
UNIT 8 ABORIGINALS AND ABORIGINAL SELF GOVERNMENT

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8.1 INTRODUCTION

As already explained in the first unit, about three per cent of Canada's population consist of **Aboriginals**, also known as **Indians**. Canada's indigenous peoples / **Aboriginals** can be divided into four major groups:

- i) **Status Indians**—those registered under the Indian Act of Canada, 1985, living on **reserves** and calling themselves 'First Nations';
- ii) **Non-status Indians**—those who never had or have lost status under the Indian Act, living off reserves, migrated mostly to cities and are represented by National Council of Canada;
- iii) **Métis**—those of mixed Indian and non-Indian ancestry (of early French **fur-traders** and Indians) represented by the **Métis** National Council;
- iv) **Inuits** (**earlier** known as **Eskimos**)—the northern natives. The majority of these live in the Arctic and now number around 25,000.

Together these four groups number about one million, **representing** 3 per cent of the total population.

In theory indigenous peoples / **Aboriginals** enjoy the **same** rights as all members of the national societies protected in their respective constitutions, and no discrimination is allowed under the law. Traditionally the laws have been applied on an unequal basis and, as a consequence, systemic, social, economic, cultural and political discrimination exists in

every country. The indigenous peoples do not recall having consented to subject themselves to a system of law which is totally alien to theirs. Not only do national legal systems fail to recognise indigenous distinct traditions, but also, in effect, exclude indigenous peoples in many ways from that of national legal system. Thus even the use of key words like, 'government', 'politics', or 'sovereignty' would not mean much to the Aboriginal peoples¹ as these terms cannot translate easily into their languages, an aspect that needs to be kept in mind while discussing the issues of Aboriginal self-government.

Aboriginal self-government in Canada can be described as a diverse range of efforts by Aboriginal peoples to gain and exercise decisive control over, and to redesign where necessary, the activities, institutions and financial arrangements of those governments which exist in their communities and regions. Self-government is usually defined as the basic international legal status of a state that is not subject, within its territorial jurisdiction, to the government of a foreign state or to foreign law other than public international law. Self-government can be achieved in a number of ways. Full constitutional recognition of the inherent rights of these peoples to govern themselves and be accommodated in the Canadian constitutional order is important.

This unit attempts to delineate the steps taken by the Canadian government towards evolving a political structure for Aboriginal self-government.

8.2 COLONIAL ANTECEDENTS

Before the Europeans settled in North America, the continent had been inhabited for thousands of years by self-governing nations of aboriginal peoples. These nations though often portrayed in history as "uncivilised" and "savage," were in fact intelligent civilisations, comparable to those in Europe at that time. They were productive, cultured and spiritual, and had evolved over time a method of governing themselves, which though not in written form, included complex political structures and incorporated cultural and spiritual values.

8.2.1 Early Colonial Response

The appearance of white men and their "empires" in North America did not spell the immediate end to native self-government. On the contrary, for the first two-and-a-half centuries of European occupation of Canada, from the founding of Quebec until the first Indian Act of the newly confederated Canadian nation, Indians remained self-governing people adjusting their internal social affairs, their external diplomatic and military relationships and managing their territory and resources according to ancient usage and custom and by the light of their current and well-defined self-interest. European empires in North America, Dutch, French, British and American not only recognised the Indian rights to land and self-government but in many cases were dependent upon those aboriginal nations for much of their success.

B.W. Hodgins, J.S. Milloy and K.J. Maddock point out that in Canada of the seventeenth and first half of the eighteenth centuries, robust Indian empires, with interlocking trade, military and diplomatic systems as well as autonomous communities, co-existed with an under nourished French colony on the St. Lawrence. Out of necessity and because of their preoccupation with the fur trade, which demanded free standing and self-sustaining native societies for its most effective prosecution, the French respected Indian autonomy.

This autonomy of the Indian nations, as also the general wisdom of French Policy towards them, outlived the French empire and thus assured that the recognition of Indian land rights and self-government would continue in the British Imperial regime. A British ancient Regime Indian Policy was shaped fully in the Proclamation of 1763. The imperial government's chosen approach and its formula for Indian affairs enunciated in the Proclamation, was straight forward: continental security was to be born of peace and peace born of conciliation. Fundamental to this conciliatory policy was the decision was to conduct relations on a "nation to nation" basis. This decision was not taken because the imperial government felt bound by international or natural law. In fact, such legal questions were simply not considered. Rather, the decision was wholly pragmatic, one that was essential to security of colonies. The cornerstone of this guarantee of indigenous nationhood was Britain's recognition of tribal tenure to land that was, after 1763, alienable only to the crown according to a prescribed formula that became the pre-requisite for the extinguishing of aboriginal within, but not outside, the confines of established colonies or provinces.

Of course, it was not untrammelled imperial recognition of tribal sovereignty for it was made clear that Great Britain had overriding title to the land and of the sovereignty over the Indian tribes. But as a strategy of pragmatic conciliation, the Governors were to deal with the tribes as if they were indisputably independent political entities. They were to be left to govern themselves and thus a much expanded Indian department was to function as a specialised foreign office. Indian agents were directed in a companion document to the Proclamation—The Plan for the Future Management of Indian Affairs—to meet tribal representatives annually to discuss grievances, to take advice on the conduct of the fur trade, and to cooperate in the determination of tribal boundaries. These duties were to be performed with due deference to Indian national pride.

Such latitude for independent native action and self-determination was not to last for long. Self-government did not survive the transfer of responsibility for Indian affairs to the United Canada in 1860 and the consequence of free trade and responsible government which were being worked out during that generation. The central event of that decade, the grand constitutional reorganisation of empire that was confederation, reduced the tribes towards of the nation, powerless clients of an Indian Department that was now aggressive, intrusive and determined to re-make Indian society in its own Victorian image.

8.3 CANADIAN GOVERNMENT POLICY

The organisational development amongst the Canadian indigenous peoples known also as Indians prior to 1970 was very uneven but singularly more uniform after that date. Did governmental policies give a fillip to the indigenous movement for rights?

8.3.1 Canadian Confederation and Aborigines

Under the new dispensations of confederation, initially attempts were made to suppress Indian governments by outlawing their activities, seizing the records and symbols of government, and imposing the Indian Band Council system under the "Indian Act". By section 91:24 of the British North America Act of 1867, the Federal Parliament was given exclusive authority over Indians and the land reserved for Indians under the "Indian Act" of 1869 abolished all ancient tribal government institutions and customs. Under this Act, the tribes were to be given "the benefits of municipal government" closely supervised by

federal officials. Later in the consolidated "Indian Act of 1876", the formula of 1869 was repeated and its implication, that Indians would lose control over all issues touching their community interest, was spelt out in detail.

The "Band Council," created under the "Indian Act", was until very recently, the only form of Indian government recognised in Canadian law. Under the Band Council system, the primary decision making responsibility rested with the Minister of Indian Affairs and Northern Development. This meant a direct involvement of the federal government in the routine matters of a local government. The Band Councils by-law making powers as specified in the Act were very limited as also the financial capacities.

Most Indian leaders rejected this band council system. Some believed it was imposed as a method of assimilation and government control, as part of a structure designed to replace and destroy Indian cultures, customs, and traditional governments. Others pointed out that due to the band councils severely limited range of powers and their uncertain legal status, they were unable to provide effective responsible local governments. As a result, in general, the natives resisted the pressure from Ottawa to adopt to white culture. Despite the "Indian Act", traditional governments survived. Many Indian Nations maintained two forms of government simultaneously, publicly using the band council system to satisfy the federal government while secretly continuing a traditional government.

Consequent result for almost a century had been the cultural clash which had had the most negative results. Enfranchisements (the 1876 Indian Act stated that if an Indian could prove himself "civilised", he could move off the reserve and apply for full citizenship), the critical indicator of assimilation, remained rare and reserve conditions were deplorable. Except beyond the limits of Canadian economic expansion, aboriginal people lived in slums in the wilderness – unemployed, undernourished and increasingly without hope. In 1946, the Canadian Parliament appointed a special joint committee of the Senate and House of Commons to examine and consider the "Indian Act." Consequent "Indian Act of 1951", the Legislative mouse of the committee's elephantine report, was a faithful repetition of the Act of 1876. It did add the possibility of devolution of important jurisdictions to the band councils. But rather than heralding a step back toward self-government, this provision was a crude carrot and stick attempt to move whole communities into involuntary enfranchisement.

8.3.2 New Initiatives

A new pan-Indian initiative was launched in 1960 when the educated urban Indians and *Métis* set up the *National Indian Council* (NIC). Its main aim was to promote native Indian culture and advance political agreement. The leadership of the NIC had little contact with the mass of the Indians who lived on the reservations (some 80% around 1970). The scepticism of the local tribes and of the leadership on the reservations was palpable. Members of the new organisation were seen as marginal. The organisation had, therefore, to fight against major internal divisions right from the outset. Furthermore, it had problems with fund-raising and achieved little influence since the authorities did not see it as being in any way representative of Indians generally.

In view of growing dissatisfaction in Canada's native leaders, in 1966, a thorough examination of the conduct of Indian affairs, a survey of the contemporary Indians of Canada was conducted (also known as Hawthorn Report).

8.3.3 Hawthorn's Recommendations

An attempt by the Canadian federal government to understand the parameters of the Amerindian problem resulted in the appointment in 1963 of anthropologist Harry B. Hawthorn to study their educational and socio-economic conditions. **Hawthorn's recommendations** came out in the form of a report by 1966. The report was well received by the Amerindian population as it stressed that an Amerindian should not be forced to acquire those values of the majority society which they do not wish to acquire. It was pointed out that they were not taking advantage of whatever little opportunity for self-governance that they had. Out of 577 bands at the time, only 118 had passed any by-laws. Apart from the lack of clear authority as to whether they should be passing any by-laws, some bands were expected to follow Ottawa. Complying with the system ensured them a larger share of the welfare grant. This was resulting in no real authority residing in these communities. Welfare grants only served to weaken the community solidarity. Thus the report suggested some additional rights for the Amerindian apart from the rights and duties spelt out for Canadian citizens. While this was a positive development for the Amerindians, a contrast was the White Paper of 1969, which was completely rejected by them.

8.3.4 White Paper (1969)

With Hawthorn's recommendations and rejection of assimilation as policy expectations were raised amongst the Indians that their views would at last be considered and that their old demand for special rights, either on the basis of the treaties or through Aboriginal title would be taken up for serious negotiation. But the solution chosen by the Trudeau government went in exactly the opposite direction. It decided to get rid of all special rights, including the Indian Act, the reservations and the treaties and to transfer all welfare matters affecting the Indian population, as was the case for the population generally, to the Provinces. The government saw it as a policy which would enable Indians to be free to develop their own cultures in a free and equal environment—legal, social and cultural and economic, equality with the rest of the Canadians. Aboriginal rights would not be recognised and in effect, treaties would be terminated. When this programme was launched in the summer of 1970, spontaneous militancy ensued. The government's *White Paper* then became the catalyst that would unite the various indigenous groups around the policy proposed by the NIC.

The Status-Indians' regional bodies came together in a federal structure and at a meeting in 1969 the nature of the organisation, the *National Indian Brotherhood (NIB)* was decided upon. The NIB was totally opposed to the *White Paper*. In 1971, this policy was withdrawn and the government promised not to amend the "Indian Act" without the agreement of the Indian people.

Canada now experienced an unexpected and remarkable growth in organisations and institutions not only amongst all the indigenous peoples but also by academics and government officials.

8.4 GROWTH OF INDIGENOUS ORGANISATIONS (1970s)

The government, forced to retreat, now stood without a policy for its indigenous peoples. It was under pressure and needed organisations amongst the indigenous peoples with whom it could consult. Besides, the Liberal government had a programme on public participation which gave financial support to the pressure groups.

Then president of the NIB, George Manuel took this opportunity to initiate the building up of an international network of indigenous peoples. At that time the Trudeau government was searching for a successful example of policy towards indigenous peoples elsewhere. As head of the NIB, Manuel took part in several Canadian delegations on major trips and conferences overseas. In 1974, the NIB was granted 'non-governmental status' by the UN, the first organisation amongst indigenous peoples to be so. Through the contacts Manuel made with representatives of other indigenous peoples from around the world, the NIB was able to stage a conference at Port Alberni in British Columbia in October 1975 which attracted delegates from 24 countries. This conference set up the **World Council of Indigenous Peoples** (WCIP) and agreed on a key note programme which had as its main aim to secure political, economic and social justice for indigenous peoples and to reinforce their rights. During its early years, Church bodies of Canada, and to a small extent, Norway contributed to the finances of the organisation.

The pan-Indian movement in Canada sought to create international solidarity which would be used to exert greater pressure on the national authorities over land claims. It was envisaged that international success would give the leadership of the NIB authority within and, externally, the respect of the Canadian public authorities. The **James Bay and Northern Quebec Agreement of 1975** broke new ground and was even called the first modern Aboriginal claims settlement as it was the first comprehensive case to be settled in Canada. The **Inuit** and **Cree** communities of Quebec were left with substantial control over their own political, economic and social affairs even though the final say still rested with the government. In spite of a cash settlement of \$232.5 million over 21 years, the ownership of 2,140 sq. miles and hunting and fishing rights, the flooding of once productive land is the price to be paid. If the entire project planned in four major phases is completed, an area the size of France would be affected with unimaginable consequences. The provincially owned company Hydro-Quebec plans to flood tens of thousands of square miles of Aboriginal lands to produce electricity for export. The northern two-thirds of the province of Quebec where lies most of the timber, mineral and hydro-power wealth is inhabited mostly by **Cree** Indians and **Inuit** and is also the key to an independent Quebec. The issue still needs to be resolved as one of Quebecois sovereignty and Aboriginal rights.

The authority that the WCIP had, has been consciously exploited by the NIB. For example, already at its second general assembly in 1977, a resolution was adopted which more than anything else, was grounded in the Canadian political process. What was really required was a pan-Indian movement rather than a number of local organisations which could put forth its demands clearly to the government. This was achieved with the NIB changing its name to the current **Assembly of First Nations**.

8.5 THE QUESTION OF SELF GOVERNMENT

The question of Aboriginal self-determination and thus self-government is a serious issue of concern in Canada. In theory there are a number of possibilities with regard to self-government—a separate state or province within a federation, a self-governing territory or local government. Primary focus is given in Canada to self-government. This is in contrast to other countries like Australia where Aboriginal issues are not considered in the formal terms of self-government although the system of land councils and community councils can be taken as various forms of self-government.

As we have discussed earlier, the Crown in Canada signed treaties with some of the native peoples and also juridically recognised Aboriginal land rights. The Canadian Constitution defines the Aboriginal peoples of Canada and recognises Aboriginal treaties and rights. But it was only brought about in the 1980s. In the following section, we will see how the process of Aboriginal self-government evolved.

8.5.1 Constitution Act of 1982

The Indian movement in Canada expressly used the international network of indigenous peoples in order to exert greater pressure on their own authorities. From the 1970s it was the political developments in Canada which led the way for the others. Delegations were sent to Britain and continental Europe to press their cause internationally. It was assumed that Canada, being a signatory to most international covenants, would be obliged to protect its own peoples' rights. Canada had even welcomed the establishment by U.N. Human Rights Commission of the Working Group on Indigenous Populations in 1982 and claimed that Aboriginal rights, along with Treaty rights, had received constitutional protection by the Constitution Act of 1982 and would soon be able to vindicate their rights.

Treaty Rights

Section 35 of the Constitution Act, 1982 gave Treaties in Canada, greater legal protection. It 'recognised and affirmed' the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada. It identified the "Aboriginal peoples of Canada" as the Indian, Inuit, and *Métis* peoples of Canada. For greater certainty, in Subsection (1) "treaty rights" included rights existing by way of land claims agreements or may be so acquired and granted equal treaty rights to male and female persons.

But at the same time Treaty rights are not immune from legal squabbles. The historical Treaty process was heavily weighed in favour of government, but the Canadian courts have, to their credit, never set aside a Treaty or surrender on that ground. The disregard of formalities in the Treaty process has led to some equivocal documents being recognised as Treaties. Treaties are considered to be unique in law.

Aboriginal Rights

If Treaty rights were not always secure under Canadian law, Aboriginal rights were virtually non-existent. They could be regulated by any level of government. Aboriginal rights includes Aboriginal title and may also include linguistic, religious and customary practices of many types. Aboriginal title still exists in much of the British Columbia province, and in Quebec and the Territories. Many of the modern land claims settlements have been negotiated on the basis of unextinguished Aboriginal title. In general, while the New Constitution of 1982 recognised existing rights, it left them undefined. It, however, provided for a "First Ministers Conference" involving aboriginal and territorial leaders to work out the definition in detail.

8.5.2 The First Ministers Conference

Between 1983 and 1987, the First Ministers held four conferences with the major native organisations. But repeated attempts to entrench the principle of aboriginal self-government in the constitution ended in failure—in part because some premiers objected that the concept was too vague and undefined.

In the first conference in 1983 aboriginal leaders focused on the issue of inherent, non-municipal self-government. Trudeau seemed somewhat sympathetic, at least to entrenched self-government with considerable diverse and circumscribed powers. The three westernmost provinces were unimpressed; only a federally funded and delegated municipal role could be envisioned and a land base generally without much in the way of guaranteed sub-surface rights considered. British Columbia stuck to its historic opposition both to treaties and to any role in that province for the Royal Proclamation.

At the 1984 conference (Pierre Trudeau's last) Prime Minister Trudeau's promise to include in the constitution the right to aboriginal peoples to self-governing institutions represented the federal government's acceptance of a constitutional basis for aboriginal self-government. An accord was jointly proposed by the three national native organisations. It committed the federal and provincial governments to negotiating and concluding treaties for the implementation of aboriginal rights including the right to self-government. However seven provinces did not support constitutional entrenchment.

At the April 1985 conference new Prime Minister Mulroney sought support for a constitutional amendment from the required number of provinces and the participating aboriginal association. Seven provinces seemed to be prepared to support a compromise constitutional amendment which would affirm, in principle, the right to aboriginal candidates to self-government within the context of the Canadian Federation; it would, however, leave to a political accord any further commitment to negotiate terms of self-government. The support of a number of these provisionally supportive provinces was conditional on the acceptance of the amendment by the aboriginal association, but this agreement was not immediately forthcoming. The conference therefore adjourned without reaching agreement.

The year 1985 also witnessed the first major amendments in the Indian Act. Most important was the amendment in membership sections of the Indian Act in order to remove sections that permitted the loss or gain of federally recognised Indian "status" and membership on the basis of sex and marital status, to restore status to many of those who had lost it over the years, and to abolish the concept of "enfranchisement" (declaring oneself to be no longer an Indian). The amendments also increased certain band by-law powers, and to control residency on reserves. On 15 April 1986, the Canadian government, in a policy statement indicated its commitment to implementing Indian self government on a community-by-community basis either within the "Indian Act" or beyond it.

Under this policy Sechelt Indians north of Vancouver, through Bill C-93 "The Sechelt Indian Band Self-Government Act" in 1986 became the first individual band to secure full rights of self-government. This Act is a form of enabling legislation which does not detail every aspect of the proposed form of government but instead contains the general authority for the Sechelt Band to become a self-governing entity. The Act does not list the rights, powers and duties of the Sechelt government but instead establishes it as a legal entity with the powers of a natural person. Assembly of First Nations, however, did not approve of Sechelt's acceptance of this Act pointing out that all the community was receiving was developmental participation and a municipal status under Ottawa but with close British Columbia supervision. In Ontario also, the new Liberal government, with full federal concurrence, successfully opened negotiations with the council of the Nishnabai Aski (the Northern Cree-Ojibwa of the 1905 Treaty). This resulted in a two-tier system of local self-government in many of the communities of the James Bay Watershed. Again it was a

question as to whether or not their power was delegated and how securely these powers were entrenched.

A fourth and final constitutional conference was held in Ottawa on 26 and 27 March 1987. As in previous two conferences, aboriginal self-government was the main focus of discussion. Aboriginal people were seeking the recognition of their 'inherent' right to self-government, a right which they were exercising before the arrival of Europeans in North America, and at the time of confederation. They believe this is a right which has never been extinguished, and which, because they already possess it, cannot be given to them by the federal and provincial governments. The federal government and many of provincial governments on the other hand, were willing to entrench only a "contingent" right, that is, a right which would be delegated and defined through negotiated agreements. Some aboriginal leaders seemed resigned to the fact that the quest for a solution through First Ministers conference was temporarily halted. Many sympathetic scholars felt that with Western provincial intransigence, Eastern equivocation and conservative double talk, the last two conferences had merely been designed to establish a federal municipal system for Indians, with the provinces assuming more and more of the welfare, social and administrative responsibilities; the whole thing was perhaps Trudeau's 1969 white paper of administrative assimilation once again.

The issue of what rights were "existing" in 1982, when this provision came into force, was answered by the Supreme Court of Canada in 1990 in *Sparrow v. The Queen*, an Aboriginal fishing rights case from British Columbia. The Court ruled that the rights protected by Section 35 were those which had not been extinguished by statute or by consent of the Indians. This ruling **overturned** some previous decisions which suggested that Aboriginal and Treaty rights had been "frozen" in the form in which they had been regulated prior to 1982. The Court ruled that regulation of a right does not extinguish it.

The Constitution Act also guarantees Aboriginal and Treaty rights equally to **men and women**. Until 1985, all versions of the Indian Act provided that, upon marriage, an **Indian groom** conferred status on his non-Indian wife, while the Indian bride of a non-Indian **man** lost her status. It was the Constitution Act, 1982 that finally forced change. Section 15, the equality provision of the Charter, came into effect in April of 1985 and it was recognised that the differential treatment of the Indian men and women would not survive another challenge **and** that the Canadian Charter of Rights and Freedoms could not adversely **affect** such rights. Bill C-31, enacted to come into effect before the Charter, not only ended any status consequences of marriage (no gain, no loss) but also restored status to those who had previously lost it and their children. Canada greatly underestimated the number of individuals who would become entitled to Indian status and Band membership: The result **was** a major change in the demographics of some Indian communities, in some cases more than doubling the membership rolls. The *Twinn* case challenged Bill C-31 **on** the basis of its incursion on tribal rights of self-government, but the Federal Court Trial Division rejected that challenge in 1995. The decision is under appeal.

8.5.3 Aboriginal and Treaty Rights of Métis and Inuits

The question of Aboriginal and Treaty rights must be addressed differently for Inuit and **Métis**. They have no historical treaties and there has not been any regulation of their entitlement to Aboriginal status. This is a constitutional, not a statutory, issue.

For the Inuit, many issues are being resolved by way of land claims settlements based on the fact that they have never ceded their Aboriginal title to their lands by Treaty. Entitlement as a **beneficiary**, compensation, self-government measures and a land base are issues commonly dealt within these comprehensive land claim negotiations. These agreements, as noted above, become treaties for purposes of constitutional protection of the rights guaranteed to the Inuit parties. The Inuvialuit settlement of the early 1980s was an example of such a settlement; the most comprehensive has been the Nunavut Agreement of 1993 which will, when implemented, effectively divide the Northwest Territories into two new political units.

Métis have no treaties. They live in provinces for the most part, not in the Territories. Their Aboriginal title is derivative, not original. Their land base, except for some settlements organised under provincial law, is non-existent. All of these issues are obscured by the question of status. **Are** all people with some Aboriginal blood, but no other status or entitlement, *Me'tis*? What really is a definition of *Métis*? Will there be one exclusively for constitutional purposes? At this time, it is easier to pose these questions than to answer them. And once the question of status is answered, it leads to the main issue of whether there is a federal responsibility for *Métis* in the same sense that there is a federal responsibility for Indians. Canada so far has not considered the *Métis* as a federal responsibility, although it has funded *Métis* organisations generously.

All of these issues also arise in terms of claims settlements and discussions around the "inherent right of self-government". They will, if anything, become more complex in the future. For the Indians, the constitution implies not only "internal sovereignty" but also symbolises the aspiration for self-determination for the people. Aboriginal rights is being applied to far more than just land issues and as far as Amerindians are concerned, it also includes self-government.

8.6 TOWARDS SELF-GOVERNMENT

The many initiatives that fall generally under the rubric of self-government are commonly seen as a fair and reasonable transition from government limitations imposed on Aboriginal communities and individuals to a modern, community-based self-actualising form of government. This has many legal implications in terms of constitutional, legislative and jurisdictional issues: all complicated by an almost theological reliance upon a theory of "inherent rights" of self-government. This is not to suggest that the theory is wrong: it lacks, however, specific legal or even political content at the present time.

The position taken by the Indians on self-government received momentum in 1983 with the Report of the Special Parliamentary Committee on Indian Self-Government, commonly known as the **Penner Report** after the chairman of the committee Keith Penner. The Report's acknowledgement that Indians would rather have self-government than representation in Parliament was significant. So much so, three **Ministers' Conferences** discussing how the institutions of self-government should be established were held in the period between 1983 to 1987. But the results were **not** at all satisfying and nothing came of it. The **Cree-Naskapi Act of Quebec, 1984** is hailed as the first self-government legislation in Canada. It replaced the *Indian Act* for the region it serves. It was a direct result of the Penner Report as well as the James Bay and related agreements of 1975-78 which transferred

lands by Quebec to Ottawa for the exclusive use of the James Bay Cree. But there is a disagreement over the extent to which it has been implemented. While the government claims that 80 per cent of what was agreed has already been put into practice, the aborigines feel that it has not as yet been done.

Soon after this, then Prime Minister Brian Mulroney signed the **Meech Lake Accord** in 1987 which recognised Quebec as a 'distinct society'. In return, Quebec would accept the 1982 Constitution. The Accord was meant to be ratified within three years but was not well received by the Aboriginal community. Elijah Harper, one of Canada's few indigenous parliamentarians to be involved, took this opportunity to stand firm against the decision. It was not as if the aborigines were against recognition of Quebec as distinct, but as the Head of the Assembly of Manitoba Chiefs pointed out, "if Quebec is distinct, we are even more distinct".

Less than three weeks later in the summer of 1990, the indigenous peoples conveyed their determination with the **Oka-Kahnasetake** crisis. Recognition of the inherent right of Aboriginal communities to govern themselves was a feature of the rejected Charlottetown Accord. The **Royal Commission on Aboriginal Peoples** was established by the government in 1991 to examine the treatment and position of Aboriginals in the Canadian society and make recommendations as to how they could be more fully integrated. These recommendations, along with submissions from various provincial commissions and recommendations from Aboriginal peoples, served as a catalyst for further discussions and meetings with all of Canada's First Ministers. Consensus was reached in Charlottetown in August 1992 but this "Charlottetown Accord" was defeated in a national referendum held in October 1992. If simple public issues of hunting and fishing rights were difficult to address, concepts such as the inherent right of self-government would be very complicated. The idea is that aborigines should take matters into their own hands.

8.6.1 The Territory of Nunavut

What really deserves special attention is the creation of **Nunavut in 1993**. The establishment of Nunavut, a distinct territory under its own government, was based on the concept of traditional land ownership and use as understood by the eastern and central Arctic Inuit in order to control their own destiny. The Nunavut Land Claims Agreement, ratified by the Inuit in November of 1992, signed by the Prime Minister of Canada on May 25, 1993, and passed through the Canadian Parliament in June of the same year, is the largest native land claim settlement in Canadian history. In providing title to the Nunavut Inuit of 350,000 square kilometres of land in the eastern Arctic, the agreement establishes clear rules of ownership and control over land and resources in the new Territory (which has an area of approximately two million square kilometers, or one-fifth of Canada's landmass).

The Nunavut Land Claims Agreement is one of the most innovative of the "modern day treaties" concluded in Canada. Some of the more outstanding of its 41 articles include the following:

- 1) title to approximately 350,000 square kilometres (136,000 square miles) of land, of which 35,250 square kilometres (14,000 square miles) include mineral rights;
- 2) equal representation of Inuit with government on a new set of wildlife management, resource management and environmental boards;

- 3) the right to harvest wildlife on lands and waters throughout the Nunavut Settlement Area;
- 4) capital transfer payments of \$1.148 billion, payable to the Inuit over 14 years;
- 5) a \$13 million Training Trust Fund;
- 6) a share of federal government royalties for Nunavut Inuit from oil, gas and mineral development on Crown lands;
- 7) where Inuit own surface title to the land, the right to negotiate with industry for economic and social benefits from non-renewable resource development;
- 8) the right of first refusal on sport and commercial development of renewable resources in the Nunavut Settlement Area;
- 9) the creation of three new federally funded national parks;
- 10) the inclusion of a political accord, that provides for the establishment of the new Territory of Nunavut and through this a form of self-government for the Nunavut Inuit.

The new government administers an area that covers approximately 20 per cent of Canada, with powers equivalent to those of the Yukon and Northwest Territories. An elected Legislative Assembly (with 19 MLAs), a Cabinet and a territorial court are the primary institutions of public government.

The Nunavut Implementation Commission consisted of nine members named by the Government of Canada, six of whom had to be residents of Nunavut. The Commission advised all parties on the funding and design of training plans, the timetable for transferring services, and the process for holding the first election for the Government of Nunavut, in February 1999. This initial transition phase ended with the election.

Since 1 April 1999, the Government of Nunavut has been gradually assuming the responsibilities formerly exercised by the Government of the Northwest Territories, with the transfer of administration for programmes in areas such as culture, public housing and health care to be complete by 2009.

The government of Nunavut will be established in evolutionary stages over 16 years, from 1993 to 2009. With the first election for the Government of Nunavut, in February 1999, the initial transition phase ended. Nunavut is made up of three distinct regions (Qikiqtaaluk, Kivalliq, and Kitikmeot) and twenty-eight communities. Accordingly, the Nunavut Government is decentralised, with government departments and agencies set up in communities throughout the territory.

As a result of the recommendation of the 1991 Royal Commission the federal government has also published *Gathering Strength—Canada's Aboriginal Action Plan* (1998) along with *An Agenda for Action with First Nations*. The primary objective of the Agenda is to renew the federal government's relationship with the Aboriginal peoples and strengthen Aboriginal governments. This includes working out a "government-to-government"

~~relations programme~~ which is acceptable to Aboriginal peoples. The ~~government of Canada~~ has agreed to develop ways to recognise the Aboriginal self-government and to **establish a** framework for working out jurisdictional and intergovernmental relations; develop a Governance Transition Centre to support Aboriginals in developing governance structures,

and support capacity-building in Aboriginal communities; create organisational structures to deal with justice and disputed issues and partner with Aboriginal groups to develop a strategy to deal with lands and resource issues which includes exploration of possible methods other than surrenders or extinguishing of Aboriginal rights.

8.7 SUMMARY

Aboriginal self-government in Canada can be defined as a diverse range of efforts by Aboriginal peoples to gain and exercise decisive control over, and to redesign where necessary, the activities, institutions and financial arrangements of those governments which exist in their communities and regions.

A serious move towards the development of an organisational structure to advance political agreements was made only in the 1960s and 1970s leading to the setting up of the National Indian Council and subsequently the National Indian Brotherhood (NIB). The NIB was vehemently opposed to government policies like the White Paper of 1969 which wanted to get rid of any special Aboriginal rights. The first comprehensive case to be settled in Canada was the James Bay and Northern Quebec Agreement of 1975 which gave the Cree and the Inuit communities of Quebec substantial control of their political, economic and social affairs.

The Constitution Act of 1982 gave recognition to treaty and Aboriginal rights. This was a major move towards the concept of self-governance. The position taken by the Indians on self-government received momentum in 1983 with the Report of the *Special* Parliamentary Committee on Indian Self-Government, commonly known as the Penner Report. The Report's acknowledgement that Indians would rather have self-government than representation in Parliament was significant. This was soon followed by the First Ministers' Conferences and the Cree Naskapi Act of Quebec, 1984. What really deserves special attention is the establishment of a distinct territory known as Nunavut in 1993 based on the concept of traditional land ownership as understood by the eastern and central Arctic Inuit.

8.8 EXERCISES

- 1) Give a brief description of the Aboriginal community in the Canadian society.
- 2) Describe the major government policy measures undertaken towards Aboriginal self-government in the 1960s and 1970s.
- 3) Critically examine the provisions for self-government made under the Canadian Constitution. What do you think are the positive aspects of these provisions?
- 4) What are the main features of the Nunavut Land Claims Agreement?