cleansing and purification of municipal waters, and to compel the owner or occupant of any building or ground to remove from the premises owned or occupied by him all such offensive substances as the council may direct, and, upon his default, to authorize the removal or destruction thereof at the expense of such owner or occupant;

Sewerage; (10) to regulate the sewerage of the municipality and to maintain and operate a sewage collection and disposal system;

Waste; (11) to prevent the throwing out or depositing of waste and provide for the collection, removal and disposal of the same;

Drumps; (12) to construct, equip and operate plants for the elimination or recycling of waste and to regulate or prohibit the use of places as dumps;

Smoke; (13) to regulate or prohibit the escapement of smoke, gas and effluents from engines, factories or establishments;

Nuisance. (14) to define what shall constitute a nuisance and to regulate or prohibit the same, including noise.

1978, c. 87, s. 174.

Auction. **175.** The municipal corporation may cause to be sold at auction, by bailiff, without any judicial proceedings and after the notices required for the sale of moveables under writ of execution, all moveable effects in its possession which are unclaimed within six months and which have been abandoned or are the proceeds of theft or have been seized or confiscated.

Liability. If such property is claimed after the sale, the municipal corporation shall be liable only for the proceeds of the sale, after deducting the cost of the sale and other expenses which it may have incurred. If they cannot be sold because they have no merchantable value or by reason of the illegality of their possession or use, they may be destroyed after publication of similar notices, and if they are claimed after destruction, the municipal corporation shall not be liable for the payment of any indemnity or compensation.

1978, c. 87, s. 175.

DIVISION IV

TOWN PLANNING AND LAND DEVELOPMENT

By-laws: **176.** The council may make by-laws:

Master plan; (1) to order the making of a master plan of the territory or of any part of the territory of the municipal corporation specifying the purposes for which each portion of the territory included in the plan may be used, and to enact that such master plan shall become obligatory; to oblige the owner of any land to submit beforehand to the council any plan for the division or re-division of such land or of any modification or cancellation in the book of reference of a subdivision, and to obtain from the council a subdivision permit;

Zones; (2) subject to the master plan of the municipality, to divide the municipality into zones of such number, shape and area as the council deems suitable for the purpose of such by-law and, with respect to each of such zones, to prescribe the architecture,

dimensions, symmetry, alignment, destination, materials and the manner of assembling the same, of the structures which may be erected therein, the use of any immoveable located therein, the area and dimensions of lots, the proportion of lots which may be occupied by structures, the space which must be left clear between structures and the lines of lots, the space which, on such lots, must be reserved and arranged for the parking of vehicles, and the manner of arranging such space. Every such by-law must, before coming into force, be approved by the affirmative vote of the majority of the electors whose names appear on the electoral list in force, and who have voted on such by-law;

Trades. (3) to regulate the carrying on of trades, businesses and industries of all kinds within the municipality.

1978, c. 87, s. 176.

DIVISION V

PUBLIC SERVICES

§1.— *Water Supply*

Reservoirs. **177.** The council may make by-laws to provide for the establishment or acquiring, maintenance, management and regulation of reservoirs and water delivery systems to supply water to the municipality, and to instal apparatus for filtering and purifying water.

1978, c. 87, s. 177.

Tax. **178.** The council may, by-law, in order to meet the interest on, and constitute a fund to reimburse the capital of, the sums expended in the construction and maintenance of reservoirs and water delivery systems, impose on all owners or occupants of immoveables in the municipality, an annual tax at a rate to be fixed by it, based on the area of each immoveable.

1978, c. 87, s. 178.

By-laws: **179.** The council may make by-laws:

Use of water; (1) to prohibit any occupant of a house or building supplied with water from furnishing such water to others, or from using it otherwise than for his own use, of from wasting it;

Water-closets; (2) to prescribe the size, quality, strength, and location of water-closets, baths, and other similar apparatus;

Pollution; (3) to prevent the pollution of the water in the reservoirs and the practising of frauds upon the municipal corporation with regard to the supply of water;

Compensation for water, meters; (4) to establish the compensation for water and provide for payment thereof; to supply meters for buildings or establishments, for measuring the quantity of water used therein and fix the amount to be paid for the rent of meters;

Other matters. (5) to provide for any other matter or thing of any nature or kind whatsoever, having reference to water delivery systems, which it may be necessary to regulate, determine or prohibit for its proper working.

1978, c. 87, s. 179.

Special agreement.

180. The municipal corporation may make a special agreement with consumers for the supply of water in special cases, where it is considered that there is more than the ordinary consumption of water.

1978, c. 87, s. 180.

Levying tax.

181. The tax levied under section 178, the compensation for water services, as well as all other taxes due for water or for meters, shall be levied according to the rules and in the manner prescribed by the council.

1978, c. 87, s. 181.

Public notice.

182. As soon as the municipal cororation is ready to furnish water to any part of the municipality not already supplied, public notice thereof shall be given, and, after such notice, all persons liable to the payment of compensation for water services in such part of the municipality, whether they consent or not to receive the water, shall pay the compensation fixed by the tariff.

1978, c. 87, s. 182.

Cutting off water.

183. If any person causes or allows any apparatus to be out of repair, or to be so used that the water supplied from the water delivery system is wasted, or unduly consumed, or if he refuses or neglects to pay the compensation lawfully imposed for the water supplied to him, for thirty days after the same is due and payable, the municipal corporation may discontinue the supply so long as the person is in default, which shall not, however, exempt such person from the payment of such compensation, as if the water had been supplied to him without interruption.

1978, c. 87, s. 183.

Inspection.

184. The officers appointed for the management of water delivery systems may enter into any house or building, or upon any property whether situated within or without the municipality, for the purpose of satisfying themselves that the water is not wasted and that the by-laws relative to water are faithfully carried out.

Duty of owners.

The owners or occupants of any such house, building or property shall allow the officers to make such visit or examination. The supply of water may be discontinued to any person refusing to admit the officers, so long as such refusal continues.

1978, c. 87, s. 184.

Quantity not guaranteed.

185. The municipal corporation shall not be bound to warrant the quantity of water to be supplied; and no person may refuse, on account of the insufficiency of the water-supply, to pay the compensation for the use of the water.

1978, c. 87, s. 185.

Supplying outside municipality.

186. The council may also make special agreements for the supply of water beyond the municipality, provided that the persons with whom such agreements are made comply with the by-laws respecting the management of the water delivery system.

1978, c. 87, s. 186.

Council's rights transferable.

187. The council may, by by-law, transfer its rights and powers respecting the water-supply to any person willing to undertake the same, provided that such person does not exact, for the use of the water, rates higher than those approved or determined by by-law of the council.

1978, c. 87, s. 187.

§2.— *Lighting*

By-laws.

188. The council may make by-laws providing for the lighting of the municipality by means of electric or other light furnished by any person, and the municipal corporation may become a party to any contract to that effect.

1978, c. 87, s. 188.

Lighting system.

189. The council shall have all the necessary powers for the establishment and management of a system of lighting by electricity or otherwise, for the requirements of the public and of private individuals or companies desiring to light their houses, buildings or establishments.

1978, c. 87, s. 189.

Extension, renewal of contract.

190. At the expiration of the term mentioned in any contract entered into between the council and any public utility company, respecting the supplying of electricity for light, heat and power by such company to the municipal corporation which itself distributes the same to its ratepayers, the Régie de l'électricité et du gaz, on petition to that effect, may order that the contract be extended or renewed on such other or similar terms, prices and conditions as it may determine.

1978, c. 87, s. 190.

Tax.

191. The council may by by-law, in order to meet the interest on, and constitute a fund to reimburse the capital of, the sums expended in the establishment of lighting systems, impose on all owners or occupants of immoveable property in the municipality an annual tax at the rate to be fixed by it, based on the area of each property.

1978, c. 87, s. 191.

By-laws: Compensation, meters;

192. The council may make by-laws:

(1) if the lighting system belongs to the municipal corporation,

(*a*) to determine, in addition to the tax mentioned in section 191, the compensation to be paid for light and for the rent of meters, and for supplying meters to measure the quantity of light consumed;

(*b*) to prevent fraud in connection with the quantity of light supplied;

(*c*) to protect the wires, pipes, lamps, apparatus and other articles serving for the distribution of light;

Penalties. (2) if the lighting system belongs to the municipal corporation or to others, to impose penalties against persons extinguishing the lamps without authority.

1978, c. 87, s. 192.

Levying tax. **193.** The tax and the compensation imposed under sections 191 and 192 shall be levied according to the rules and in the manner prescribed by the council.

1978, c. 87, s. 193.

Use of light optional. **194.** Any citizen may accept or refuse to use the light supplied by the municipal corporation in any building, house or establishment controlled by him.

1978, c. 87, s. 194.

Inspection. **195.** The officers appointed to manage the lighting system of the municipal corporation may enter any building, house or establishment, and upon any property, for the purpose of ascertaining whether the by-laws respecting lighting are faithfully observed.

Duty of owners. The owners or occupants of all such buildings, houses establishments or properties shall allow such officers to enter and make such inspection or examination

1978, c. 87, s. 195.

Placing posts. **196.** The owners or occupants of houses, buildings or lands in the municipality shall, whether the lighting system belongs to the municipal corporation or to others, permit the pipes, wires, lamps and posts necessary for the lighting for public purposes to be placed on their houses, buildings or lands, subject to the payment of actual damage, if any be occasioned thereby.

1978, c. 87, s. 196.

Hydro-Quebec. **197.** Nothing in this subdivision shall be construed as subjecting Hydro-Québec or its successors to any additional jurisdiction or control than that found in the Hydro-Québec Act (chapter H-5) or other provincial acts of general application.

1978, c. 87, s. 197.

§3.— *Heating and power*

Heating systems, power development. **198.** The council shall have all the powers necessary for the establishment and administration of any system of heating and power development by means of electricity or otherwise for the use of the public, or of private persons or corporations desiring to make use thereof in their houses, buildings or establishments. Sections 188 to 197 shall apply, *mutatis mutandis*, to this section.

1978, c. 87, s. 198.

§4.— *Municipal roads*

By-laws: **199.** The council may make by-laws:

Streets; (1) subject to the master plan of the municipality, to order the opening, closing, widening, extension, changing, imrovement, maintaining or regulation of streets and roads and to regulate the locating, constructing and maintaining of sidewalks and bridges; however, the by-law ordering the closing of streets must provide for an indemnity, if there is occasion therefor, and shall be subject to the approval of the Commission municipale du Québec before coming into force;

Naming of streets; (2) to give names to, or change the names of, streets, lanes or public places and regulate the numbering of houses and buildings;

Preventing accidents in winter. (3) to prescribe the measures necessary to prevent accidents in winter from the accumulation of snow or ice on the sidewalks and the roofs of houses and other buildings; every person obliged by by-law to care for any sidewalk or roof, shall be responsible towards the municipal corporation for damages resulting from his neglect to fulfill his obligations in this respect, and may be called in warranty in any case instituted against the municipal corporation for damages.

1978, c. 87, s. 199.

Responsibility. **200.** The municipal corporation shall be responsible in damages for the bad state of streets, roads, sidewalks, bridges, public places and municipal watercourses.

1978, c. 87, s. 200.

§5.— *Traffic and transportation*

By-laws: **201.** The council may make by-laws:

Public transportation; (1) to establish and regulate public transportation services and facilities;

Motor vehicles; (2) to regulate the use and speed of motor vehicles, both on land and water;

Noxious substances; (3) to regulate or prohibit the transportation of noxious and other dangerous substances;

Noisy vehicles; (4) to regulate or prohibit the use of noisy vehicles;

Diversion of traffic; (5) to authorize the diversion of traffic in the streets of the municipality for the performance of work thereon and for any other reason of necessity or emergency;

All-terrain vehicles; (6) to prescribe, maintain and regulate passageways for, and the use of all-terrain vehicles, vehicles not following roads, and hovercraft; to regulate the use of such vehicles in accordance with any provincial regulations governing such vehicles;

Parking; (7) to establish, maintain and regulate parking places or buildings for vehicles;

Trailers; (8) to establish, maintain and regulate grounds for the parking of trailers and mobile homes and to prohibit the parking and use of trailers, mobile homes or other vehicles as dwellings or commercial establishments outside such grounds;

Airports; (9) to establish, maintain and regulate airports or airstrips for airplanes or other aircraft; and

Harbours. (10) to establish, maintain and regulate harbours, wharves, dry-docks and other landing places for ships, boats and other craft.

1978, s. 201.

DIVISION VI

RECREATION AND CULTURE

By-laws: Recreational centres; Public baths, marina; Community radio and television aerials; Public libraries.

202. The council may make by-laws:

(1) to establish, equip, maintain and improve recreational centres, playgrounds and parks;

(2) to establish and maintain public baths, privies and lavatories, to regulate marinas in the waters comprised within its jurisdiction, and to regulate public or private swimming pools or areas;

(3) to establish and administer a system of community radio and television aerials for the needs of those wishing to make use thereof, and to regulate the installation, maintenance, number and height of television and radio aerials; the council, however, shall not acquire by expropriation the existing systems in the municipality; and

(4) to establish and maintain free public libraries, library associations, handicrafts institutes, reading-rooms and public museums, exhibitions and fairs for historical, literary, artistic or scientific purposes.

1978, c. 87, s. 202.

TITLE IX

PUBLIC WORKS OF THE CORPORATION

Public works.

203. All public works of the municipal corporation are performed at the expense of the municipal corporation which orders them by contract awarded and passed according to the rules set forth in this title.

1978, c. 87, s. 203.

Public tenders. Delay to tender. Bases of tendering. Opening of tenders. Tenderers. Names read aloud. Acceptance. Awarding contract. Resolution.

204. (1) Unless it involves an expenditure of less than $10,000, no contract for the execution of municipal works or the supply of equipment or materials shall be awarded except after a call for public tenders specifying the work to be performed.

(2) The delay for the receipt of tenders shall not be less than fifteen days.

(3) Tenders shall not be called for, nor shall the contracts resulting therefrom be awarded except on one or the other of the following bases:

(*a*) for a fixed price;

(*b*) at unit prices.

(4) All tenders must be opened publicly in the presence of at least two witnesses, on the day and at the hour and place mentioned in the call for tenders.

(5) All those who have tendered may be present at the opening of the tenders.

(6) The names of the tenderers and their respective prices must be mentioned aloud at the opening of the tenders.

(7) The council shall not be obliged to accept either the lowest or any other tender.

(8) The municipal corporation shall not, without the previous authorization of the Minister, award the contract to any person except the one who made the lowest tender within the prescribed delay.

(9) The contract shall be awarded by resolution.

1978, c. 87, s. 204.

Validity.

205. No contract is valid or binding upon the municipal corporation unless the by-law authorizing the work has provided for the appropriation of the moneys required for paying the costs of the same.

1978, c. 87, s. 205.

Making of contract.

206. The contract is made in the name of the municipal corporation and accepted by the mayor or by a member of the council specially authorized for that purpose.

1978, c. 87, s. 206.

Security.

207. The person to whom such work is awarded must give security to the satisfaction of the council for the due performance thereof and for the payment of all damages, interest and costs.

1978, c. 87, s. 207.

APPENDIX B-1

Profit and Nonprofit Regional Corporations, 1980

Region	Profit Corporation	Nonprofit Corporation
Copper River Basin	Ahtna, Inc.	Copper River Native Assoc. Copper River Basin Regional Housing Authority
Aleutians	Aleut Corporation	Aleutian/Pribilof Islands Association, Inc. Aleutian/Pribilof Regional Housing Authority
Arctic Slope	Arctic Slope Regional Corp.	Inupiat Community of the Arctic Slope Arctic Slope Regional Housing Authority
Bering Straits	Bering Straits Native Corp.	Kawerak Norton Sound Health Corp. Bering Straits Regional Housing Authority
Bristol Bay	Bristol Bay Native Corporation	Bristol Bay Native Assoc. Bristol Bay Area Health Corp. Bristol Bay Regional Housing Authority
Southwest	Calista Corporation	Association of Village Council Presidents Yupiktak Bista Yukon-Kuskokwim Health Corporation AVCP Regional Housing Authority Nunum Kitlutaisti
Prince William Sound-Gulf of Alaska	Chugach Natives, Inc.	North Pacific Rim North Pacific Rim Housing Authority
Cook Inlet	Cook Inlet Region, Inc.	Cook Inlet Native Assoc.
Interior	Doyon, Ltd.	Tanana Chiefs Conference Tanana Chiefs Housing Authority
Kodiak	Koniak, Inc.	Kodiak Area Native Assoc. Kodiak Area Regional Housing Authority
Northwest	NANA Regional Corp.	Mauneluk Association NANA Regional Housing Authority
Southeast	Sealaska Corp.	Tlingit-Haida Central Council Southeast Alaska Regional Health Corp. Tlingit-Haida Regional Housing Authority

Source: Gerald A. McBeath, Thomas A. Morehouse, The Dynamics of Native Self-Government,

APPENDIX B-2

MAJOR DIFFERENCES BETWEEN FIRST, SECOND, THIRD, AND FOURTH CLASS CITIES IN ALASKA

(Prepared by Local Affairs Agency, State of Alaska)

The major differences between first, second, and third class cities in Alaska are few. They share many of the same powers and duties and have similar forms of municipal government. The major differences between the first three classes and the fourth class are greater. The various major differences between the several classes are as follows:

Incorporation

First Class: Requires at least 400 permanent inhabitants; at least 100 of the qualified voters sign an incorporation petition.

Second Class: Requires at least 50 permanent inhabitants; at least 15 of the qualified voters sign an incorporation petition.

Third Class: Requires at least 5 bona fide residents or property owners for petition; area limited to 50 square miles; no actual population requirement.

Fourth Class: Requires at least 25 permanent inhabitants 19 years of age or older within a 3-mile radius; at least 20 qualified voters sign an incorporation petition; size not limited by 3 mile radius.

ARTICLE X LOCAL GOVERNMENT

Purpose and Construction

SECTION 1. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Local Government Powers

SECTION 2. All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

Boroughs

SECTION 3. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

Assembly

SECTION 4. The governing body of the organized borough shall be the assembly, and its composition shall be established by law or charter. Each city of the first class, and each city of any other class designated by law, shall be represented on the assembly by one or more members of its council. The other members of the assembly shall be elected from and by the qualified voters resident outside such cities.

Service Areas

SECTION 5. Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

Unorganized Boroughs

SECTION 6. The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for minimum local participation and responsibility. It may exercise any power of function in an unorganized borough which the assembly may exercise in an organized borough.

Cities

SECTION 7. Cities shall be incorporated in a manner prescribed by law, and shall be a part of the borough in which they are located. Cities shall have the powers and functions conferred by law or charter. They may be merged,

consolidated, classified, reclassified, or dissolved in the manner provided by law.

Council

SECTION 8. The governing body of a city shall be the council.

Charters

SECTION 9. The qualified voters of any borough of the first class or city of the first class may adopt, amend, or repeal a home rule charter in a manner provided by law. In the absence of such legislation, the governing body of a borough or city of the first class shall provide the procedure for the preparation and adoption or rejection of the charter. All charters, or parts or amendments of charters, shall be submitted to the qualified voters of the borough or city, and shall become effective if approved by a majority of those who vote on the specific question.

Extended Home Rule

SECTION 10. The legislature may extend home rule to other boroughs and cities.

Home Rule Powers

SECTION 11. A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

Boundaries

SECTION 12. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

Agreements; Transfer of Powers

SECTION 13. Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.

Local Government Agency

SECTION 14. An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law.

Special Service Districts

SECTION 15. Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law.

APPENDIX C-1

United Kingdom: Land Use Planning Legislation

Date	*Act*	*Major Provisions*
1875	Public Health Act	Created sanitary districts; authorized local authorities to enact building codes
1890	Working Classes Dwellings Act	Authorized slum clearance and construction of public housing
1909	Housing, Town Planning, Etc., Act	Empowered local authorities to prepare town planning schemes intended to secure proper sanitary conditions, amenity, and convenience in use of land
1919	Housing and Town Planning Act	Made preparations of town planning schemes obligatory
1932	Town and Country Planning Act	Scope of planning extended to rural areas and all types of land use
1940	Barlow Report	Report on the causes of the distribution of the industrial population, including consideration of the social, economic, and strategic disadvantages of industrial concentration, and appropriate remedial measures; formed basis for postwar planning policy
1947	Town and Country Planning Act	Brought all development under control by making it subject to planning permission; required preparation of development plans
1962	Town and Country Planning Act	Consolidated planning legislation, including provisions of a series of acts during 1950s restoring owners' rights to development value and market compensation for compulsory purchase
1968	Town and Country Planning Act	Development plans replaced by structure plans and local plans: the former, dealing with broad policy and strategic issues, subject to ministerial approval; the latter, dealing with day-to-day tactical issues, not requiring ministerial approval
1969	Town and Country Planning (Scotland) Act	Appropriate legislation for Scotland
1971	Town and Country Planning Act	Consolidated provisions of previous act
1972	Town and Country Planning (Scotland) Act	Consolidated provisions of previous act
1972	Local Government Act	Reorganization of local government establishing two-tier system of counties and districts throughout England and Wales
1973	Local Government (Scotland) Act	Reorganization of local government in Scotland providing for a two-tier system of regions and districts except in the Western Isles, Orkney, and Shetland; modification of planning procedures to allow regional reports rather than structure plans

APPENDIX C-2

NOTES taken from the current Scottish Law Statutes, 1965

THE HIGHLANDS AND ISLANDS DEVELOPMENT (SCOTLAND) ACT, 1965.

An Act to make further provision for the economic and social development of the Highlands and Islands of Scotland and for purposes connected herewith:

General Note

The Act provides for the establishment of a Highlands and Islands Development Board to concert, promote, assist, and undertake measures for the economic and social development of the Highlands and Islands. The area of the Board is the Counties of Argyll, Caithness, Inverness, Orkney, Ross & Cromarty, Sutherland & Zetland, but the area may be extended. The Board will consist of the Chairman and not more than six members, all of whom will be appointed by the Secretary of State. Directions and advice may be given to the Board by the Secretary of State and by the Highlands and Islands Development Consultative Council to be set up. The Board has power to acquire land (which is defined to include salmon fishings), by agreement or compulsorily, to dispose of land. The Board can erect buildings and carry out other operations on land, provide equipment and services, and hold, manage, maintain, hire, let, or otherwise dispose of works, equipment or services.

These powers may be exercised in relation to land not belonging to the Board on such terms as may be agreed with the owners. Any such agreement may be recorded in a Register of Sasines and, if so recorded, will be enforceable against persons deriving title to the land, the person who entered into the agreement. The Industrial Estates Management Corporation may act as agent for the Board.

The Board may carry out any business which they feel will contribute to the economic or social development of Highlands and Islands and they may provide advisory training, management, technical, accountancy, or other services. The persons engaged in business in the Highlands and Islands can promote publicity, they may give grants or loans to persons carrying on, or proposing to carry on, any industrial, commercial, or other undertaking. They can make charges for their services except gifts for the purposes of any of their functions and promote research. They have the power of entry to land and to obtain information subject to the usual safeguards as to confidentiality.

Before granting approval to any development, the Secretary of State has to consult the local planning authority and he has to be supplied with copies of the Board's accounts.

The Constitution, meetings and proceedings, and the staffing of the Board, are regulated by the first schedule and the Constitution of the Highlands and Islands Development Consultative Council by the second schedule. The Act came into operation on August 5, 1965.

The Highlands and Islands Development Consultative Council shall consist of a Chairman and other such members as the Secretary of State may appoint.

The Council shall include members representative of local authority interests and such other interests as the Secretary of State may see fit and in appointing members representative of local authority interests, the Secretary of State shall satisfy himself that there is appropriate representation of the different parts of the Highlands and Islands including, in particular, the Orkney Islands, the Shetland Islands, the Outer Hebrides, and the Inner Hebrides.

Before appointing to Council a member representative of a particular interest the Secretary of State shall consult such bodies or body as it appears to him to be appropriate. Every member of the council shall hold and vacate office in accordance with the terms of the instrument by which he is appointed but not withstanding any thing in such an instrument, any member of the Council may resign his office by a notice given under his hand to the Secretary of State and a member of the Council who ceases to hold office shall be eligible for re-appointment to the Council.

There shall be paid to Council Members and persons attending meetings at the request of the Council such allowances as the Secretary of State may determine in respect of loss of earnings and travel and subsistence expenses; this to be done in consultation and with the approval of the Treasurer.

APPENDIX C-3

NOTES on the SCOTTISH DEVELOPMENT AGENCY ACT OF 1975.

This Act establishes a Scottish development agency; it provides for the appointment of a Secretary of State for the Scottish Development Advisory Board; it makes provisions for assistance in connection with air services serving the Highlands and Islands.

S.1 establishes the Scottish Development Agency and sets out the membership of the same;

S.2 enumerates the general purposes and functions of the agency;

S.3 lays down the auxiliary powers of the agency;

S.3 empowers the Secretary of State to give directions to the agency;

S.5 relates to the exercise by the agency of powers to give selected financial assistance under the Industry Act, 1972;

S.6 deals with provision of sites and premises for industry;

S.7 relates to the submission of proposals by the agency to the Secretary of State for the development and improvement of the environment;

S.8 relates to derelict land;

S.9 deals with the acquisition and disposal of land;

S.10 contains powers of entry;

S.11 empowers the Secretary of State to obtain information;

S.12 relates to the financial duties of the agency;

S.13 relates to the finances of the agency;

S.14 imposes other limits to the transfer of property rights and liability of certain bodies to the agency;

S.S.15&16 relate to the transfer of publicly-owned property to the agency;

S.17 deals with assistance from local authorities and development corporations in carrying out certain functions;

S.18 establishes the Scottish Industrial Development Advisory Board to advise the Secretary of State with respect to the exercise of his functions under the Industry Act of 1972, S.7;

S.19 deals with assistance to persons providing air service to serving the Highlands andIslands;

S.20 deals with service of documents;

S.21 relates to expenses;

S.22 deals with the application of the Act to the Crown;

S.23 contains definitions;

S.24 deals with order and regulations;

S.25 contains consequential amendments;

S.26 contains the short title and extent.

The Act received the Royal assent on Nov. 12, 1975.

For Parliamentary Debates, see House of Lords, Vol. 359, col. 1188, Vol. 360, col. 845, Vol. 361, cols. 121, 497, 1002 and 1277, House of Commons Vol. 894, cols. 462 and 593, Vol. 898, cols. 255 and 379.

APPENDIX C-4

NOTES RE OFFSHORE PETROLEUM DEVELOPMENT (SCOTLAND) ACT, 1975

taken from the Scottish Current Law Statutes, Vol. 1, 1975.

This is an Act to provide for the acquisition by the Secretary of State of land in Scotland for purposes relating to exploration for, and exploitation of, offshore petroleum; to enable the Secretary of State to carry out work to facilitate operations for those purposes; to regulate such operations in certain sea areas; to provide for the reinstatement of land used for these purposes; and for purposes connected with those matters.

General Note

The background to the Act is the relatively new situation and problems of the exploitation of North Sea oil and gas reserves. On January 31, 1974, the Secretary of State for Scotland announced the government's intention "to introduce into Parliament as soon as possible a Bill which would enable the government to acquire using an accelerated procedure if necessary, land which is urgently needed for certain projects related to the production of offshore oil and gas...Accelerated procedures would apply also to planning permission...it is intended that these powers should be used sparingly and only for a limited range of cases..." (Hansard, HC Vol. 868, Cols. 625-638).

Following a change of government on August 12, 1974, the Secretary of State for Energy issued a statement on the need for sites for oil production platform construction in Scotland and the Secretary of State announced the government's intention to introduce legislation conferring power to take sites into public ownership. The Act goes further than these announcements of August 12, 1974.

S.1 of the Act is the main provision. It empowers the Secretary of State to acquire by agreement or compulsory any land in Scotland for any purpose connected with the exploration for, or exploitation of, offshore petroleum. It also makes provision for an accelerated acquisition procedure by means of an "expedited acquisition order" in which a public inquiry may be dispensed with. The procedure will be exerciseable where such acquisition is required as a matter of urgency for any of a number of specified purposes. Such an order is subject to affirmative resolution by each House of Parliament and may also be referred to the Special Orders Committee of the House of Lords during a period of twenty-eight days from the laying of the Draft Statutory Instrument in Parliament. It is made clear that these powers do not abrogate any provisions of the Town and Country Planning (Scotland) Act, 1972 relating to planning permission.

S.2 applies certain provisions of the Town and Country Planning (Scotland) Act, 1972 regarding the extinguishment of rights over land to acquisitions made under the Act and confers the power on the Secretary of State to extinguish by order certain public rights.

S.s 307 confer new powers on the Secretary of State; they deal with the designation for certain purposes of areas of the sea within which certain relevant operations may take place. The Secretary of State has

the power to designate by order sea areas within which control of works and operations relating to offshore petroleum exploration or exploitation may be exercised; to grant licences for such operations; to make regulations for the protection and control of operations in navigation of such areas and to delegate to any harbour authority, local authority, or other body or person, his power to execute and enforce regulations. A licence under the Act is necessary before any relevant operations are executed in a designated sea area and the execution of such operations without a licence, or in contravention of a licence condition, is an offense, as is any other contravention of a licence condition.

Schedule 3 details the requirements for the making and revocation of sea designation orders.

S.8 related to the reinstatement of land once the purpose for which it was acquired under the Act has been served. The duty is laid on the Secretary of State to reinstate such land when reasonably practicable or to adapt it to a different use.

S.9 relates to the reinstatement of other (privately-owned) land developed for purposes connected with offshore petroleum. It provides for a requirement for the availability of funds to meet the cost of reinstatement in such land when planning permission has been granted subject to a condition requiring reinstatement. This section, therefore, supplements s.27 of the Town and Country Planning (Scotland) Act, 1972. The Secretary of State is given powers of special and general direction in relation to the exercise of these requirements for the planning authority.

S.10-14 deal with miscellaneous and general matters.
S.10 and 11 empower the Secretary of State with the approval of the Treasury to carry out works on land held under the Act or in a designated sea area and to defray or contribute to the cost thereof. It also empowers the Scottish Industrial Estates Corporation and any local authority to act as agents for the Secretary of State in the carrying out of works under this Section or in S.8 and to provide other services in relation to any function of the Secretary of State under the Act.

S.12 applies certain provisions of existing land acquisition legislation to the acquisition of land by agreement under the Act and provides for the appropriation of land for purposes of the Act. It also makes it clear that inalienable land may be the subject of an Expedited Acquisition Order.

S.13 excludes actions for nuisance in respect of relevant operations when they are treated as public works for the purposes of compensation for depreciation in the value of adjoining land.

S.s. 14-16 are technical provisions dealing with the Secretary of State's powers to acquire certain information to be provided, rights of entry to land to affix notices, etc., and application of the Act to Crown land.

The remaining provisions, (S.s 17-20) are in common form relating to finance, the making of orders, regulations, etc. Provisions regarding savings ? for existing acts and the interpretation of phrases. The Act received the royal assent on Mar. 13, 1975 and came into operation that day. (For Parliamentary Debates, see House of Commons, Vol. 880, col. 1259, Vol. 881, cols. 1108-1244, Vol. 883, cols. 244-250, Vol. 883, col. 369-450, Vol. 884, cols. 217-328, Vol. 887, cols. 637-660. House of Lords, Vol. 990, cols. 378-451, Vol. 922, col. 1077-1202, Vol. 923, col. 215-270, Vol. 924, cols. 647-665, Vol. 925, cols. 1195-1203.)

Appendix D-1

The Navajo-Hopi Long Range Rehabilitation Act

[CHAPTER 92]

AN ACT

April 19, 1950
[S. 2734]
[Public Law 474]

To promote the rehabilitation of the Navajo and Hopi Tribes of Indians and a better utilization of the resources of the Navajo and Hopi Indian Reservations, and for other purposes.

Navajo and Hopi Tribes.
Rehabilitation, etc.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to further the purposes of existing treaties with the Navajo Indians, to provide facilities, employment, and services essential in combating hunger, disease, poverty, and demoralization among the members of the Navajo and Hopi Tribes, to make available the resources of their reservations for use in promoting a self-supporting economy and self-reliant communities, and to lay a stable foundation on which these Indians can engage in diversified economic activities and ultimately attain standards of living comparable with those enjoyed by other citizens, the Secretary of the Interior is hereby authorized and directed to undertake, within the limits of the funds from time to time appropriated pursuant to this Act, a program of basic improvements for the conservation and development of the resources of the Navajo and Hopi Indians, the more productive employment of their manpower, and the supplying of means to be used in their rehabilitation, whether on or off the Navajo and Hopi Indian Reservations. Such program shall include the following projects for which capital expenditures in the amount shown after each project listed in the

Appropriations authorized.

Source: US Statutes, Vol.64

following subsections and totaling $88,570,000 are hereby authorized to be appropriated: Projects.

(1) Soil and water conservation and range improvement work, $10,000,000.

(2) Completion and extension of existing irrigation projects, and completion of the investigation to determine the feasibility of the proposed San Juan-Shiprock irrigation project, $9,000,000.

(3) Surveys and studies of timber, coal, mineral, and other physical and human resources, $500,000.

(4) Development of industrial and business enterprises, $1,000,000.

(5) Development of opportunities for off-reservation employment and resettlement and assistance in adjustments related thereto, $3,500,000.

(6) Relocation and resettlement of Navajo and Hopi Indians (Colorado River Indian Reservation), $5,750,000.

(7) Roads and trails, $20,000,000.

(8) Telephone and radio communication systems, $250,000.

(9) Agency, institutional, and domestic water supply, $2,500,000.

(10) Establishment of a revolving loan fund, $5,000,000.

(11) Hospital buildings and equipment, and other health conservation measures, $4,750,000.

(12) School buildings and equipment, and other educational measures, $25,000,000.

(13) Housing and necessary facilities and equipment, $820,000.

(14) Common service facilities, $500,000.

Funds so appropriated shall be available for administration, investigations, plans, construction, and all other objects necessary for or appropriate to the carrying out of the provisions of this Act. Such further sums as may be necessary for or appropriate to the annual operation and maintenance of the projects herein enumerated are hereby also authorized to be appropriated. Funds appropriated under these authorizations shall be in addition to funds made available for use on the Navajo and Hopi Reservations, or with respect to Indians of the Navajo Tribes, out of appropriations heretofore or hereafter granted for the benefit, care, or assistance of Indians in general, or made pursuant to other authorizations now in effect. Additional sums authorized.

SEC. 2. The foregoing program shall be administered in accordance with the provisions of this Act and existing laws relating to Indian affairs, shall include such facilities and services as are requisite for or incidental to the effectuation of the projects herein enumerated, shall apply sustained-yield principles to the administration of all renewable resources, and shall be prosecuted in a manner which will provide for completion of the program, so far as practicable, within ten years from the date of the enactment of this Act. An account of the progress being had in the rehabilitation of the Navajo and Hopi Indians, and of the use made of the funds appropriated to that end under this Act, shall be included in each annual report of the work of the Department of the Interior submitted to the Congress during the period covered by the foregoing program. Administration. Completion date. Report to Congress.

SEC. 3. Navajo and Hopi Indians shall be given, whenever practicable, preference in employment on all projects undertaken pursuant to this Act, and, in furtherance of this policy, may be given employment on such projects without regard to the provisions of the civil-service and classification laws. To the fullest extent possible, Indian workers on such projects shall receive on-the-job training in order to enable them to become qualified for more skilled employment. Employment of Indian workers.

SEC. 4. The Secretary of the Interior is authorized, under such regulations as he may prescribe, to make loans from the loan fund authorized by section 1 hereof to the Navajo Tribe, or any member or association of members thereof, or to the Hopi Tribe, or any member or Loans.

association of members thereof, for such productive purposes as, in his judgment, will tend to promote the better utilization of the manpower and resources of the Navajo or Hopi Indians. Sums collected in repayment of such loans and sums collected as interest or other charges thereon shall be credited to the loan fund, and shall be available for the purpose for which the fund was established.

Leases of restricted lands.

SEC. 5. Any restricted Indian lands owned by the Navajo Tribe, members thereof, or associations of such members, or by the Hopi Tribe, members thereof, or associations of such members, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, or business purposes, including the development or utilization of natural resources in connection with operations under such leases. All leases so granted shall be for a term of not to exceed twenty-five years, but may include provisions authorizing their renewal for an additional term of not to exceed twenty-five years, and shall be made under such regulations as may be prescribed by the Secretary. Restricted allotments of deceased Indians may be leased under this section, for the benefit of their heirs or devisees, in the circumstances and by the persons prescribed in the Act of July 8, 1940 (54 Stat. 745; 25 U. S. C., 1946 edition, sec. 380). Nothing contained in this section shall be construed to repeal or affect any authority to lease restricted Indian lands conferred by or pursuant to any other provision of law.

Navajo tribal constitution.

SEC. 6. In order to facilitate the fullest possible participation by the Navajo Tribe in the program authorized by this Act, the members of the tribe shall have the right to adopt a tribal constitution in the manner herein prescribed. Such constitution may provide for the exercise by the Navajo Tribe of any powers vested in the tribe or any organ thereof by existing law, together with such additional powers as the members of the tribe may, with the approval of the Secretary of the Interior, deem proper to include therein. Such constitution shall be formulated by the Navajo Tribal Council at any regular meeting, distributed in printed form to the Navajo people for consideration, and adopted by secret ballot of the adult members of the Navajo Tribe in an election held under such regulations as the Secretary may prescribe, at which a majority of the qualified votes cast favor such adoption. The constitution shall authorize the fullest possible participation of the Navajos in the administration of their affairs as approved by the Secretary of the Interior and shall become effective when approved by the Secretary. The constitution may be amended from time to time in the same manner as herein provided for its adoption, and the Secretary of the Interior shall approve any amendment which in the opinion of the Secretary of the Interior advances the development of the Navajo people toward the fullest realization and exercise of the rights, privileges, duties, and responsibilities of American citizenship.

Availability of Navajo tribal funds.

SEC. 7. Notwithstanding any other provision of existing law, the tribal funds now on deposit or hereafter placed to the credit of the Navajo Tribe of Indians in the United States Treasury shall be available for such purposes as may be designated by the Navajo Tribal Council and approved by the Secretary of the Interior.

Tribal council recommendations, etc.

SEC. 8. The Tribal Councils of the Navajo and Hopi Tribes and the Indian communities affected shall be kept informed and afforded opportunity to consider from their inception plans pertaining to the program authorized by this Act. In the administration of the program, the Secretary of the Interior shall consider the recommendations of the tribal councils and shall follow such recommendations whenever he deems them feasible and consistent with the objectives of this Act.

Payments to States under Social Security Act.

49 Stat. 621, 626, 646; 42 U. S. C., Supp. III, §§ 303(a), 603(a), 1383 (a).
Post, pp. 510, 550, 553.

SEC. 9. Beginning with the quarter commencing July 1, 1950, the Secretary of the Treasury shall pay quarterly to each State (from sums made available for making payments to the States under sections 3 (a), 403 (a), and 1003 (a) of the Social Security Act) an amount, in addition to the amounts prescribed to be paid to such State under such sections, equal to 80 per centum of the total amounts of contributions by the State toward expenditures during the preceding quarter by the State, under the State plans approved under the Social Security Act for old age assistance, aid to dependent children, and aid to the needy blind, to Navajo and Hopi Indians residing within the boundaries of the State on reservations or on allotted or trust lands, with respect to whom payments are made to the State by the United States under sections 3 (a), 403 (a), and 1003 (a), respectively, of the Social Security Act, not counting so much of such expenditure to any individual for any month as exceeds the limitations prescribed in such sections.

Joint Committee on Navajo-Hopi Indian Administration.

SEC. 10. (a) There is hereby established a joint congressional committee to be known as the Joint Committee on Navajo-Hopi Indian Administration (hereinafter referred to as the "committee"), to be composed of three members of the Committee on Interior and Insular Affairs of the Senate to be appointed by the President of the Senate, not more than two of whom shall be from the same political party, and three members of the Committee on Public Lands of the House of Representatives to be appointed by the Speaker of the House of Representatives, not more than two of whom shall be from the same political party. A vacancy in the membership of the committee shall be filled in the same manner as the original selection. The committee shall elect a chairman from among its members.

Function.

(b) It shall be the function of the committee to make a continuous study of the programs for the administration and rehabilitation of the Navajo and Hopi Indians, and to review the progress achieved in the execution of such programs. Upon request, the committee shall aid the several standing committees of the Congress having legislative jurisdiction over any part of such programs, and shall make a report to the Senate and the House of Representatives, from time to time, concerning the results of its studies, together with such recommendations as it may deem desirable. The Commissioner of Indian Affairs at the request of the committee, shall consult with the committee from time to time with respect to his activities under this Act.

Powers.

(c) The committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings, to sit and act at such times and places, to require by subpena or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, to procure such printing and binding, and to make such expenditures as it deems advisable. The cost of stenographic services to report such hearings shall not be in excess of 25 cents per hundred words. The provisions of sections 102 to 104, inclusive, of the Revised Statutes shall apply in case of any failure of any witness to comply with any subpena or to testify when summoned under authority of this subsection.

2 U. S. C. §§ 192-194.

Appointment and compensation of experts, etc.
42 Stat. 1488; 63 Stat. 972, 974.
5 U. S. C., Supp. III, §§ 1071-1153.
Post, pp. 242, 262, 1160.

(d) The committee is authorized to appoint and, without regard to the Classification Act of 1923, as amended, fix the compensation of such experts, consultants, technicians, and organizations thereof, and clerical and stenographic assistants as it deems necessary and advisable.

Appropriation authorized.

(e) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section, to be disbursed by the Secretary of the Senate on vouchers signed by the chairman.

Approved April 19, 1950.

Appendix D-2

The Indian Self-Determintion and Education Assistance Act

(Selected Sections)

Pu Law 93-638

AN ACT

January 4, 1975
S. 1017

ovide maximum Indian participation in the Government and education of e Indian people; to provide for the full participation of Indian tribes in ograms and services conducted by the Federal Government for Indians and encourage the development of human resources of the Indian people; to tablish a program of assistance to upgrade Indian education; to support the ht of Indian citizens to control their own educational activities; and for r purposes.

e it enacted by the Senate and House of Representatives of the ed States of America in Congress assembled, That this Act may cited as the "Indian Self-Determination and Education Assistance f".

Indian Self-Determination and Education Assistance Act.
25 USC 450 note.

CONGRESSIONAL FINDINGS

25 USC 450.

. 2. (a) The Congress, after careful review of the Federal rnment's historical and special legal relationship with, and result-responsibilities to, American Indian people, finds that—

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

(2) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

The Congress further finds that—

(1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles;

(2) the Federal responsibility for and assistance to education of Indian children has not effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction which education can and should provide; and

(3) parental and community control of the educational process is of crucial importance to the Indian people.

DECLARATION OF POLICY

25 USC 450a.

. 3. (a) The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian p for self-determination by assuring maximum Indian participat the direction of educational as well as other Federal services to I communities so as to render such services more responsive to the and desires of those communities.

(b) The Congress declares its commitment to the maintenan the Federal Government's unique and continuing relationship and responsibility to the Indian people through the establishme a meaningful Indian self-determination policy which will pe orderly transition from Federal domination of programs for services to Indians to effective and meaningful participation b Indian people in the planning, conduct, and administration of programs and services.

(c) The Congress declares that a major national goal of the U States is to provide the quantity and quality of educational ser and opportunities which will permit Indian children to compete excel in the life areas of their choice, and to achieve the measu self-determination essential to their social and economic well-b

Source: US Statues, Vol. 88

NEXT

DOCUMENT

POOR

QUALITY

ORIGINAL

DEFINITIONS

25 USC 450b.

SEC. 4. For the purposes of this Act, the term—

(a) "Indian" means a person who is a member of an Indian tribe;

(b) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(c) "Tribal organization" means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided*, That in any case where a contract is let or grant made to an organization to perform services benefitting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant;

(d) "Secretary", unless otherwise designated, means the Secretary of the Interior;

(f) "State education agency" means the State board of education or other agency or officer primarily responsible for supervision by the State of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

REPORTING AND AUDIT REQUIREMENTS

Recordkeeping.
25 USC 450c.

SEC. 5. (a) Each recipient of Federal financial assistance from the Secretary of Interior or the Secretary of Health, Education, and Welfare, under this Act, shall keep such records as the appropriate Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Comptroller General and the appropriate Secretary, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in the preceding subsection of this section, have access (for the purpose of audit and examination) to any books, documents, papers, and records of such recipients which in the opinion of the Comptroller General or the appropriate Secretary may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to in the preceding subsection.

(c) Each recipient of Federal financial assistance referred to in subsection (a) of this section shall make such reports and information available to the Indian people served or represented by such recipient as and in a manner determined to be adequate by the appropriate Secretary.

(d) Any funds paid to a financial assistance recipient referred to in subsection (a) of this section and not expended or used for the purposes for which paid shall be repaid to the Treasury of the United States.

PENALTIES

SEC. 6. Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of a contract, subcontract, grant, or subgrant pursuant to this Act or the Act of April 16, 1934 (48 Stat. 596), as amended, embezzles, willfully mis- 25 USC 452.

25 USC 450d.

applies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of such a grant, subgrant, contract, or subcontract, shall be fined not more than $10,000 or imprisoned for not more than two years, or both, but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

WAGE AND LABOR STANDARDS

25 USC 450e.

SEC. 7. (a) All laborers and mechanics employed by contractors or subcontractors in the construction, alteration, or repair, including painting or decorating of buildings or other facilities in connection with contracts or grants entered into pursuant to this Act, shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1491), as amended. With respect to construction, alteration, or repair work to which the Act of March 3, 1921 is applicable under the terms of this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (48 Stat. 948, as U.S.C. 276c).

40 USC 276a note.

5 USC app. II.

(b) Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—

25 USC 452.

(1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77).

25 USC 1452.

CARRYOVER OF FUNDS

25 USC 13a.

SEC. 8. The provisions of any other laws to the contrary notwithstanding, any funds appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208), for any fiscal year which are not obligated and expended prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation and expenditure during such succeeding fiscal year.

25 USC 13, 52a.

TITLE I—INDIAN SELF-DETERMINATION ACT

Citation of title, 25 USC 450f note.

SEC. 101. This title may be cited as the "Indian Self-Determination Act".

CONTRACTS BY THE SECRETARY OF THE INTERIOR

25 USC 450f.

SEC. 102. (a) The Secretary of the Interior is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organizaton of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, provided for in the Act of April 16, 1934 (48 Stat. 596), as amended by this Act, any other program or portion thereof which the Secretary of the Interior is authorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto: *Provided, however*, That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory; (2) adequate protection of trust resources is not assured, or (3) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract: *Provided further*,

25 USC 452.

25 USC 13, 52a.

That in arriving at his finding, the Secretary shall consider whether the tribe or tribal organization would be deficient in performance under the contract with respect to (A) equipment, (B) bookkeeping and accounting procedures, (C) substantive knowledge of the program to be contracted for, (D) community support for the contract, (E) adequately trained personnel, or (F) other necessary components of contract performance.

(b) Whenever the Secretary declines to enter into a contract or contracts pursuant to subsection (a) of this section, he shall (1) state his objections in writing to the tribe within sixty days, (2) provide to the extent practicable assistance to the tribe or tribal organization to overcome his stated objections, and (3) provide the tribe with a hearing, under such rules and regulations as he may promulgate, and the opportunity for appeal on the objections raised.

(c) The Secretary is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this title to obtain adequate liability insurance: *Provided, however*, That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

CONTRACTS BY THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE

25 USC 450c.

SEC. 103. (a) The Secretary of Health, Education, and Welfare is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to carry out any or all of his functions, authorities, and responsibilities under the Act of August 5, 1954 (68 Stat. 674), as amended: *Provided, however*, That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted for will not be satisfactory; (2) adequate protection of trust resources is not assured; or (3) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract: *Provided further*, That the Secretary of Health, Education, and Welfare, in arriving at his finding, shall consider whether the tribe or tribal organization would be deficient in performance under the contract with respect to (A) equipment, (B) bookkeeping and accounting procedures, (C) substantive knowledge of the program to be contracted for, (D) community support for the contract, (E) adequately trained personnel, or (F) other necessary components of contract performance.

42 USC 2001.

(b) Whenever the Secretary of Health, Education, and Welfare declines to enter into a contract or contracts pursuant to subsection (a) of this section, he shall (1) state his objections in writing to the tribe within sixty days; (2) provide, to the extent practicable, assistance to the tribe or tribal organization to overcome his stated objections; and (3) provide the tribe with a hearing, under such rules and regulations as he shall promulgate, and the opportunity for appeal on the objections raised.

Hearing.

(c) The Secretary of Health, Education, and Welfare is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this title to obtain adequate liability insurance: *Provided, however*, That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

Liability insurance.

GRANTS TO INDIAN TRIBAL ORGANIZATIONS

SEC. 101. (a) The Secretary of the Interior is authorized, upon the request of any Indian tribe (from funds appropriated for the benefit of Indians pursuant to the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto) to contract with or make a grant or grants to any tribal organization for— 25 USC 1808. 25 USC 13, 452n.

(1) the strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of planning, financial management, or merit personnel systems; the improvement of tribally funded programs or activities; or the development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources);

(2) the planning, training, evaluation of other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 102 of this Act and the additional costs associated with the initial years of operation under such a contract or contracts;

(3) the acquisition of land in connection with items (1) and (2) above: *Provided*, That in the case of land within reservation boundaries or which adjoins on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of Interior may (upon request of the tribe) acquire such land in trust for the tribe; or

(4) the planning, designing, monitoring, and evaluating of Federal programs serving the tribe.

(b) The Secretary of Health, Education, and Welfare may, in accordance with regulations adopted pursuant to section 107 of this Act, make grants to any Indian tribe or tribal organization for—

(1) the development, construction, operation, provision, or maintenance of adequate health facilities or services including the training of personnel for such work, from funds appropriated to the Indian Health Service for Indian health services or Indian health facilities; or

(2) planning, training, evaluation or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 103 of this Act.

(c) The provisions of any other Act notwithstanding, any funds made available to a tribal organization under grants pursuant to this section may be used as matching shares for any other Federal grant programs which contribute to the purposes for which grants under this section are made.

PERSONNEL

SEC. 105. (a) Section 3371(2) of chapter 33 of title 5, United States Code, is amended (1) by deleting the word "and" immediately after the semicolon in clause (A); (2) by deleting the period at the end of clause (B) and inserting in lieu thereof a semicolon and the word "and"; and (3) by adding at the end thereof the following new clause:

"(C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act." 43 USC 1601 note. *Ante*, p. 2204.

(b) The Act of August 5, 1954 (68 Stat. 674), as amended, is further amended by adding a new section 8 after section 7 of the Act as follows: 42 USC 2004a.

42 USC 2004b.
42 USC 215.

"SEC. 8. In accordance with subsection (d) of section 214 of the Public Health Service Act (58 Stat. 690), as amended, upon the request of any Indian tribe, band, group, or community, commissioned officers of the Service may be assigned by the Secretary for the purpose of assisting such Indian tribe, group, band, or community in carrying out the provisions of contracts with, or grants to, tribal organizations pursuant to section 102, 103, or 104 of the Indian Self-Determination and Education Assistance Act".

Ante, pp. 2206, 2207.

(c) Paragraph (2) of subsection (a) of section 6 of the Military Selective Service Act of 1967 (81 Stat. 100), as amended, is amended by inserting after the words "Environmental Science Services Administration" the words "or who are assigned to assist Indian tribes, groups, bands, or communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended".

50 USC app. 456.

(d) Section 502 of the Intergovernmental Personnel Act of 1970 (84 Stat. 1909, 1925) is amended—

12 USC 2001.
42 USC 4762.

(1) by deleting the word "and" after paragraph (3);

(2) by deleting the period after paragraph (4) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding at the end thereof the following new paragraph:

"(5) Notwithstanding the population requirements of section 203(a) and 303(c) of this Act, a 'local government' and a 'general local government' also mean the recognized governing body of an Indian tribe, band, pueblo, or other organized group or community, including any Alaska Native village, as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which performs substantial governmental functions. The requirements of sections 203(c) and 303(d) of this Act, relating to reviews by the Governor of a State, do not apply to grant applications from the governing body of an Indian tribe, although nothing in this Act is intended to discourage or prohibit voluntary communication and cooperation between Indian tribes and State and local governments."

42 USC 4723, 4743.

42 USC 1601 note.
42 USC 4723, 4743.

Certain tribal organization employees, coverage, rights, and benefits.
25 USC 450i.

(e) Notwithstanding any other law, executive order, or administrative regulation, an employee serving under an appointment not limited to one year or less who leaves Federal employment to be employed by a tribal organization on or before December 31, 1985, in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if the employee and the tribal organization so elect, to the following:

Work injuries, compensation.
5 USC 8101.

(1) To retain coverage, rights, and benefits under subchapter I of chapter 81 ("Compensation for Work Injuries") of title 5, United States Code, and for this purpose his employment with the tribal organization shall be deemed employment by the United States. However, if an injured employee, or his dependents in case of his death, receives from the tribal organization any payment (including an allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the tribal organization, or other benefit of any kind) on account of the same injury or death, the amount of that payment shall be credited against any benefit payable under subchapter I of chapter 81 of title 5, United States Code, as follows:

(A) payments on account of injury or disability shall be credited against disability compensation payable to the injured employee; and

(B) payments on account of death shall be credited against death compensation payable to dependents of the deceased employee.

(2) To retain coverage, rights, and benefits under chapter 83 ("Retirement") of title 5, United States Code, if necessary employee deductions and agency contributions in payment for coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Civil Service Retirement and Disability Fund (section 8348 of title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under section 8332 of title 5, United States Code. Days of unused sick leave to the credit of an employee under a formal leave system at the time the employee leaves Federal employment to be employed by a tribal organization remain to his credit for retirement purposes during covered service with the tribal organization.

Retirement.
5 USC 8301.

(3) To retain coverage, rights, and benefits under chapter 89 ("Health Insurance") of title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Employee's Health Benefit Fund (section 8909 of title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 89 of title 5, United States Code.

Health insurance.
5 USC 8901.

(4) To retain coverage, rights, and benefits under chapter 87 ("Life Insurance") of title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organizations are currently deposited in the Employee's Life Insurance Fund (section 8714 of title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 87 of title 5, United States Code.

Life insurance.
5 USC 8701.

5 USC 8701.

(f) During the period an employee is entitled to the coverage, rights, and benefits pursuant to the preceding subsection, the tribal organization employing such employee shall deposit currently in the appropriate funds the employee deductions and agency contributions required by paragraphs (2), (3), and (4) of such preceding subsection.

(g) An employee who is employed by a tribal organization under subsection (e) of this section and such tribal organization shall make the election to retain the coverages, rights, and benefits in paragraphs (1), (2), (3), and (4) of such subsection (e) before the date of his employment by a tribal organization. An employee who is employed by a tribal organization under subsection (e) of this section shall continue to be entitled to the benefits of such subsection if he is employed by another tribal organization to perform service in activities of the type described in such subsection.

(h) For the purposes of subsections (e), (f), and (g) of this section, the term "employee" means an employee as defined in section 2105 of title 5, United States Code.

"Employee."

(i) The President may prescribe regulations necessary to carry out the provisions of subsections (e), (f), (g), and (h) of this section and to protect and assure the compensation, retirement, insurance, leave, reemployment rights, and such other similar civil service employment rights as he finds appropriate.

Regulations.

(j) Anything in sections 205 and 207 of title 18, United States Code to the contrary notwithstanding, officers and employees of the United States assigned to an Indian tribe as authorized under section 372 of title 5, United States Code, or section 2072 of the Revised Statute (25 U.S.C. 48) and former officers and employees of the United States employed by Indian tribes may act as agents or attorneys for or appear on behalf of such tribes in connection wth any matter pending before any department, agency, court, or commission, including any matter in which the United States is a party or has a direct and substantial interest: *Provided*, That each such officer or employee or former officer

or employee must advise in writing the head of the department, agency, court, or commission with which he is dealing or appearing on behalf of the tribe of any personal and substantial involvement he may have had as an officer or employee of the United States in connection with the matter involved.

ADMINISTRATIVE PROVISIONS

25 USC 450j.

SEC. 106. (a) Contracts with tribal organizations pursuant to sections 102 and 103 of this Act shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the appropriate Secretary, such contracts may be negotiated without advertising and need not conform with the provisions of the Act of

40 USC 270a.

August 24, 1935 (49 Stat. 793), as amended: *Provided*, That the appropriate Secretary may waive any provisions of such contracting laws or regulations which he determines are not appropriate for the purposes of the contract involved or inconsistent with the provisions of this Act.

(b) Payments of any grants or under any contracts pursuant to section 102, 103, or 104 of this Act may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of this title. The transfer of funds shall be scheduled consistent with program requirements and applicable Treasury regulations, so as to minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement thereof by the tribal organization, whether such disbursement occurs prior to or subsequent to such transfer of funds. Tribal organizations shall not be held accountable for interest earned on such funds, pending their disbursement by such organization.

Contracts, term.

(c) Any contract requested by a tribe pursuant to sections 102 and 103 of this Act shall be for a term not to exceed one year unless the appropriate Secretary determines that a longer term would be advisable: *Provided*, That such term may not exceed three years and shall be subject to the availability of appropriations: *Provided, further*, That the amounts of such contracts may be renegotiated annually to reflect costs, including but not limited to cost increases beyond the control of a tribal organization.

(d) Notwithstanding any provision of law to the contrary, the appropriate Secretary may, at the request or consent of a tribal organization, revise or amend any contract or grant made by him pursuant to section 102, 103, or 104 of this Act with such organization as necessary to carry out the purposes of this title: *Provided, however*, That whenever an Indian tribe requests retrocession of the appropriate Secretary for any contract entered into pursuant to this Act, such retrocession shall become effective upon a date specified by the appropriate Secretary not more than one hundred and twenty days from the date of the request by the tribe or at such later date as may be mutually agreed to by the appropriate Secretary and the tribe.

(e) In connection with any contract or grant made pursuant to section 102, 103, or 104 of this Act, the appropriate Secretary may permit a tribal organization to utilize, in carrying out such contract or grant, existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within his jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance.

(f) The contracts authorized under sections 102 and 103 of this Act or grants pursuant to section 104 of this Act may include provisions for the performance of personal services which would otherwise be performed by Federal employees including, but in no way limited to, functions such as determination of eligibility of applicants for assist-

...benefits, or services, and the extent or amount of such assistance, ...ties, or services to be provided and the provisions of such assistance, benefits, or services, all in accordance with the terms of the contract or grant and applicable rules and regulations of the appropriate Secretary: *Provided*, That the Secretary shall not make any contract that would impair his ability to discharge his trust responsibilities to any Indian tribe or individuals.

(g) Contracts and grants with tribal organizations pursuant to sections 102, 103, and 104 of this Act and the rules and regulations adopted by the Secretaries of the Interior and Health, Education, and Welfare pursuant to section 107 of this Act shall include provisions to assure fair and uniform provision by such tribal organizations of the services and assistance they provide to Indians under such contracts and grants.

(h) The amount of funds provided under the terms of contracts entered into pursuant to sections 102 and 103 shall not be less than the appropriate Secretary would have otherwise provided for his direct operation of the programs or portions thereof for the period covered by the contract: *Provided*, That any savings in operation under such contracts shall be utilized to provide additional services or benefits under the contract.

PROMULGATION OF RULES AND REGULATIONS

25 USC 450k.

SEC. 107. (a) The Secretaries of the Interior and of Health, Education, and Welfare are each authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purposes of carrying out the provisions of this title.

(b)(1) Within six months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall each to the extent practicable, consult with national and regional Indian organizations to consider and formulate appropriate rules and regulations to implement the provisions of this title.

(2) Within seven months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall each present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

Publication in Federal Register.

(3) Within eight months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall promulgate rules and regulations to implement the provisions of this title.

(c) The Secretary of the Interior and the Secretary of Health, Education, and Welfare are authorized to revise and amend any rules or regulations promulgated pursuant to this section: *Provided*, That prior to any revision or amendment to such rules or regulations the respective Secretary or Secretaries shall present the proposed revision or amendment to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives and shall, to the extent practicable, consult with appropriate national or regional Indian organizations and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to and receive comments from, other interested parties.

Publication in Federal Register.

REPORTS

25 USC 450l.

SEC. 108. For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract or grant under this title, the Indian tribe which requested such contract or grant shall submit to the appropriate Secretary a report including, but not limited to, an accounting of the amounts and purposes for which Federal funds were expended, information on the conduct of the program or service involved, and such other information as the appropriate Secretary may request.

REASSUMPTION OF PROGRAMS

25 USC 450m.

SEC. 109. Each contract or grant agreement entered into pursuant to sections 102, 103, and 104 of this Act shall provide that in any case where the appropriate Secretary determines that the tribal organization's performance under such contract or grant agreement involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any persons; or (2) gross negligence or mismanagement in the handling or use of funds provided to the tribal organization pursuant to such contract or grant agreement, such Secretary may, under regulations prescribed by him and after providing notice and hearing to such tribal organization, rescind such contract or grant agreement and assume or resume control or operation of the program, activity, or service involved if he determines that the tribal organization has not taken corrective action as prescribed by him: *Provided*, That the appropriate Secretary may, upon notice to a tribal organization, immediately rescind a contract or grant and resume control or operation of a program, activity, or service if he finds that there is an immediate threat to safety and, in such cases, he shall hold a hearing on such action within ten days thereof. Such Secretary may decline to enter into a new contract or grant agreement and retain control of such program, activity, or service until such time as he is satisfied that the violations of rights or endangerment of health, safety, or welfare which necessitated the rescission has been corrected. Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

Notice and hearing.

EFFECT ON EXISTING RIGHTS

25 USC 450n.

SEC. 110. Nothing in this Act shall be construed as—

(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe; or

(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

TITLE II—THE INDIAN EDUCATION ASSISTANCE ACT

Citation of title. 25 USC 455 note.

SEC. 201. This title may be cited as the "Indian Education Assistance Act".

PART A—EDUCATION OF INDIANS IN PUBLIC SCHOOLS

25 USC 452.

SEC. 202. The Act of April 16, 1934 (48 Stat. 596), as amended, is further amended by adding at the end thereof the following new sections:

25 USC 455.

"SEC. 4. The Secretary of the Interior shall not enter into any contract for the education of Indians unless the prospective contractor has submitted to, and has had approved by the Secretary of the Interior, an education plan, which plan, in the determination of the Secretary, contains educational objectives which adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and assures that the contract is capable of meeting such objectives: *Provided*, That where students other than Indian students participate in such programs, money expended under such contract shall be prorated to cover the participation of only the Indian students.

25 USC 456.

"SEC. 5. (a) Whenever a school district affected by a contract or contracts for the education of Indians pursuant to this Act has a local school board not composed of a majority of Indians, the parents of the Indian children enrolled in the school or schools affected by such contract or contracts shall elect a local committee from among their number. Such committee shall fully participate in the development and shall have the authority to approve or disapprove programs to be conducted under such contract or contracts, and shall carry out such other duties, and be so structured, as the Secretary of the Interior shall by regulation provide: *Provided, however*, That, whenever a local Indian committee or committees established pursuant to section 305 (a)(2)(B)(ii) of the Act of June 23, 1972 (86 Stat. 235) or an Indian advisory school board or boards established pursuant to this Act prior

to the date of enactment of this section exists in such school district, such committee or board may, in the discretion of the affected tribal governing body or bodies, be utilized for the purposes of this section.

"(b) The Secretary of the Interior may, in his discretion, revoke any contract if the contractor fails to permit a local committee to perform its duties pursuant to subsection (a).

25 USC 457. "SEC. 6. Any school district educating Indian students who are members of recognized Indian tribes, who do not normally reside in the State in which such school district is located, and who are residing in Federal boarding facilities for the purposes of attending public schools within such district may, in the discretion of the Secretary of the Interior, be reimbursed by him for the full per capita costs of educating such Indian students."

Report to congressional committees. 25 USC 457 note. SEC. 203. After conferring with persons competent in the field of Indian education, the Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall prepare and submit to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives not later than October 1, 1975, a report which shall include:

(1) a comprehensive analysis of the Act of April 16, 1934 (48 Stat. 596), as amended, including—

25 USC 452. (A) factors determining the allocation of funds for the special or supplemental educational programs of Indian students and current operating expenditures;

(B) the relationship of the Act of April 16, 1934 (48 Stat. 596), as amended, to—

(i) title I of the Act of September 30, 1950 (64 Stat. 1100), as amended; and 20 USC 236.

(ii) the Act of April 11, 1965 (79 Stat. 27), as amended; and 20 USC 821 note.

(iii) title IV of the Act of June 23, 1972 (86 Stat. 235); and 20 USC 241aa note.

(iv) the Act of September 23, 1950 (72 Stat. 548), as amended. 20 USC 631.

(2) a specific program to meet the special educational needs of Indian children who attend public schools. Such program shall include, but need not be limited to, the following:

(A) a plan for the equitable distribution of funds to meet the special or supplemental educational needs of Indian children and, where necessary, to provide general operating expenditures to schools and school districts educating Indian children; and

(B) an estimate of the cost of such program;

(3) detailed legislative recommendations to implement the program prepared pursuant to clause (2); and

Indian-controlled community colleges. (4) a specific program, together with detailed legislative recommendations, to assist the development and administration of Indian-controlled community colleges.

PART B—SCHOOL CONSTRUCTION

Contract authority. 25 USC 458. SEC. 204. (a) The Secretary is authorized to enter into a contract or contracts with any State education agency or school district for the purpose of assisting such agency or district in the acquisition of sites for, or the construction, acquisition, or renovation of facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation or other lands held in trust by the United States for Indians, if such facilities are necessary for the education of Indians residing on any such reservation or lands,

(b) The Secretary may expend not less than 75 per centum of such funds as are authorized and appropriated pursuant to this part B on those projects which meet the eligibility requirements under subsections (a) and (b) of section 14 of the Act of September 23, 1950 (73 Stat. 548), as amended. Such funds shall be allocated on the basis of existing funding priorities, if any, established by the United States Commissioner of Education under subsections (a) and (b) of section 14 of the Act of September 23, 1950, as amended. The United States Commissioner of Education is directed to submit to the Secretary, at the beginning of each fiscal year, commencing with the first full fiscal year after the date of enactment of this Act, a list of those projects eligible for funding under subsections (a) and (b) of section 14 of the Act of September 23, 1950, as amended. 20 USC 644.

(c) The Secretary may expend not more than 25 per centum of such funds as may be authorized and appropriated pursuant to this part B on any school eligible to receive funds under section 208 of this Act.

(d) Any contract entered into by the Secretary pursuant to this section shall contain provisions requiring the relevant State educational agency to—

(1) provide Indian students attending any such facilities constructed, acquired, or renovated, in whole or in part, from funds made available pursuant to this section with standards of education not less than those provided non-Indian students in the school district in which the facilities are situated; and

(2) meet, with respect to such facilities, the requirements of the State and local building codes, and other building standards set by the State educational agency or school district for other public school facilities under its jurisdiction or control or by the local government in the jurisdiction within which the facilities are situated.

(e) The Secretary shall consult with the entity designated pursuant to section 5 of the Act of April 16, 1934 (48 Stat. 596), as amended by this Act, and with the governing body of any Indian tribe or tribes the educational opportunity for the members of which will be significantly affected by any contract entered into pursuant to this section. Such consultation shall be advisory only, but shall occur prior to the entering into of any such contract. The foregoing provisions of this subsection shall not be applicable where the application for a contract pursuant to this section is submitted by an elected school board of which a majority of its members are Indians. *Ante*, p. 2214.

(f) Within ninety days following the expiration of the three year period following the date of the enactment of this Act, the Secretary shall evaluate the effectiveness of the program pursuant to this section and transmit a report of such evaluation to the Congress. Such report shall include— Program evaluation, report to Congress.

(1) an analysis of construction costs and the impact on such costs of the provisions of subsection (f) of this section and the Act of March 3, 1921 (46 Stat. 1491), as amended;

(2) a description of the working relationship between the Department of the Interior and the Department of Health, Education, and Welfare including any memorandum of understanding in connection with the acquisition of data pursuant to subsection (b) of this section;

(3) projections of the Secretary of future construction needs of the public schools serving Indian children residing on or adjacent to Indian reservations;

(4) a description of the working relationship of the Department of the Interior with local or State educational agencies in connection with the contracting for construction, acquisition, or renovation of school facilities pursuant to this section; and

(5) the recommendations of the Secretary with respect to the transfer of the responsibility for administering subsections (a) and (b) of section 14 of the Act of September 23, 1950 (72 Stat. 548), as amended, from the Department of Health, Education and Welfare to the Department of the Interior.

20 USC 644.

Appropriation.

(g) For the purpose of carrying out the provisions of this section there is authorized to be appropriated the sum of $35,000,000 for the fiscal year ending June 30, 1974; $35,000,000 for each of the four succeeding fiscal years; and thereafter, such sums as may be necessary, all of such sums to remain available until expended.

PART C—GENERAL PROVISIONS

25 USC 458a.

SEC. 205. No funds from any grant or contract pursuant to this title shall be made available to any school district unless the Secretary is satisfied that the quality and standard of education, including facilities and auxiliary services, for Indian students enrolled in the schools of such district are at least equal to that provided all other students from resources, other than resources provided in this title, available to the local school district.

25 USC 458b.

SEC. 206. No funds from any contract or grant pursuant to this title shall be made available by any Federal agency directly to other than public agencies and Indian tribes, institutions, and organizations: *Provided*, That school districts, State education agencies, and Indian tribes, institutions, and organizations assisted by this title may use funds provided herein to contract for necessary services with any appropriate individual, organization, or corporation.

25 USC 458c.

SEC. 207. (a)(1) Within six months from the date of enactment of this Act, the Secretary shall, to the extent practicable, consult with national and regional Indian organizations with experiences in Indian education to consider and formulate appropriate rules and regulations to implement the provisions of this title.

(2) Within seven months from the date of enactment of this Act the Secretary shall present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

Rules and regulations, publication in Federal Register.

(3) Within eight months from the date of enactment of this Act, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this title.

Publication in Federal Register.

(b) The Secretary is authorized to revise and amend any rules or regulations promulgated pursuant to subsection (a) of this section: *Provided*, That prior to any revision or amendment to such rules or regulations the Secretary shall, to the extent practicable, consult with appropriate national and regional Indian organizations, and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

25 USC 458d.

SEC. 208. The Secretary is authorized and directed to provide funds pursuant to this Act; the the Act of April 16, 1934 (48 Stat. 596), as amended; or any other authority granted to him to any tribe or tribal organization which controls and manages any previously private school. The Secretary shall transmit annually to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives a report on the educational assistance program conducted pursuant to this section.

25 USC 452.

Report to congressional committees.

25 USC 458e.

SEC. 209. The assistance provided in this Act for the education of Indians in the public schools of any State is in addition and supplemental to assistance provided under title IV of the Act of June 23, 1972 (86 Stat. 235).

20 USC 241aa note.

Approved January 4, 1975.

Aboriginal Land Rights (Northern Territory) Act

On Australia Day 1977 the Aboriginal Land Rights (Northern Territory) Act was proclaimed giving legal recognition to Aboriginal land rights in the Northern Territory. The Act completed its passage through Parliament in December 1976 after forty-nine amendments had been made to the Bill introduced in June.

The Act gives effect to the recommendations of the Aboriginal Land Rights Commission (Mr Justice Woodward) and provides a land base for Northern Territory Aboriginals. Under the Act Aboriginals with traditional rights in land will determine how their land will be used and preserved.

In summary, the Act provides that:

- **inalienable freehold title to land on Northern Territory Aboriginal reserves and certain other land will be granted to Aboriginal Land Trusts holding title for the benefit of Aboriginals entitled by Aboriginal tradition to use and occupy those lands. Aboriginal reserve lands comprise about 18% of the area of the Northern Territory;**
- **Aboriginal Land Trusts, composed of Aboriginals living in the areas, will be title-holding bodies only and their actions will be directed by traditional owners, through Land Councils; the Trust scheme enables rights corresponding with traditional Aboriginal rights to be vested under Australian law without risk that the rights conferred are not sufficient to cover traditional Aboriginal rights;**
- **Aboriginal Land Councils, composed of representatives chosen by Aboriginals living in their areas, will administer Aboriginal land in accordance with the wishes of the traditional Aboriginal owners of each particular area of land; the Councils will have available all necessary legal and other assistance and will negotiate on behalf of traditional owners with anyone seeking to use Aboriginal land;**
- **an Aboriginal Land Commissioner will investigate and report on Aboriginal land claims in the Northern Territory, and there is provision for claims to unalienated Crown land to be granted; some 23% of the Northern Territory is vacant Crown land, most of it being desert and semi-desert lands in Central Australia;**
- **mineral exploration and development on Aboriginal land will be allowed only with Aboriginal consent or, if required in the national interest, after a Proclamation disallowable by either House of Parliament;**
- **Aboriginal Land Councils can negotiate terms and conditions of any mining or exploration and an independent Arbitrator can be appointed if agreement cannot be reached in these negotiations;**
- **mining royalties derived from Aboriginal land will be received by Aboriginals with a proportion (30%) being paid to Aboriginal communities affected by the particular mining operation, a proportion going to meet the costs of the Land Councils and the balance being available for the Aboriginals of the Territory; should the royalty rate be increased beyond the current 2½% (on a production value basis) the Government will determine what proportion of the increase will be payable to Aboriginals.**

The Minister attended the first meetings of the Northern Land Council and the Central Land Council, formally constituted under the Act, at Batchelor on 27 January and Alice Springs on 4 February. At these meetings Chairmen and Deputy Chairmen were elected for the initial six months of the Councils' operation. The Minister decided to limit the first term of Council membership to give the Councils the time they needed to develop long-term arrangements for elections, for staffing and for consideration of the establishment of local committees.

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THE INSTITUTE OF LOCAL GOVERNMENT

The Institute of Local Government, Queen's University, was founded in 1944 to provide a focus for educational and research activities related to municipal government in Canada. It is part of the School of Graduate Studies and Research at Queen's University.

Within this broad mandate, the Institute has devoted itself to the continuing education of municipal officials, to the provision of advice to municipal officials and others dealing with various problems related to urbanization, local government politics, organization and management. Its research program has spanned eight broad areas of interest: studies of municipal institutions, the municipal political process, management in local government, local government in remote and rural areas, comparative local government, local government in the intergovernmental arena, the history of local government, and urbanization and its effects.

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