

**Implementing Aboriginal Self-Government:  
Problems and Prospects**

**David C. Hawkes  
and  
Evelyn J. Peters**

**Report on the Workshop Held  
May 27-30, 1986**

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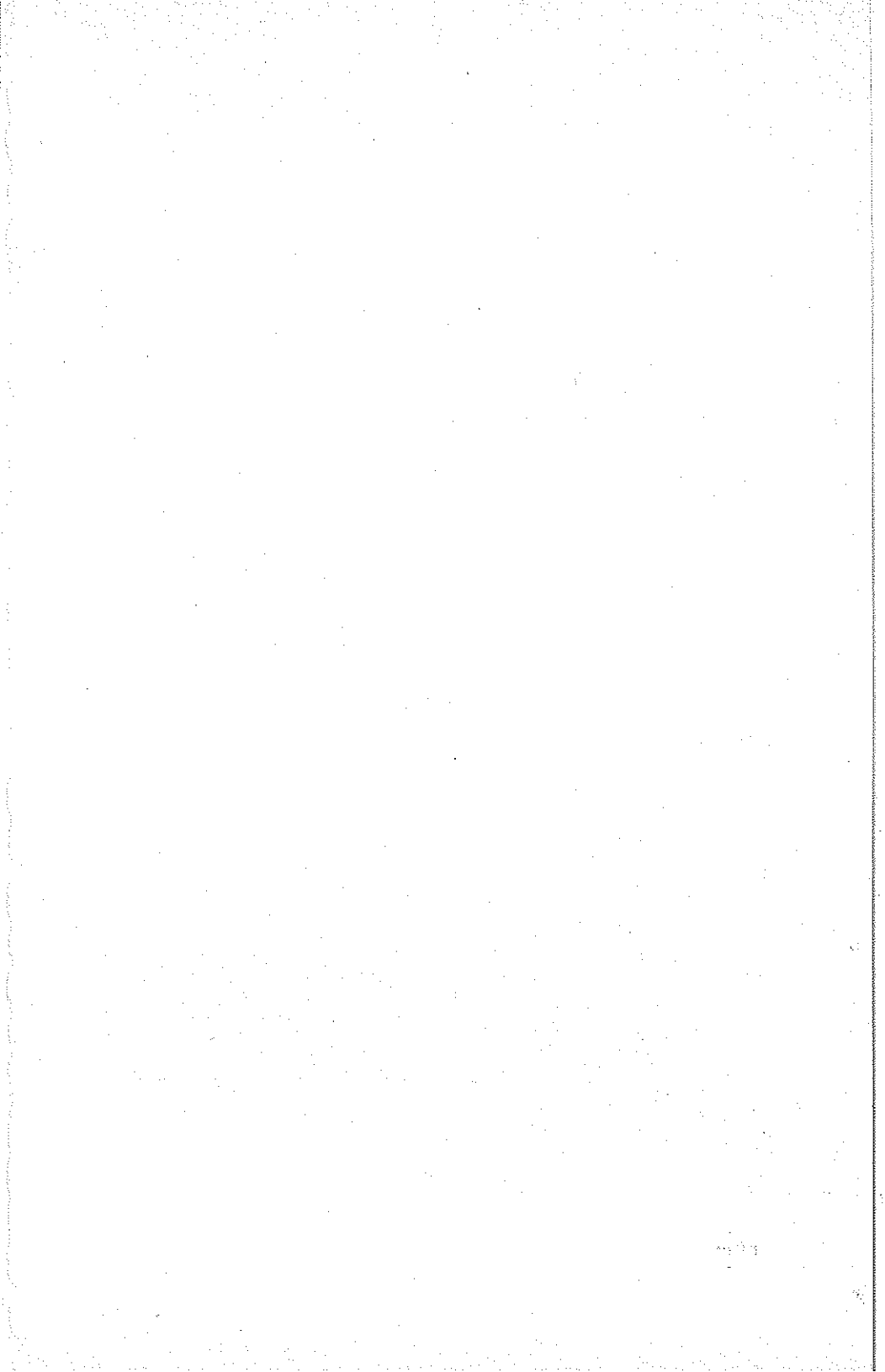
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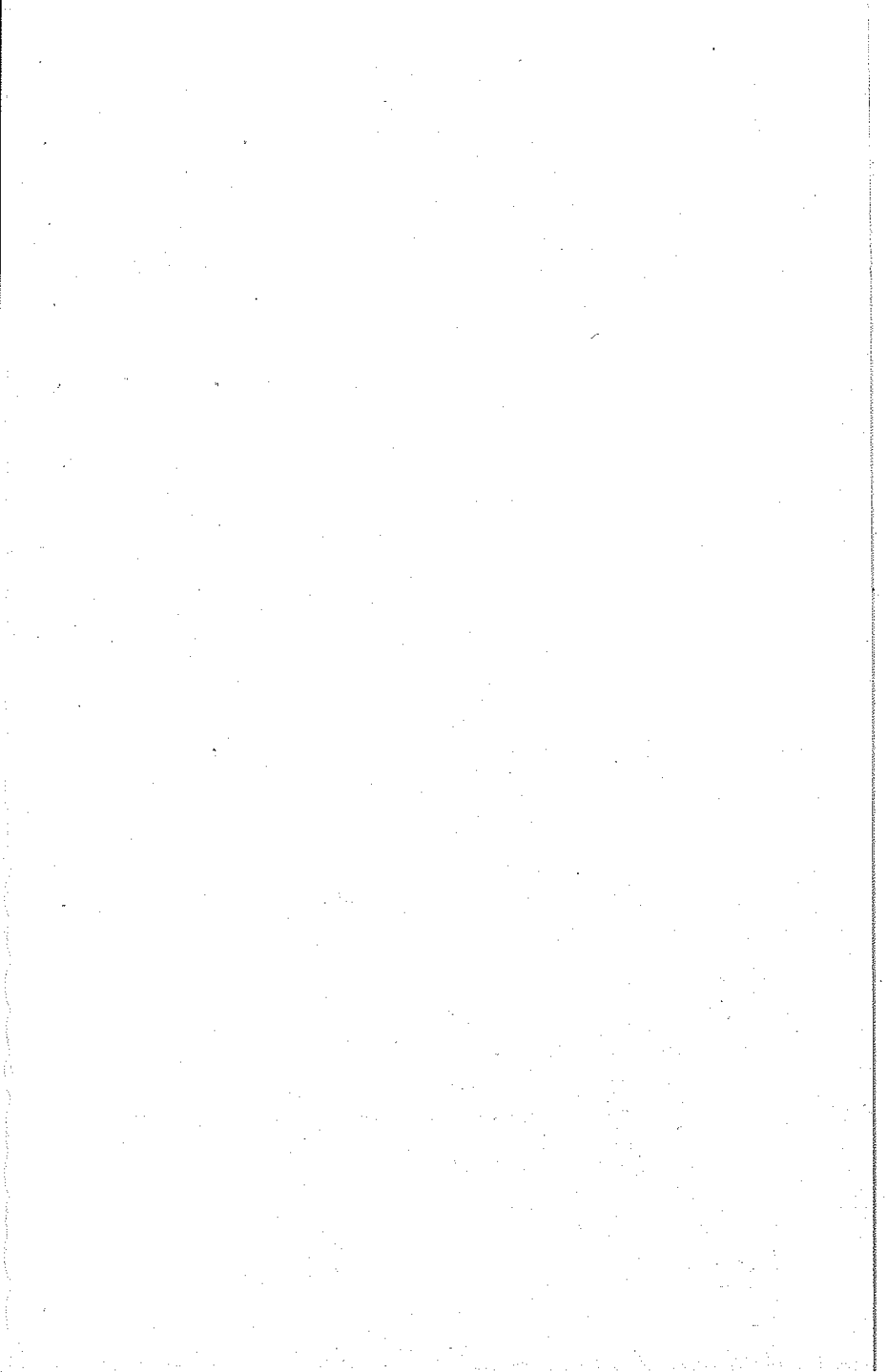
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*David C. Hawkes and Evelyn J. Peters*



## Introduction

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From Tuesday evening, May 27th, until late afternoon, May 30th, 1986, a workshop was held at the Donald Gordon Centre of Queen's University on the topic of "Implementing Aboriginal Self-Government: Problems and Prospects". The purpose of the workshop was to explore possible self-government agreements that might be developed, both of a comprehensive nature (i.e., Kativik, Cree/Naskapi (of Quebec), Nunavut, Sechelt), and in particular policy sectors (e.g., education, resources, environmental management, and economic development). A corollary objective was to examine what is possible both with, and without an entrenched right to self-government in the constitution.

The workshop was organized by the Institute of Intergovernmental Relations, and was part of the Institute's larger project on "Aboriginal Peoples and Constitutional Reform". No media representatives attended the workshop, nor was a verbatim record kept. Participants were assured that no official record of the proceedings would be published, and that no attribution of remarks would emerge in the report on the workshop. Instead, a summary report - which follows - was to be sent to workshop participants, to the 17 parties to the section 37 constitutional negotiations, and to project sponsors.<sup>1</sup>

This report is a review of the issues raised. It is not intended to be analytic or interpretive, although this may be found in the Background Papers prepared in advance of the workshop (see Appendix D). The workshop provided a forum for people, who are involved in negotiating and implementing aboriginal self-government, to identify problems and opportunities, and to make suggestions.

Section 37 of the *Constitution Act, 1982* (as amended) requires the holding of a series of constitutional conferences by 1987 to deal with "constitutional matters that directly affect the aboriginal peoples of Canada." In view of the importance of this subject, in May of 1984 the Institute launched a research project on "Aboriginal Peoples and Constitutional Reform". Phase One of the project responded to concerns that emerged at the outset of the section 37 constitutional negotiation process. Discussions surrounding the First Ministers' Conferences on Aboriginal Constitutional Matters quickly focussed on the task of making constitutional provisions for aboriginal self-government. Many involved in the process said that they did not know what "aboriginal self-government" meant, and that they would require further information before inscribing it in the constitution.

Phase One of the Institute's project responded to this problem. As indicated by its title, "Aboriginal Self-Government: What Does It Mean?" Phase One examined various models, forms and proposals for aboriginal self-government. This included an exploration of the citizenship rights of aboriginal peoples, the experience of aboriginal self-government in other nations, and a review of Canadian developments over the past few years. The results of these investigations were compared to the positions taken by parties to the constitutional negotiations, in an effort to identify areas of emerging conflict and consensus. These findings were elaborated in five Background Papers, a Discussion Paper and a Workshop, which was held two months prior to the 1985 First Ministers' Conference (FMC).<sup>2</sup>

At a meeting of government ministers and aboriginal leaders held in June, 1985, several governments indicated their intention to pursue the negotiation of individual self-government agreements, and then to consider their entrenchment in the constitution (the "bottom-up" approach). This contrasts with the proposal, which had thus far dominated discussions, to entrench the right to aboriginal self-government in the constitution, and then to negotiate individual agreements (the "principles first" approach). The result is that, in addition to multilateral negotiations at the national level, negotiations are now proceeding on a bilateral or trilateral basis, at the local, regional and provincial/territorial levels.

"Bottom-up" negotiations will entail discussions, at the very least, in the following areas: recognition of aboriginal self-governments; jurisdiction/powers of self-governments; provision of public services; law enforcement; financial arrangements; and policy coordination among aboriginal self-governments, provincial governments, and the federal government. In practice, the negotiations may proceed on a sector-by-sector basis (e.g., education, resources, economic development, social services).

Clearly, the "bottom-up" approach could have a major effect on the process of constitutional reform as it relates to aboriginal peoples in Canada. Phase Two of the Institute's project therefore focussed initially on the "bottom-up" approach. The research examined the practical problems in designing mechanisms and making arrangements for implementing self-government agreements (see Appendix D for a list of background papers produced). The workshop on "Implementing Aboriginal Self-Government: Problems and Prospects" was the central element of year two of the overall project. In year three, the project will focus on the search for a constitutional accommodation, and will examine issues surrounding the entrenchment of the right to aboriginal self-government in the constitution.

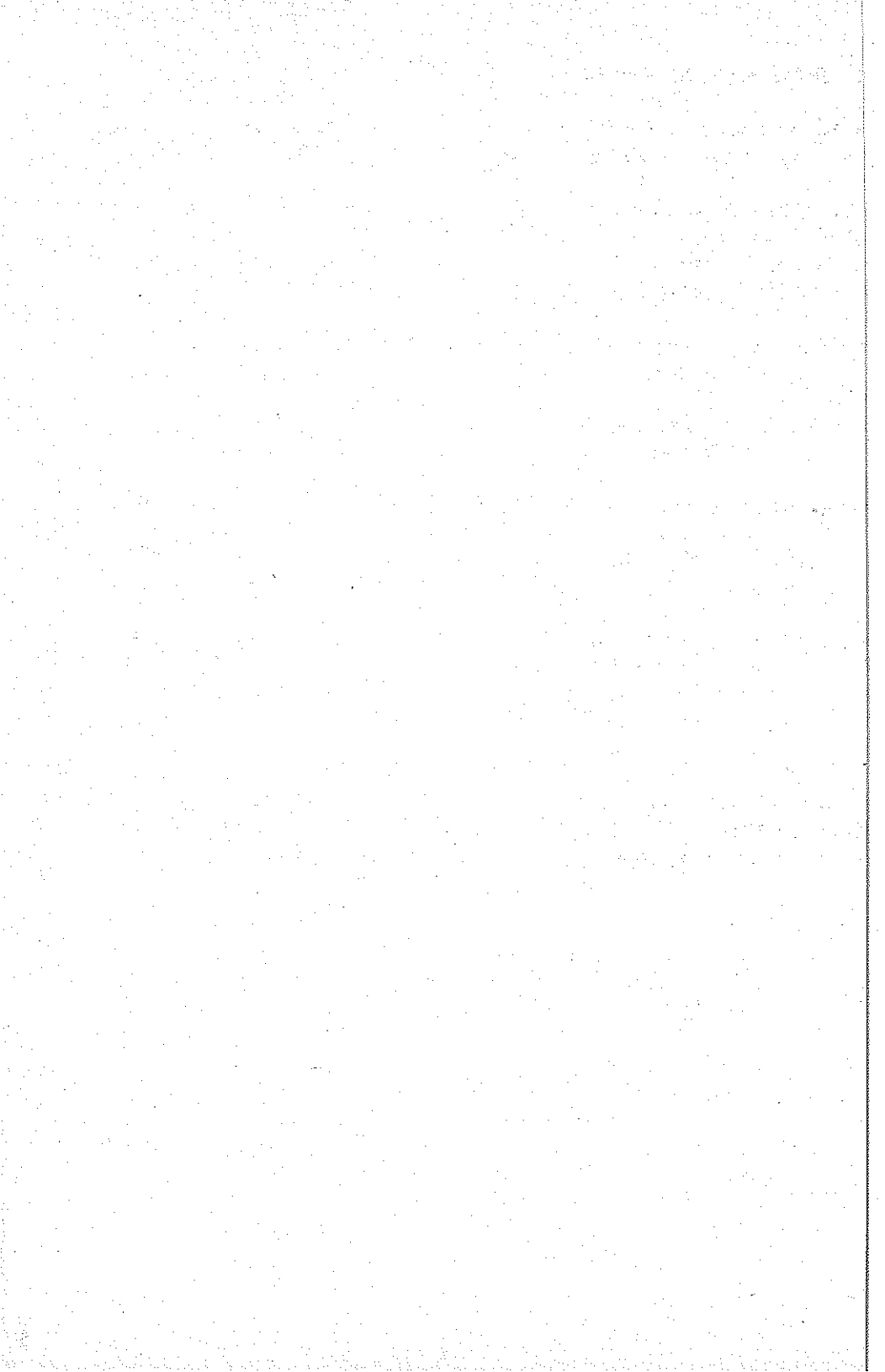


A great deal of preparatory work went into the workshop. The 17 parties to the negotiations were involved in the design of the workshop agenda, included in this report as Appendix A. Background materials prepared by the Institute were sent to each participant in advance of the workshop (for a list of such materials, see Appendix F). A framework for analysis, included here as Appendix B, was presented at the first session. The framework for analysis examined three dimensions of the field: (1) aboriginal self-governing institutions in individual policy sectors; (2) aboriginal self-government across a range of policy sectors; and (3) aboriginal intergovernmental relations.

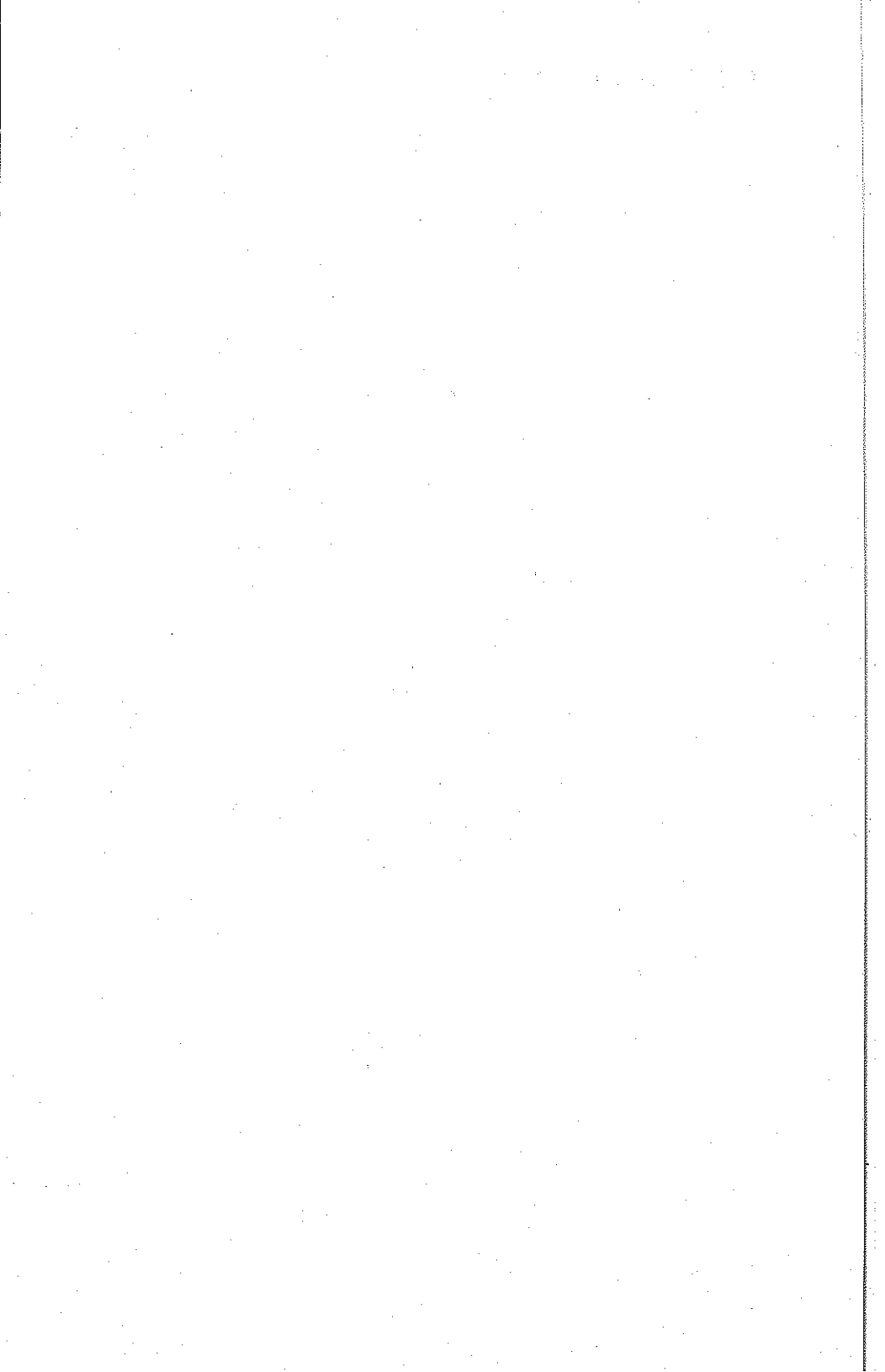
Participants in the workshop included officials from federal, provincial and territorial governments, representatives from national aboriginal peoples' organizations, and other experts in the field, including aboriginal persons who are actually working on the development of self-government arrangements. A complete list of participants, with mailing addresses, is included as Appendix C.

The report is organized in two parts - the first on the plenary sessions, and the second on the concurrent sessions. In each session, case studies or descriptions of individual cases were used to animate discussion. By examining various cases, it was hoped that participants could isolate important elements to be considered in the design of future self-government agreements. While cases were used to draw out significant points, the report is organized more by issues than by cases. For details on the cases, readers should consult Appendices D, E and F.

The organization of this report does not consistently follow the order of the workshop sessions. The report restructures the discussions, such that some comments made in one session are placed in another. This was done to make the report clearer and more "reader-friendly".



## Part I - Plenary Sessions



## 1. Aboriginal Self-Government Agreements

Two sessions were held on the strengths and weaknesses of self-government agreements. The first analyzed past and existing arrangements, while the second examined proposed new agreements, and looked to the future. Both are reported upon here.

### *What is Aboriginal Self-Government?*

Although this was not a question on the formal workshop agenda, on a few occasions it did arise forcefully. One such instance stands out. It was stated that aboriginal self-government is the fusion of the will of the people to be self-governing, and having the financial resources to meet that goal. It was added that, in many statements of the Minister of Indian Affairs and members of his department, self-government appeared to be a disembodied concept, divorced from reality. Contrary to these statements, self-government does not come into being when a nation begins to strive toward that goal. This is an insufficient condition.

### *What are the Barriers to Aboriginal Self-Government?*

This discussion was based on the experience of existing self-government arrangements in Canada. Although many of the problems that were identified reflected particular circumstances, some were generic in nature. For the most part, conversation was concentrated on the problems of making self-government legislation a reality after agreements had been signed ("Legislation is not the major problem, *executing* legislation is the problem!"). Two main themes emerged: obtaining adequate funding, and ensuring adequate processes and structures for implementation.

## FUNDING

- Participants noted that when self-government legislation associated with the James Bay and Northern Quebec Agreement came into effect, neither the federal or provincial governments, nor the aboriginal peoples were aware of the actual costs involved. In part, this was due to the fact that the federal government's administrative costs were largely hidden. One participant indicated that when the Kativik Regional Government was being formed, budget figures were frequently "pulled out of the air".

- Although the James Bay Cree have not found the scope of their jurisdiction to be a problem, their experience demonstrates the limitations of non-justiciable funding arrangements. Despite the fact that the principles establishing funding for the *Cree/Naskapi Act* (1984) are contained in a memorandum of understanding signed by the chiefs of the Cree and Naskapi and the federal minister, and even though the Crees received a letter in 1984 from the minister confirming that these arrangements had been approved by the federal Cabinet, the funding formula has yet to be approved by the Treasury Board. The resulting lack of financial resources, participants maintained, has prevented Cree councils from carrying out their mandate as specified in the Act, and threatens their continued survival.
- It is the experience of the Kativik Regional Government (KRG) that both jurisdiction and funding are problematic. The scope of jurisdiction is too narrow, particularly with respect to wildlife management and manpower training. Although the KRG is a public government and has the power to levy property taxes, there is no meaningful tax base in the region. Hence, the KRG must negotiate its funding each year, from a complex maze of dispersed sources within the Quebec Government. Such financial arrangements have major implications:
  - Participants indicated that KRG department executives spend one-half of their time negotiating for funds. Always having to lobby for funding drains human resources, and interferes with the day-to-day operation of the government.
  - Spending priorities are to a large extent determined by provincial priorities rather than local needs, because these are the areas in which provincial funding is available.
  - Local councils find it difficult to plan ahead, since funding frequently arrives considerably after the beginning of the fiscal year.

## IMPLEMENTATION

- The James Bay Cree found that implementation of the *Cree/Naskapi Act* was hindered by a lack of coordination among federal government departments, as well as within them. Participants reported that each department or branch struggled independently to meet the terms of the agreement, but each lacked the appropriate

authority or expertise. The minister responsible for delivering the agreement, Indian and Northern Affairs Canada (INAC), did not have the authority to implement changes in many of the areas specified in the Act, such as health. It was suggested that INAC was designed to administer *The Indian Act*, and not to implement aboriginal self-government.

- The creation of new structures and processes to implement the KRG was extremely difficult, according to persons involved. The Agreement required types of governing bodies, responsibilities, and ways of doing things which were unfamiliar to the provincial government, individuals involved in the KRG, and the local people. Participants stated that the Government of Quebec was not prepared to finance the creation of Kativik, nor did it have the expertise to offer assistance with respect to implementation.

### *What Changes Are Needed?*

Changes were suggested with respect to both funding and implementation. In large part, these came in response to questions as to the "ingredients" of successful self-government agreements, and what might be incorporated into future agreements to overcome the problems of the past and the present.

### FUNDING

Suggested remedies for funding problems came in two general areas: in terms of constitutional amendments, and in terms of provisions for individual self-government agreements.

- In the discussion concerning financial commitments in the constitution, participants made the following observations:
  - The principal weakness of aboriginal self-government is that funding is often at the vagaries of other governments. Resourcing must be entrenched in the constitution so that it is beyond the whims of contemporary governments.
  - Without a constitutionally-entrenched financial commitment which is binding on the Treasury Board(s), government(s) will continue to be able to avoid implementing self-government agreements by failing to provide adequate funding.

- In the constitution, amendments regarding the financing of aboriginal governments should focus on general fiscal relations and arrangements at the national level. It was added that although national principles regarding financing should be entrenched, funding formulae cannot. It was also suggested that the section 36 approach (equalization and regional disparities) might be used in a general statement about levels of funding.
- In the discussion concerning provisions for individual self-government agreements, the following points were made:
  - It was repeatedly stated that specific funding formulae should reflect local circumstances, and should be negotiated individually.
  - It is essential that financing either be part of the self-government legislation, or take the form of a legally binding, contractual agreement. If it is the latter, five-year block funding agreements are preferred.
  - Some participants suggested that more time and effort should be expended to identify the costs involved, while other argued that if financial formulae were to be worked out in detail before self-government legislation went forward, the structures of self-government would never be created.
  - It is important, as the KRG experience illustrates, to obtain commitments for long term block funding, so that aboriginal governments are able to plan and set priorities effectively.

## IMPLEMENTATION

Remedies concerning implementation problems were also proposed at the general level, as well as at the level of individual self-government agreements.

- At the general level, a great deal of the discussion was concentrated on the need for an implementation structure, or a coordinating body or secretariat to put self-government legislation into practice. Participants indicated that this body should have the authority to coordinate provisions on behalf of the relevant government departments, and that it should be designed to dissolve (i.e., via a sunset clause) when implementation is complete.



● It was also the view that the implementation process should be part of individual self-government agreements. From their experience, participants indicated that a portion of each self-government agreement should specify:

- considerable detail about how objectives are to be reached, since general commitments can be interpreted in different ways by parties to the agreement (for example, although section 16 of the James Bay and Northern Quebec Agreement clearly identifies a funding formula for the establishment of the Cree School Board's annual operating budget, representatives of the Board have never participated in what has been to date a federal-provincial process).
- time limits and penalty clauses after every provision, since in existing agreements there is little incentive for governments to follow through on agreements, and to commit funds
- a monitoring system for implementation
- a dispute resolution mechanism, such as an arbitration system or procedure, to determine what is fair regarding an adequate level of funding. This would enable aboriginal peoples to have their grievances settled out of court.

● It was also widely argued that self-government agreements should allow for the evolutionary process of implementing self-government, and that they should permit renegotiation at the request of the aboriginal governments. Arrangements should allow aboriginal people to be trained "on the job", so that dependence on non-aboriginal advisors is not built into the system. In addition, allowance should be made for developing institutions that are more responsive to the needs of aboriginal peoples, which will become more evident as self-government is implemented.

## 2. Financing Aboriginal Self-Government

As is already evident, financing aboriginal self-government was a theme that pervaded every session of the workshop, even though only one session was formally devoted to this topic. That one session concentrated, in large part, on the introductory remarks which were made by Marc Malone. While it is not possible to reproduce all his remarks here, some of the most salient points should be highlighted.

Mr. Malone cited a number of "facts of intergovernmental finance". These included the following:

- Federal and provincial governments form an exclusive club and operate on a closed-shop basis. Since ministers of finance form the core of this club, they should be included in self-government negotiations. If they are not, any agreement reached may be meaningless unless it is given constitutional protection or is otherwise justiciable.
- Provincial governments take precedence over individuals and groups with regard to equalization and transfer payments.
- The federal government is facing a large deficit, which must be reduced soon.
- Formulation of any new financial arrangements is very slow.
- Conditional, special purpose transfers are the norm. It is difficult to establish new channels, or redirect old ones.
- Resource revenue-sharing is not *the* solution, but it is part of the solution, (i.e., there are pitfalls, such as excessive reliance on resource revenues).
- We cannot ignore tax reform measures now afoot in the United States, which may further constrain federal and provincial governments.

Malone also spoke of a number of trade-offs facing aboriginal governments. One such trade-off was resourcing vs. autonomy. Transfers from other governments lead to dependency. The greater the transfer, the greater the dependency. Aboriginal governments also face a trade-off regarding public vs. private economic initiatives. Aboriginal governments may find it tempting to promote public economic activity in order to

increase employment. In the rush, opportunities for private enterprise (which may be more self-sustaining) may be missed.

It was the view of Mr. Malone, which was echoed throughout the workshop, that a general commitment in the constitution to adequate financing for aboriginal governments is essential, if only because the ministers of finance have not been present in the negotiations. There are several options in this regard, including a commitment in:

- the preamble (non-justiciable)
- section 35
- section 36
- an amended version of section 92(A) regarding resource taxation (an unlikely choice)

Mr. Malone concluded his remarks by suggesting that aboriginal peoples need a clear sense of their priorities when negotiating self-government agreements. He made three observations in this respect, concurred in by many participants.

- Aboriginal governments should develop powers of taxation, since without taxation, there is no responsible government. Aboriginal people need a personal and financial stake in their governments, which encourages both governmental accountability and citizen participation.
- Direct and unconditional funding is preferable for two reasons. It is politically important because it forces local politicians to make decisions. In addition, it is cost effective. Under the present system, 30 per cent of federal funding is used to pay for federal government administrative costs. To this must be added the costs of constantly negotiating funding arrangements, and the cost of aboriginal lobbying for additional funding.
- Aboriginal peoples need to express their solidarity in financial terms. Fiscal equalization would be a concrete way of doing so. Horizontal equalization could take the form of transfers among aboriginal governments, loans, or joint economic ventures. The development of these kinds of transfers might be especially significant for self-determining institutions off a land base. Such functions demonstrate the need for a cooperative agency among aboriginal peoples.

A number of interesting points were made in the ensuing discussion. Several participants recommended that the first priority for aboriginal governments should be that of preparing people for private business. Others noted that the overarching federal concern was expenditure control, not financing aboriginal self-government. It was pointed out, repeatedly (echoing Mr. Malone's point), that ministers of finance are not involved in the constitutional negotiations. This can mean that agreements on paper do not become reality because of delays in establishing financing. It was recommended that ways be found to involve ministers of finance early on in the negotiation process. One speaker observed that financial arrangements were too complex and differentiated to be entrenched in the constitution in detail.

### 3. Negotiating Aboriginal Self-Government

This session examined different negotiating processes, either in use or proposed, for reaching agreements on aboriginal self-government. Negotiation processes were compared across a number of dimensions:

- the instruments used to give effect to agreements, such as memoranda of understanding, declarations of political intent, exchanges of letters, or legislation
- the scope of the negotiations, whether narrow or wide, whether articulated or not (policy sectors)
- the timing of negotiations (e.g., are target dates for agreement identified?)
- the structure of negotiations (e.g., committees, sub-committees, working groups)
- the resourcing of the negotiation process (i.e., funding and support staff)

Discussion focussed on the design of negotiation processes, and how to make them more effective. It was noted that the design of the negotiation process is important, since it can either help or hinder progress on substantive issues.

A number of themes emerged from the session. It was repeatedly observed that the major problem was how to get governments to act, and how to get leverage for aboriginal peoples in the negotiation process. Many participants felt that a justiciable commitment to negotiate, preferably through constitutional entrenchment, is required to ensure that governments will give the necessary priority to negotiations. In the meantime, a political commitment is required on the part of federal and provincial governments to go beyond jurisdictional concerns. The *Declaration of Political Intent*, between the federal and Ontario governments and the Union of Ontario Indians, was seen as an example of such a commitment.

Several participants emphasized the principle of "creative ambiguity", arguing that once a foundation for negotiation had been built, the details would fall into place. They pointed out that with a focus on legal details, the main question tended to become "how do we address this diversity?" rather than "how can we lay the foundations for aboriginal self-government?"

Participants reported that Métis and Non-Status Indian people face particular problems in establishing tripartite negotiations for self-government, since the federal government does not appear to consider them to fall under section 91(24) of the *Constitution Act, 1867*, and provincial governments vary in their willingness to negotiate. Structures and mechanisms are required to bring governments to the negotiating table.

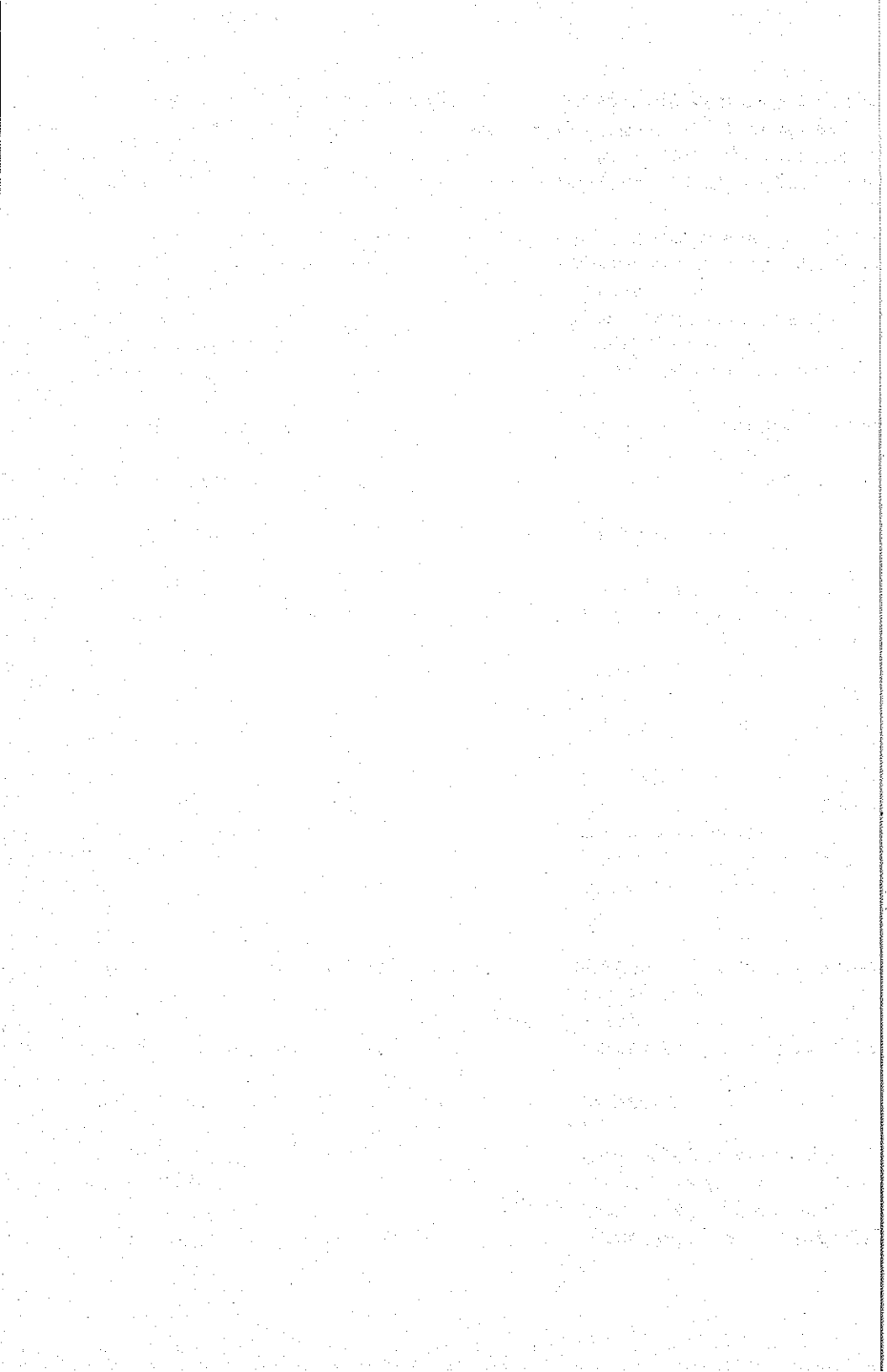
Experience to date suggests that self-government negotiations should be trilateral in nature, involving aboriginal peoples, the federal government, and the appropriate provincial government. A trilateral approach is needed because it is important to negotiate with the party/parties that have the relevant powers. Participants felt that negotiating with only the federal or provincial government left negotiations open to repeated jurisdictional blocks and delays. It was noted, however, that while negotiations should be trilateral, implementation should be bilateral, involving the aboriginal government and a federal-provincial implementation secretariat. Trilateral implementation leads to "buck-passing" between federal and provincial governments, in the view of some observers.

Another general rule to follow in self-government negotiations, according to several speakers, is that the government agency responsible for delivering the self-government agreement should have the power to do so. For comprehensive agreements, one department (such as INAC) is usually not able to do so.

The issue of funding surfaced in the discussion of self-government negotiations, as it had in all the other sessions. Participants noted that it was difficult to estimate the research costs involved in establishing a negotiating position, and suggested that there should be ways for aboriginal peoples to obtain additional resources if the original estimate fell short. It was also pointed out that, for the most part, there are no mechanisms in place to provide funding for local Métis and Non-Status Indian communities for negotiations, which could place them at a disadvantage early in the process.

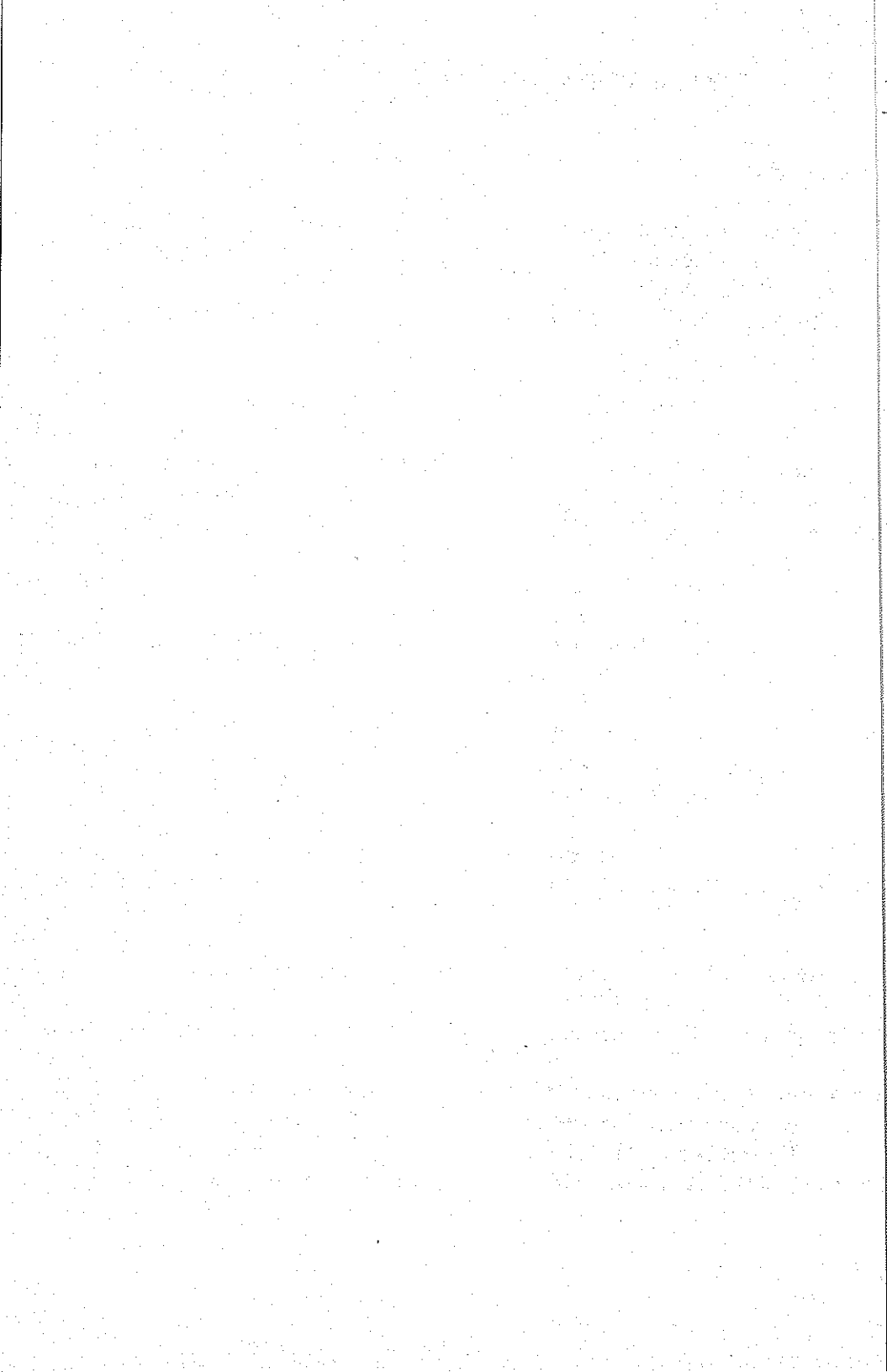
With respect to the self-government negotiations currently underway in Ontario, participants indicated that because of the many regional groups and priorities, it is difficult to negotiate agreements at the provincial level. Thus, while the *Declaration of Political Intent* provides principles on which to base negotiations, specific self-government agreements (like those contemplated in the Nishnawbe-Aski *Memorandum of Understanding*) have to be negotiated regionally. The discussion of Burleigh Falls similarly emphasized the importance of local negotiations. Participants did not indicate the extent to which this situation exists in other provinces.

Several positive aspects of the *Memorandum of Understanding* between the Nishnawbe-Aski Nation and the Governments of Canada and Ontario were highlighted. These included the setting of target dates for various agreements, and the identification of sectors in which agreements are to be negotiated. It was noted by one of the negotiators that the deadlines set out in the agreement will not be met, as negotiations are taking longer than originally (and optimistically) estimated. The point was made that aboriginal people, and particularly their researchers, should not underestimate the time it takes to locate and prepare supporting evidence.





## **Part II - Concurrent Sessions**



#### 4. Education

##### *What is Aboriginal Self-Government in the Field of Education?*

Among the various objectives identified in the education sector, two were viewed as major: the protection of aboriginal culture and heritage; and the provision of trained people, both to staff existing self-government institutions and to create an aboriginal public service. It was noted that there are too few aboriginal people, adequately trained, to staff aboriginal institutions already in place.

For some, self-government in education meant that aboriginal peoples would pass acts in their own legislative assemblies in this field. For others, it meant having the power to set the curriculum, hire teachers, develop new programs, and set annual school budgets. The absence of power over budget-setting, it was argued, means aboriginal *management* of education, rather than self-government.

It was argued, as well, that aboriginal control of aboriginal education is an existing right under section 35 of the *Constitution Act, 1982* (as amended).

##### *What are the Barriers to Aboriginal Self-Government in Education?*

Obtaining adequate and stable funding was identified as *the* major problem for aboriginal educational institutions. This is true of institutions under both federal and provincial jurisdiction. A number of specific instances were mentioned.

- Institutions under provincial jurisdiction may find that provincial government policies do not reflect the special situation of aboriginal education. Cost may be higher because of scattered populations, long distances and climate. Aboriginal school boards face high development costs for new curricula, to incorporate aboriginal language and culture. The bilateral and trilateral nature of the issues require different policies and levels of funding.
- Federal-provincial conflict regarding responsibility for post-secondary, off-reserve, and Métis and Non-Status Indian education creates uncertainty with respect to funding. Lack of long-term funding - in many instances, reliance on year-to-year discretionary funding - precludes effective planning and development.

- In the enabling legislation for the James Bay and Northern Quebec Agreement, no financing is required for section 16, the section dealing with Cree education. There is no agreement by either the federal or Quebec governments on the clauses determining the responsibilities of the Cree School Board, and their implications with respect to funding. As a result of insufficient funding, the Board is unable to carry out its mandate.

Another barrier to aboriginal self-government in education is the limited research available in the field. Information is required on methods and implications of integrating several languages in the school program, on teaching aboriginal children, on adult education, and on ways to develop curricula which integrate aboriginal culture. Provincial departments of education were seen as particularly lacking, due to their historical uninvolvedness in aboriginal education.

A crisis of purpose exists in aboriginal education, it was suggested, over whether to pursue parity of standards with provincial educational systems (which implies accepting, in the main, provincial curricula), or whether to emphasize aboriginal culture, language and belief systems. Participants indicated that choices about the objectives of the educational systems should be made at the local community level. It was strongly argued that there is a need for a balance between the two broad purposes described above, and the freedom at the jurisdictional level to shape that balance.

### *What Changes are Needed?*

With respect to the financing issue, it was suggested that parity of funding is required with the non-aboriginal educational system. Funding should also be long-term and unconditional, rather than year-to-year. Five-year core funding agreements were proposed for aboriginal educational institutions.

Participants pointed out that aboriginal people needed to participate in the policy-making process. Some thought that control and administration of education should be placed in a body or agency whose sole responsibility was aboriginal education, as opposed to a band council, for example.

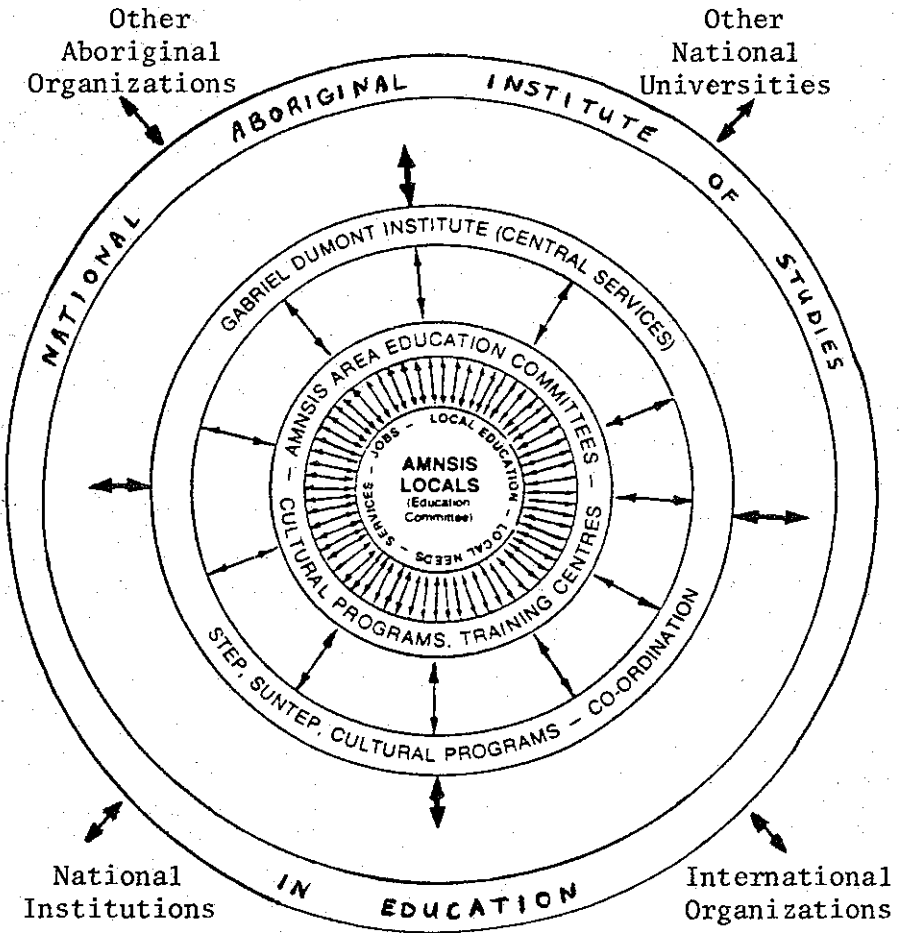
Experience suggests that aboriginal culture cannot be taught as a separate subject in the school classroom. It must be an integral part of the curriculum, which has to reflect aboriginal values and beliefs. Participants indicated that the incorporation of aboriginal culture in education requires a high degree of local autonomy and control. Hence, coordination of research and exchange of information was seen as

essential, so that communities do not struggle independently, duplicating research, human and financial resources. One cannot expect small aboriginal jurisdictions, it was argued, to be able to develop high quality educational programs. The cost of doing so is simply too great.

This underlined the need for a body or institute, national in scope and involving all aboriginal peoples (pan-aboriginal), to provide these functions. Its functions could involve various aspects of research and development, including methods of teaching aboriginal children, developing aboriginal educational programs (primary, secondary and post-secondary), adapting such programs to local needs, and developing adult and continuing education programs. Such an institute could produce different models of aboriginal education, as part of its broader mandate, which could allow local communities to sample, modify and adapt such approaches to meet local needs. Coordination would also allow aboriginal communities to compare approaches to aboriginal education.

It was suggested that the institute be funded by the federal government, in keeping with its historical responsibility for aboriginal education, but that the institute be independent from any government agency, federal or provincial. One participant adapted the model of linkages and responsibilities for education used by the Association of Métis and Non-Status Indians of Saskatchewan for the Gabriel Dumont Institute, and incorporated a National Institute for Studies in Aboriginal Education. The model is on the following page. Another participant observed that education is a higher priority for Métis and other landless aboriginal people. Since they have no mineral, water, petroleum or forest resources, they must concentrate on human resource development.

**MODEL OF LINKAGES BETWEEN LOCAL AND NATIONAL EDUCATIONAL INSTITUTIONS IN ABORIGINAL EDUCATION\***



\*This model is based on the representation of the AMNSIS/Dumont education and training planning network in the Gabriel Dumont Institute 1985 Annual Report.

## 5. Resources and Environmental Management

### *What is Aboriginal Self-Government Over Lands and Resources?*

During discussion in this session, the question arose as to which arrangements could be called "self-government", and which could not. Some participants were of the view that "self-government" is not an appropriate description of any of the existing arrangements of aboriginal "control" over lands and resources in Canada. Using criteria such as exclusiveness of jurisdiction and/or the right to levy taxes, existing arrangements could at best be termed "self-management" or municipal government (federal and provincial laws apply under these arrangements).

Others argued that the most important criterion was whether or not an agreement allowed aboriginal peoples to engage in the economy of their choice (traditional vs. wage). The case of the Sechelt Indians was used as an example. There, the economy is focussed on the tourist trade, and the Sechelt legislation (C-93) allows the band to pursue economic initiatives in this area. Due to the virtual absence of mineral deposits, oil or gas on Sechelt lands, it was argued that the application of provincial and federal jurisdiction over resources was not the criterion which should be used to evaluate whether or not the Sechelt legislation should be termed "self-government".

Along similar lines, models for self-government over lands and resources were discussed. Some participants emphasized that although the Minister responsible for INAC seemed to be presenting Sechelt as a model, that legislation was negotiated in a particular context (especially the B.C. government's unwillingness to negotiate powers over lands and resources), and with particular intentions on the part of the band (development of the tourist industry). It was argued that Sechelt should not become a model or a precedent for other arrangements. Others indicated that it might have urban parallels, or that Sechelt-type arrangements might be possible in urban areas.

The discussion also placed aboriginal control over lands and resources in the broader context of aboriginal peoples' ability to engage in the economy of their choice. For those on a land base, the economy of choice could be a traditional country economy, or one based on resource extraction or other economic development. The nature of title (to land and resources) and jurisdiction required, and the kind of administration and management system chosen could vary with different long-term objectives. For urban aboriginal peoples, the economy of choice could involve a different kind of economic development. In some

urban areas, for example, community governments could have an urban economy based on land and resources far away.

Self-government over lands and resources is not only a matter of title and jurisdiction, however. The Nunavut proposal, for example, recognized that in order to meet the goal of the Inuit for wise and sustainable development of their living environment, it was necessary to create a comprehensive management and control system over resources and the environment which would place the community, culture and social needs of the Inuit at the centre. Attaining this goal will involve decisions about the nature of self-governing institutions, and choices about the types of environmental management systems (e.g., "Western" scientific management systems over wildlife and the environment, or the traditional management systems of the Inuit).

### *What are the Barriers to Aboriginal Self-Government Over Lands and Resources?*

Reluctance on the part of federal and provincial governments was seen as a major barrier to effective aboriginal control over lands and resources. Some suggested that the provinces were generally not prepared to transfer jurisdiction over land and resources to aboriginal governments. Others suggested that there were differences by province, so that negotiations result in different scope and powers. One participant thought that the federal government was using the "bottom-up" approach to "divide and rule". Local communities, negotiating on an individual basis, may not have the expertise, experience or human and financial resources to negotiate the most favourable agreements.

The paucity of human resources was also seen as a barrier to self-government over lands and resources. Few aboriginal peoples have the formal training and education to qualify as "experts" in these fields. As a result, aboriginal leaders often become surrounded by non-aboriginal advisors. Leaders may become isolated from the people whose lands and resources they administer, so that the peoples' needs and objectives are not adequately reflected.

### *What Changes are Needed?*

Some speakers felt that constitutional entrenchment is vital to the recognition and transfer of powers to aboriginal governments. Otherwise, there will be no impetus to change the status quo. Others seemed to feel that entrenchment is a safety net, rather than a catalyst. One participant thought that without entrenchment, the status quo favours some aboriginal peoples - at least those with enough leverage to force



governments to negotiate (those with existing self-government agreements or land claims, those with resource-rich lands, those with large homogeneous populations and well developed organizations). Other peoples and communities are left to wait - Métis and Non-Status Indians may have to wait indefinitely.

New management styles and structures, which reflect the objectives of aboriginal peoples and which can be used effectively by them, are required. Institutions should be designed to take into account the limited human resources of many aboriginal communities.

Training was identified as a primary need in the administration of lands and resources, and for the creation of self-governing structures and systems. Training is needed for young people in order to create an aboriginal public administration, and re-training or "recapturing" of older people is required so that their experience can be used in an advisory capacity.

In terms of resourcing, it was repeatedly suggested that block funding is required to enable aboriginal governments to make decisions about spending priorities in the area of resource use and environmental management. It was thought that with block funding, aboriginal governments would be in a better position to make decisions where conflict exists between renewable resource development (and increased revenues) and environmental protection. It was also pointed out that aboriginal governments should enter into resource revenue-sharing agreements with federal and provincial governments, and that they require the power to levy income taxes.

In reviewing international experience in this field, Greenland was seen as a positive model. Both Greenland and Denmark have a veto power over any major decision involving natural resources.

The "economy of choice" principle requires that consideration be given to prerequisites for economic activity in different circumstances. For "sea people", issues of offshore rights become important. For people in the far north, the offshore ice - used as an extension of the land for harvesting sea mammals and fish - should be considered in negotiations over land and resources.

## 6. Economic Development

### *What is the Relationship Between Aboriginal Self-Government and Economic Development?*

The fundamental question in this session was how should political development and economic development be tied together. Two perspectives emerged regarding the relationship between economic development and aboriginal self-government.

- In the first perspective, self-government occurs through individual entrepreneurship via choices made by individuals, empowered by their wealth. It was argued that self-government was something people conferred on themselves – no one could give it to them. Self-reliance and financial independence imply self-government; the generation of wealth is the primary route to self-determination. Closely related to this perspective were participants' comments that economic integration does not imply cultural assimilation, and that aboriginal people do not lose their cultural values by moving into the market place.
- The second perspective recognizes that self-government without economic development locks aboriginal people into poverty. However, rather than viewing aboriginal self-government as emerging from the choices of financially independent individuals, this perspective emphasizes self-governing institutions providing direction for community economic development, which in turn reflects the goals of the aboriginal community. The development of self-governing institutions is seen as part of the process of economic development.

Several speakers suggested that separating the two – political and economic development – raises questions (and problems) about how economic institutions find their direction and leadership. Often, governments attempt to impose an artificial and unworkable separation between an institution's political and economic functions.

### *What are the Barriers to Aboriginal Self-Government in Economic Development?*

The separation of economic from political development was an issue for both the Native Economic Development Program (NEDP) and the Makivik Corporation.

- One participant indicated that this separation was emphasized in NEDP policy because of the fear that if the two were linked, monies would not stay in the economic area. The requirement for an arm's length relationship makes initiatives in the area of community economic development difficult, since additional leadership and direction are required from the local population.
- The situation in Northern Quebec demonstrates the complexity of creating appropriate linkages between economic and political institutions. Following the James Bay Agreement, separate institutions were created for the Inuit – the Makivik economic development corporation and the Kativik Regional Government. Part of the rationale for separating these institutions was to ensure that compensation monies were not used for social services or infrastructure. It was pointed out that while Kativik seemed to be a good instrument for delivering services, people still looked to Makivik for many self-government functions. Makivik's mandate is broader than simply making a profit, and its president and executive are elected. Participants also noted the difficulties in having "politicians" elected to the boards of economic development corporations, whose social and economic objectives often conflict. Decision-making is difficult, given differing expectations and goals.
- This led one participant to suggest that self-governing institutions should be responsible for economic development, with all powers vested in one body.

The paucity of models, the lack of information about innovative alternatives, and the absence of research on the implications of using different strategies were cited as a major problem in creating effective approaches to self-government in the economic development field. Research is especially needed on the appropriate role and institutions suitable for community economic development. Several illustrations were put forward.

- The situation in Northern Quebec in the 1970s illustrated the problem of lack of information. Participants indicated that the surprise Malouf decision created a vacuum – the only familiar model for dealing with land claims settlements and economic development was the Alaska economic development corporation.
- The Cree and Inuit hunters and trappers income security programs demonstrated how different approaches have varied outcomes and implications. In the Cree program, financial support accrues to

individuals and family units. Economic spinoffs have taken the form of opportunities for native entrepreneurs (e.g., in transportation services, for supply outlets). The Inuit program provides block grants to communities to encourage harvesting. Inuit communities have invested in capital equipment (e.g., large fishing vessels) to facilitate cooperative economic activities. Both programs have drastically reduced the costs of social services.

Another problem is that materials and labour for projects in aboriginal communities, as well as ideas for the projects themselves, are frequently imported with little local participation or input. The result is that training and resources accrue to outside firms and developments, which reinforces the lack of business skills, role models, and business networks in aboriginal communities.

It was pointed out in this session, as it was in all others, that a continuing barrier is the lack of coordination among federal government programs, together with "too much bureaucracy" and high administration costs.

#### *What Changes Are Required?*

Creative approaches to economic development for native people are needed urgently. Research is especially required in the area of community economic development, focussing on ways of linking economic and political institutions. It was noted that although situations may vary, many design questions are similar, which suggests the applicability of general models and principles for economic development.

Along similar lines, participants noted that many individual communities have, or will develop expertise in facets of economic development. There is a need for communication among aboriginal communities, enabling them to share experiences and blend approaches.

The development of a financial infrastructure to support native enterprises is essential, and aboriginal financial institutions need to be put in place. Especially crucial to participants was the creation of adequate investment vehicles.

Speakers thought that ideas and approaches to economic development arising from aboriginal communities themselves would more likely be compatible with the size and capabilities of existing human resources, and more reflective of local needs. Projects developed and administered locally and using local labour would also serve to develop skills and expertise among aboriginal peoples.

Since managerial skills are lacking, training for management was identified as an important prerequisite for aboriginal control over

economic development. In this regard, the Canadian Council for Native Business (CCNB) initiative was seen as a creative approach.

It was the view of many participants that institutions of economic development should be planned and implemented comprehensively, and linked to institutions of aboriginal government. They saw the development of self-government institutions as part of the process toward economic development.



## Conclusion

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The workshop had two main objectives. The first was to examine the practical problems in designing mechanisms and making arrangements for implementing aboriginal self-government agreements. To this end, a number of important general *themes* emerged which are summarized below.

The second objective was to isolate important elements to be considered in the design of future self-government agreements – the “ingredients” of future agreements, if you will. A number of guidelines emerged, also summarized below, for those persons involved in both the *negotiation* and *implementation* of aboriginal self-government agreements.

### *Themes*

1. Perhaps the most common practical problem is inadequate and unstable funding, which precludes effective planning and development. Funding should be long-term, unconditional and direct.
2. There is a critical shortage of trained aboriginal people. In order to develop an aboriginal public service and private sector, manpower training and education are required.
3. Aboriginal institutions are lacking in such fields as finance, environmental management, education, and economic development. Innovative approaches are required so that aboriginal institutions develop structures and management styles compatible with objectives of self-government.
4. Many aboriginal communities are operating in isolation. There is a need for coordination among aboriginal peoples in various policy sectors, to communicate and share research and experience in negotiation and implementation. Cooperative research and development bodies, creating a central source of skills and expertise (such as the proposed National Institute for Studies in Aboriginal Education), are needed to support policy-making.
5. Political and economic development cannot be separated. Appropriate linkages need to be developed between economic development policy and aboriginal self-government.

6. Without the right to aboriginal self-government entrenched in the constitution, negotiations are likely to result in "self-management" (administration) rather than "self-government" (legislation).

### *Guidelines for Negotiations*

1. A justiciable commitment to negotiate self-government agreements, preferably in the constitution, is required to bring some governments to the negotiation table.
2. Negotiations should be trilateral (aboriginal-federal-provincial), so that all the parties – and powers – are represented at the table. This lessens "buck-passing" and jurisdictional impasses.
3. Coordinating bodies are required between federal and provincial governments to facilitate negotiations which cross jurisdictional and departmental lines.
4. A commitment to adequate funding for self-government should be entrenched in the constitution, although the financial arrangements, which are complex, detailed, and vary by locale or community, should not be entrenched (these should be arrived at through negotiation).
5. Once negotiated, financial arrangements should be justiciable, and embodied either in legislation, or in legally binding contractual agreements.
6. Five-year, unconditional block funding agreements are the preferred instrument.
7. Ministers of Finance should be involved in the negotiation process.
8. Aboriginal peoples should pursue resource revenue-sharing and the power to levy taxes.

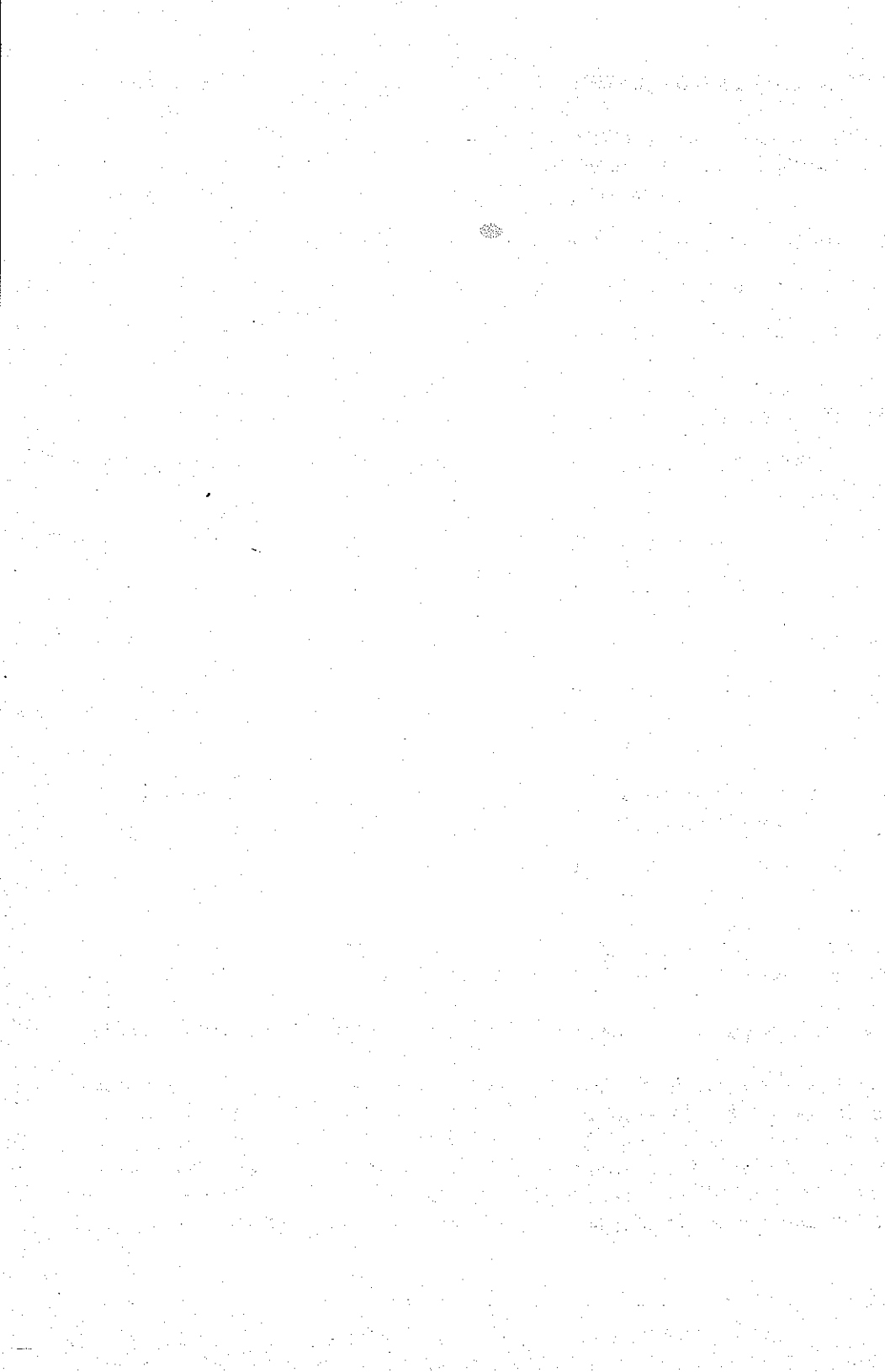
### *Guidelines for Implementation*

Problems here revolve around executing legislation, and getting governments to act on agreements. To this end, the following advice was rendered.

1. The implementation process should be part of the agreement. This should include time limits and penalty clauses, monitoring systems, and dispute resolution and arbitration procedures.



2. While negotiations should be trilateral, implementation should be bilateral.
3. This demonstrates the need for an implementation secretariat, which can coordinate the provisions of the agreement on behalf of the relevant federal and provincial government departments.



## Notes

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1. The Institute received financial support for Phase Two of the project from the Donner Canadian Foundation, the Canadian Studies program (Secretary of State of the Government of Canada), the Government of Ontario, the Government of Quebec, the Government of Alberta, the Government of Manitoba, the Government of New Brunswick, the Government of Yukon, the Assembly of First Nations, the Inuit Committee on National Issues, the Métis National Council of Canada and the Native Council of Canada.
2. Publications which emerged from Phase One of the project were:

### **Background Papers**

*Aboriginal Self-Government: Rights of Citizenship and Access to Governmental Services*, by Noel Lyon.

*Forms of Aboriginal Self-Government*, by David A. Boisvert.

*Aboriginal Self-Government in Australia and Canada*, by Bradford Morse.

*Aboriginal Self-Government in the United States*, by Douglas E. Sanders.

*First Principles: Constitutional Reform With Respect to the Aboriginal Peoples of Canada*, by Bryan P. Schwartz.

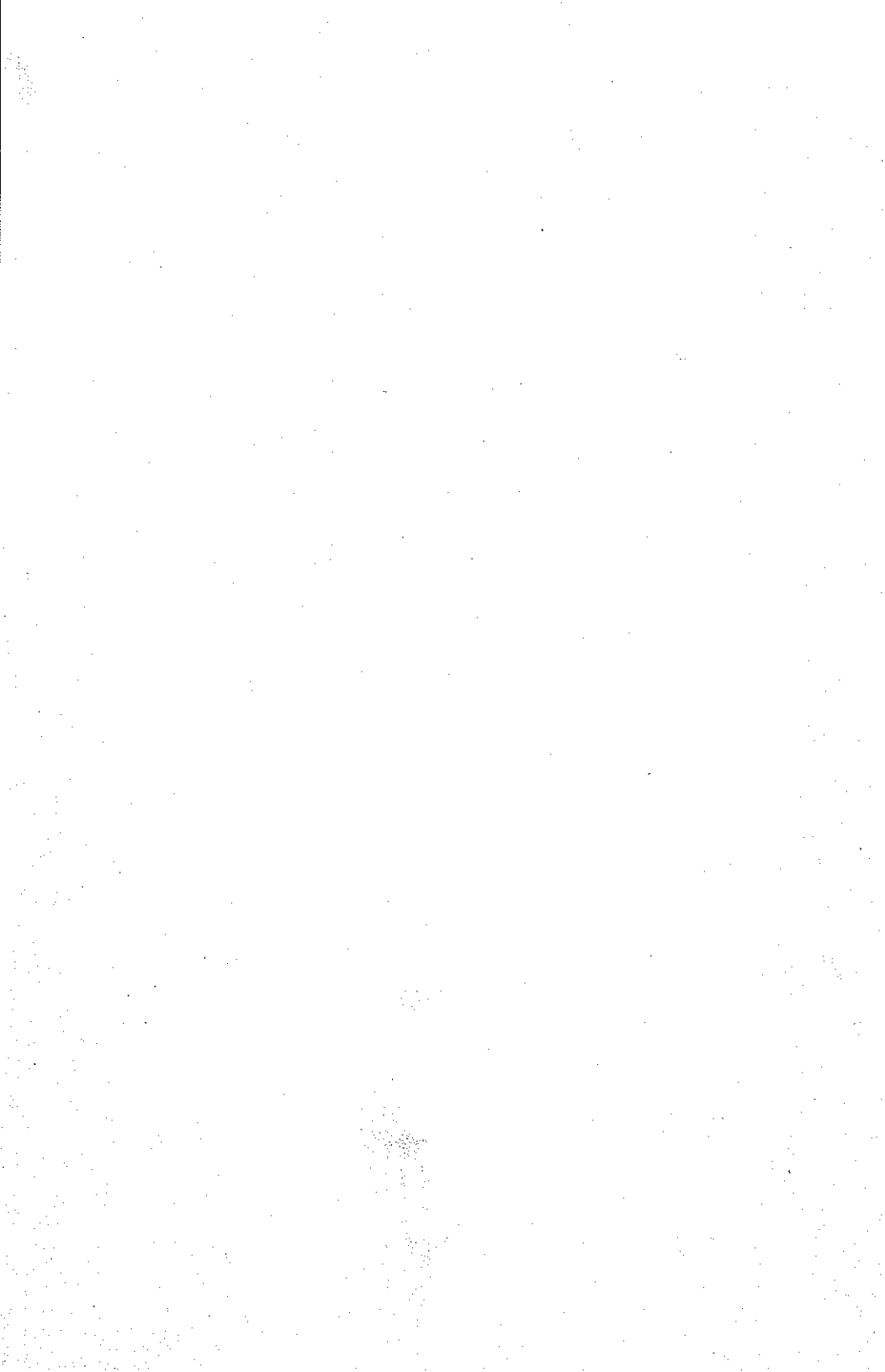
### **Discussion Paper**

*Aboriginal Self-Government: What Does It Mean?*, by David C. Hawkes.



# **APPENDIX A**

## **Workshop Agenda**



## SUMMARY AGENDA

### Workshop on "Implementing Aboriginal Self-Government: Problems and Prospects"

Time	Day			
	Tuesday May 27	Wednesday May 28	Thursday May 29	Friday May 30
7:30-9:00		breakfast	breakfast	breakfast
9:00-12:00	Travel	<u>Session 1</u>  Plenary ●Introduction ●Framework ●Existing Self-Government Agreements	<u>Session 3</u>  Plenary ●Self-Government Agreement Proposals ●Presentations	<u>Session 5</u>  Plenary ●Financing Aboriginal Self-Government
12:00-1:30		lunch	lunch	lunch
1:30-4:30	check-in available at Donald Gordon Centre	<u>Session 2</u>  Concurrent Workshops 1. Education 2. Resources/Environment 3. Economic Development	<u>Session 4</u>  Concurrent Workshops 1. Education 2. Resources/Environment 3. Economic Development	<u>Session 6</u>  Plenary ●Negotiation Processes ●Wrap-up and Conclusion
4:30-6:30	dinner available	Cash Bar	Cash Bar	Closing Reception
7:00-9:00	Registration and opening Reception	Free	Free	Travel





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## **APPENDIX B**

### **Framework For Analysis**

