PART TWO *

A Note About Sources

Among the sources referred to in this report, readers will find mention of testimony given at the Commission's public hearings; briefs and submissions to the Commission; submissions from groups and organizations funded through the Intervener Participation Program; research studies conducted under the auspices of the Commission's research program; reports on the national round tables on Aboriginal issues organized by the Commission; and commentaries, special reports and research studies published by the Commission during its mandate. After the Commission completes its work, this information will be available in various forms from a number of sources.

This report, the published commentaries and special reports, published research studies, round table reports, and other publications released during the Commission's mandate will be available in Canada through local booksellers or by mail from

Canada Communication Group — Publishing
Ottawa, Ontario
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A CD-ROM will be published following this report. It will contain the report, transcripts of the Commission's hearings and round tables, overviews of the four rounds of hearings, research studies, the round table reports, and the Commission's special reports and commentaries, together with a resource guide for educators. The CD-ROM will be available in libraries across the country through the government's depository services program and for purchase from

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Briefs and submissions to the Commission, as well as research studies not published in book or CD-ROM form, will be housed in the National Archives of Canada after the Commission completes its work.

A Note About Terminology

The Commission uses the term *Aboriginal people* to refer to the indigenous inhabitants of Canada when we want to refer in a general manner to Inuit and to First Nations and Métis people, without regard to their separate origins and identities.

The term *Aboriginal peoples* refers to organic political and cultural entities that stem historically from the original peoples of North America, not to collections of individuals united by so-called 'racial' characteristics. The term includes the Indian, Inuit and Métis peoples of Canada (see section 35(2) of the *Constitution Act, 1982*).

Aboriginal people (in the singular) means the individuals belonging to the political and cultural entities known as Aboriginal peoples.

The term *Aboriginal nations* overlaps with the term Aboriginal peoples but also has a more specific usage. The Commission's use of the term nation is discussed in some detail in Volume 2, Chapter 3, where it is defined as a sizeable body of Aboriginal people with a shared sense of national identity that constitutes the predominant population in a certain territory or collection of territories.

The Commission distinguishes between local communities and nations. We use terms such as *a First Nation community* and *a Métis community* to refer to a relatively small group of Aboriginal people residing in a single locality and forming part of a larger Aboriginal nation or people. Despite the name, a First Nation community would not normally constitute an Aboriginal nation in the sense just defined. Rather, most (but not all) Aboriginal nations are composed of a number of communities.

Our use of the term *Métis* is consistent with our conception of Aboriginal peoples as described above. We refer to Métis as distinct Aboriginal peoples whose early ancestors were of mixed heritage (First Nations, or Inuit in the case of the Labrador Métis, and European) and who associate themselves with a culture that is distinctly Métis. The more specific term *Métis Nation* is used to refer to Métis people who identify themselves as a nation with historical roots in the Canadian west. Our use of the terms Métis and Métis Nation is discussed in some detail in Volume 4, Chapter 5.

Following accepted practice and as a general rule, the term *Inuit* replaces the term *Eskimo*. As well, the term *First Nation* replaces the term *Indian*. However, where the subject under discussion is a specific historical or contemporary nation, we use the name of that nation (e.g., Mi'kmaq, Dene, Mohawk). Often more than one spelling is considered acceptable for these nations. We try to use the name preferred by particular nations or communities, many of which now use their traditional names. Where necessary, we add the more familiar or generic name in parentheses — for example, Siksika (Blackfoot).

Terms such as Eskimo and Indian continue to be used in at least three contexts:

1. where such terms are used in quotations from other sources;

2. where Indian or Eskimo is the term used in legislation or policy and hence in discussions concerning such legislation or policy (e.g., the *Indian Act*; the Eskimo Loan Fund); and

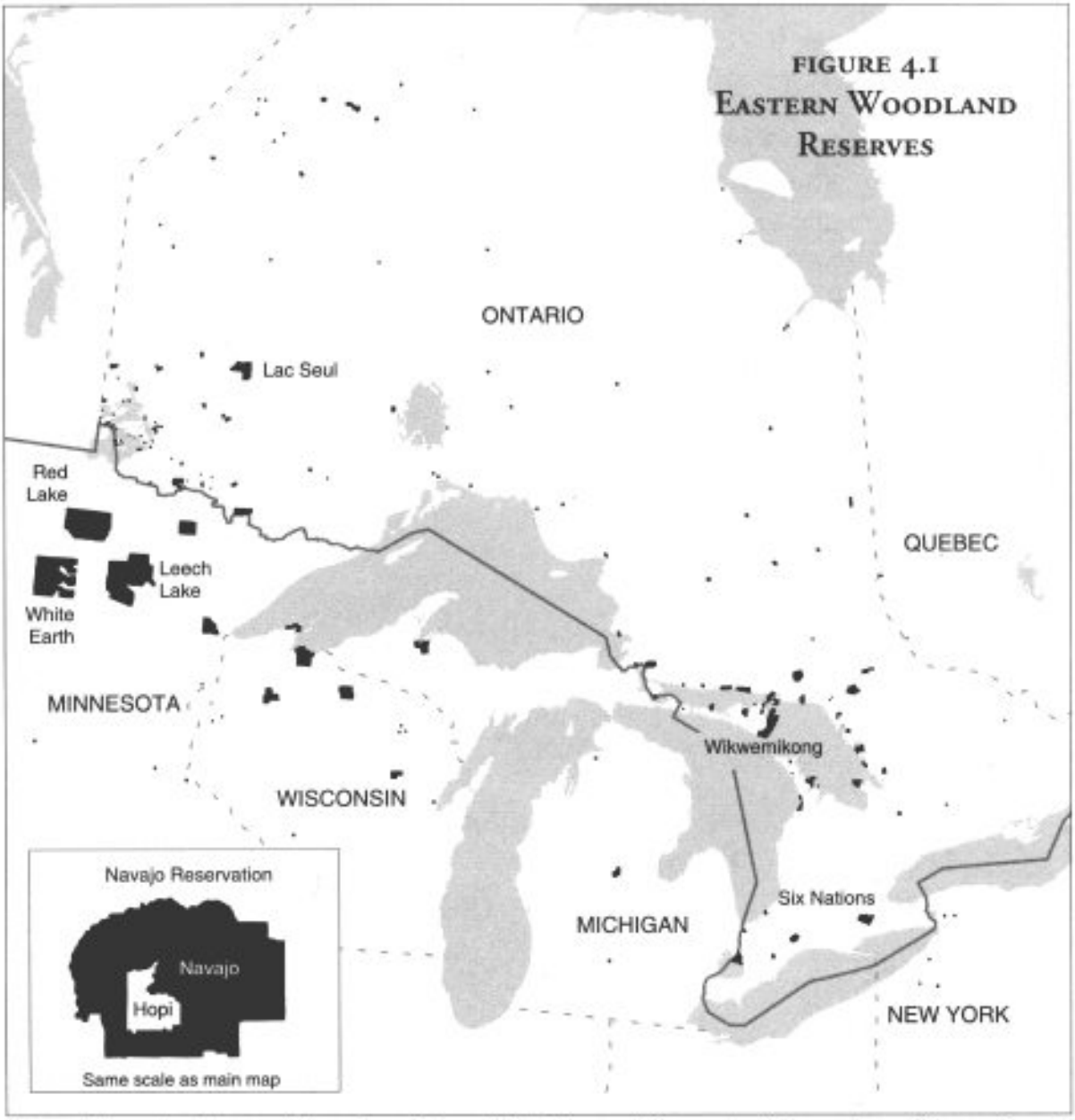
3. where the term continues to be used to describe different categories of persons in statistical tables and related discussions, usually involving data from Statistics Canada or the Department of Indian Affairs and Northern Development (e.g., status Indians, registered Indians).

4

Lands and Resources

We find ourselves without any real home in this our own country ... owing to the inadequacy of most of our reservations, some having hardly any good land, others no irrigation water etc., our limitations re pasture lands for stock owing to fencing of so-called government lands by whites ... the depletion of salmon by overfishing of the whites ... .In many places we are debarred from camping, travelling, gathering roots and obtaining wood and water as heretofore. Our people are fined and imprisoned for breaking the game and fish laws and using the same game and fish which we were told would always be ours for food. Gradually we are becoming regarded as trespassers over a large portion of this our country ... .We have no grudge against the white race as a whole nor

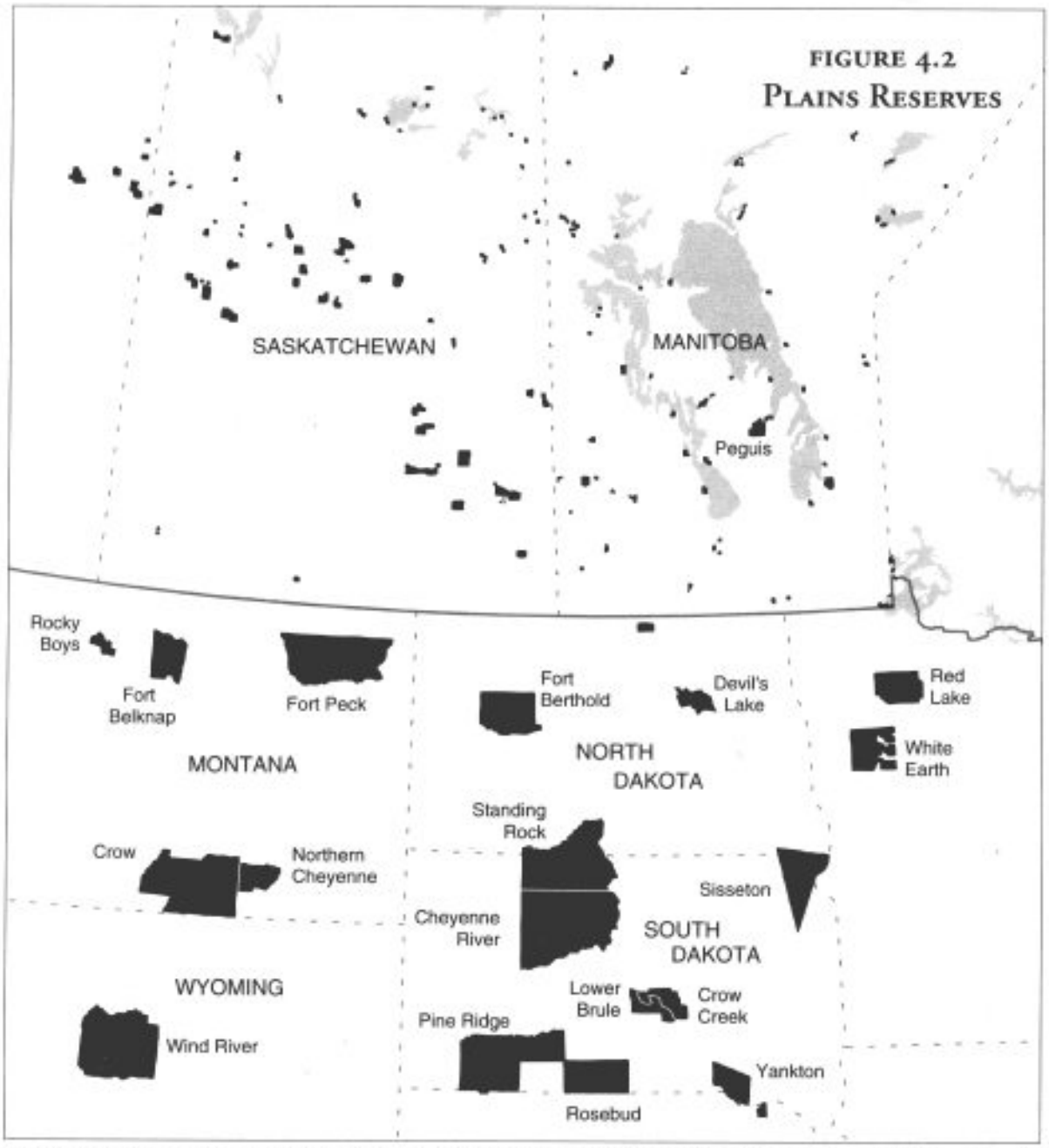
against the settlers, but we want to have an equal chance with them of making a living ... .It is their government which is to blame by heaping up injustice on us. But it is also their duty to see their government does right by us, and gives us a square deal. We condemn the whole policy of the B.C. government towards the Indian tribes of this country as utterly unjust, shameful and blundering in every way.[1]



Source: Adapted, with permission, from Robert White-Harvey, "Reservation Geography and Restoration of Native Self-Government", *Dalhousie Law Journal* 17/2 (Fall 1994), p. 588.

We hold this piece of land as our own home. When our great grandfathers

came to that piece of land they said they would never move from it and that it was going to be their permanent home. We are still in occupation of it and we ask that the Indian Affairs Branch produce whatever documents they have dealing with this land so that everything may be settled, once and for all.[2]

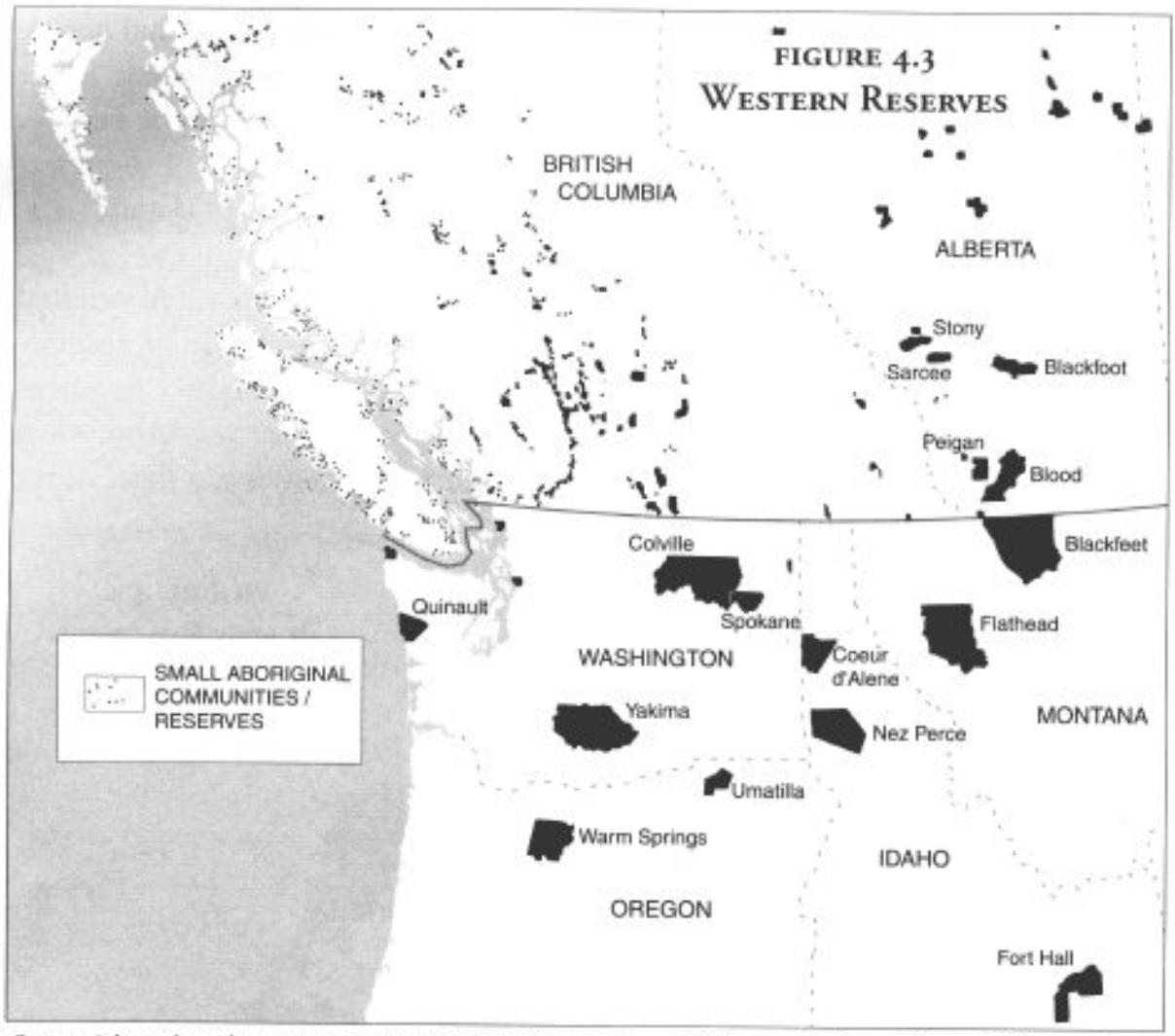


Source: Adapted, with permission, from Robert White-Harvey, "Reservation Geography and Restoration of Native Self-Government", *Dalhousie Law Journal* 17/2 (Fall 1994), p. 588.

THE COMMISSION WAS ASKED TO INVESTIGATE and make concrete

recommendations on “the land base for Aboriginal peoples, including the process for resolving comprehensive and specific claims, whether rooted in Canadian constitutional instruments, treaties or in Aboriginal title”. In Chapter 3, we discussed the recognition of Aboriginal peoples as self-governing political entities within Canada. Governance is inseparable from lands and resources. If self-government is to be a reality, then Aboriginal people need substantially more lands and resources than they have now. While these alone cannot guarantee self-reliance, Aboriginal peoples will be unable to build their societies and economies without an adequate land base.

Except in the far north (including northern Quebec), where comprehensive claims settlements since 1975 have improved the situation, the present land base of Aboriginal communities is inadequate. Lands acknowledged as Aboriginal south of the sixtieth parallel (mainly reserves) make up less than one-half of one per cent of the Canadian land mass.[3] Much of this land is of marginal value. In the United States (excluding Alaska) — where Aboriginal people are a much smaller percentage of the total population — the comparable figure is three per cent. In fact, as Robert White-Harvey points out, “all of the reserves in every province of Canada combined would not cover one-half of the reservation held by Arizona’s Navajo Nation”.[4] The accompanying maps (Figures 4.1, 4.2 and 4.3) graphically illustrate these differences.



Source: Adapted, with permission, from Robert White-Harvey, "Reservation Geography and Restoration of Native Self-Government", *Dalhousie Law Journal* 17/2 (Fall 1994), p. 588.

We have therefore concluded that the current land base of Aboriginal peoples should be expanded significantly. In addition, there should be a significant improvement in Aboriginal access to or control over lands and resources outside the boundaries of this expanded land base. Put another way, Aboriginal people must have self-governing powers over their lands, as well as a share in the jurisdiction over some other lands and resources to which they have a right of access. This is both a matter of justice — of redressing past wrongs — and a fundamental principle of the new relationship with Aboriginal people that we are proposing throughout this report. How we reach that goal, while overcoming the many problems that stand in the way, is the subject of this chapter.

1. The Case for a New Deal

As the two quotations at the beginning of the chapter make clear, Aboriginal peoples have had great difficulty preserving a home in what has always been their country. Throughout our hearings, Aboriginal people told us about the past loss of their reserve or community lands and their inability to secure additional lands for a growing population. They also spoke eloquently about the difficulties they have experienced in participating in the resource economy; about the impact of what they see as uncontrolled development or environmental degradation of their traditional territories; and about the lack of recognition of their treaty and Aboriginal harvesting rights. Throughout this chapter, we use the terms ‘traditional territory’ and ‘traditional land-use area’ synonymously.

Land is absolutely fundamental to Aboriginal identity. We examine how land is reflected in the language, culture and spiritual values of all Aboriginal peoples. Aboriginal concepts of territory, property and tenure, of resource management and ecological knowledge may differ profoundly from those of other Canadians, but they are no less entitled to respect. Unfortunately, those concepts have not been honoured in the past, and Aboriginal peoples have had great difficulty maintaining their lands and livelihoods in the face of massive encroachment.

This encroachment is not ancient history. In addition to the devastating impact of settlement and development on traditional land-use areas, the actual reserve or community land base of Aboriginal people has shrunk by almost two-thirds since Confederation, and on-reserve resources have largely vanished. The history of these losses includes the abject failure of the Indian affairs department’s stewardship of reserves and other Aboriginal assets. As a result, Aboriginal people have been impoverished, deprived of the tools necessary for self-sufficiency and self-reliance.

Aboriginal peoples have not been simply the passive victims of this process. They have used any means at their disposal to halt the relentless shrinkage of their land base. From an Aboriginal perspective, treaties were one means to that end. But Aboriginal people insist that the Crown has failed to uphold those agreements and has generally broken faith with them. And since the nineteenth century, they have continuously protested — to government officials, to parliamentary inquiries, and in the courts — what they see as the resulting inequity in the distribution of lands and resources in this country.

There is a strong moral case, then, for improving Aboriginal access to lands and resources. But there are also many pragmatic reasons. One is the sheer cost of the present system of programs and services for First Nations, Inuit and,

to a lesser extent, Métis people. Improved access to lands, resources and resource revenues will finance at least some of the costs of self-government.

An equally important reason is that conflict over lands and resources remains the principal source of friction in relations between Aboriginal and other Canadians. If that friction is not resolved, the situation can only get worse, as events between the summers of 1990 and 1995 have already shown.

The confrontation at Kanesatake (Oka) was much more than a trivial dispute over the location of a golf course. Like most Aboriginal communities, the Mohawk people of Kanesatake were seeking to secure their land base. In this particular instance, the interests of the neighbouring municipality of Oka became caught up in a three-way dispute between the Kanesatake community, Canada and Quebec over title to land. That dispute, which dates to the early eighteenth century (see Volume 1, Chapter 7), remains unresolved.

This was not an isolated incident. Also during the summer of 1990, a group from the Blackfoot Confederacy called the Lonefighters tried to halt construction of an irrigation dam on the Oldman River in southern Alberta, citing potential environmental damage to their communities and loss of traditional livelihood. This provoked an immediate reaction from the provincial government and area farmers, who expected to benefit from the regulation of water flow on the river. In northern Ontario, members of three Ojibwa bands blocked railway lines in support of their claims to a greater share in the allocation of local lands and resources. At Ontario's Ipperwash Provincial Park, members of the Kettle and Stoney Point First Nations communities, claiming the park contained burial sites, clashed with provincial police in the fall of 1995, resulting in the death of one of the protesters.

Since 1973, when members of the Ojibwa Warrior Society occupied Anishinabe Park in the northwestern Ontario town of Kenora, there has been a marked increase in this kind of Aboriginal protest and accompanying counter-reaction. The Cree people of Lubicon Lake in northern Alberta have attempted to halt oil and gas exploration in their traditional territories in support of their claim to land, angering industry and the provincial government. The Innu people in Labrador have occupied the airport runway at Happy Valley-Goose Bay to protest low-level training flights over their hunting grounds, antagonizing the military and other residents of the region. Mi'kmaq people in Quebec and New Brunswick have been involved in armed confrontations with provincial game wardens and police officers, as well as federal fisheries officials, over fishing rights in the Restigouche and Miramichi rivers.

In the Temagami region of Ontario and in various parts of British Columbia, Aboriginal people (often in association with environmentalists) have blockaded access roads to protest timber harvesting practices on traditional lands and, in the process, they have attracted counter-protests from residents of rural and remote logging communities. New allocations of fishing rights to Aboriginal people in British Columbia and Ontario also have attracted public protest.

Aboriginal actions over the past two decades have not been limited to high-profile blockades and other forms of direct action. Some groups — such as the Nisg_a'a and the Gitksan and Wet'suwet'en in British Columbia — have tried to have their Aboriginal title recognized in Canadian courts. Others have been able to persuade courts to acknowledge their treaty or Aboriginal rights as a shield against prosecution for violation of provincial and federal fish and wildlife legislation. Still other Aboriginal groups have taken part in long (and costly) hearings about the potentially adverse effects of development, such as the Berger inquiry of the mid-1970s.

Many representations were made on these matters at the Commission's hearings. While these suggested a general commitment to sharing and reconciliation, we recognize that solutions based on those principles will not be easy.[5] Any redistribution of lands and resources must be just and equitable to all concerned. Aboriginal people should not be surprised if, when rights and property are at stake, other Canadians react with surprise, concern or indignation at the assertion of their rights.

In Ontario, for example, the Algonquin people of Golden Lake have laid claim to much of Algonquin Provincial Park, attracting vocal opposition from parks and wilderness advocates as well as from local citizens. In the nearby Muskoka district, property owners on Gibson Lake — most of them urban dwellers from Toronto and other parts of the province — are concerned that their Mohawk neighbours from the Wahta Reserve might gain control of Crown land surrounding their cottages, as well as access routes to them.[6] The Commission has heard from many groups, including municipalities, western ranchers, and recreational hunters and anglers, who express similar concerns about the potential impact of any expansion in the reserve land base or an increase in Aboriginal control over off-reserve lands and resources.

It is nevertheless essential for Canadians to understand that these are not new problems. The basic difficulty — given the change in power relationships between Aboriginal people and other Canadians over the past century or more

— has been that, until very recently, governments have either ignored or failed to address the basic issues. Now the time of reckoning has arrived.

The Commission believes strongly that negotiations provide the best hope for a solution to these issues. Further confrontation will not bring social peace; continued resort to the courts is not only expensive, it risks outcomes (because of the all-or-nothing nature of the process) that may be unacceptable to all sides. But before there can be real negotiations, the power imbalance between Aboriginal governments and federal and provincial governments must be addressed.

One important step will be to alter the process for resolving what are referred to by governments as land claims. Although there have been some improvements in the two decades since federal claims policies were first introduced, opinion is virtually unanimous that the present system does not work. The system is generally inequitable, inefficient, time consuming and far too expensive. And it places the department of Indian affairs in a clear conflict of interest as funding agent, defence counsel, judge and jury.

But if Aboriginal people are to obtain a greater share of lands and resources in this country, existing claims processes are not the sole obstacle. A fundamental difficulty, and one that has had a major influence on government claims policy, is how governments and the courts have interpreted the law of Aboriginal title. In our report on federal extinguishment policy, we concluded that blanket or partial extinguishment should not be a requirement of future claims settlements.[7] The Commission believes strongly that doctrines such as extinguishment and frozen rights — not to mention the very exacting tests that Aboriginal people are being asked to meet to prove their title — are an embarrassment. It should be distasteful for Canadians to rely on inappropriate nineteenth-century (or earlier) attitudes to Aboriginal peoples. But so long as Canadian governments continue to argue some or all of these doctrines, there can be no just resolution of Aboriginal claims.

Effecting a new and equitable distribution of lands and resources will require more than new claims processes or legal arrangements, for there are many other blockages to be overcome. The state of the law has influenced how constitutional powers have been distributed, leaving little room for Aboriginal title and jurisdiction. The mandate and operating styles — in short, the institutional interests — of both provincial and federal resource management agencies and the department of Indian affairs often make it difficult to implement treaty provisions and claims settlements. Resource policies, which

are based on state management and open access, have seldom respected treaty and Aboriginal rights, and they continue to result in Aboriginal exclusion from traditional territories. These policies generally reflect the views of the dominant society on matters of property or resource rights, views that have often conflicted with those of Aboriginal people. As an example, the Commission heard from many non-Aboriginal Canadians who see fish, wildlife, and parks as common property resources to which Aboriginal people should have no special rights.

What these various blockages really represent is a clash between two fundamental visions of the relationship between Aboriginal and other Canadians. What Aboriginal people see as their traditional territories are treated by governments and society as ordinary Crown or public lands. The philosophy that prevailed for more than a century and that shaped the present situation (especially south of the sixtieth parallel) supported confining Aboriginal people to reserves and assuming control of the rest of the land. Under the *Constitution Act, 1867*, the provinces were the chief beneficiaries of this approach to the division of lands.

This approach has not worked and cannot work. The Aboriginal principles of sharing and coexistence offer us the chance for a fresh start. Canadians have an opportunity to address the land question in the spirit of these principles.

In this chapter we outline our proposals to implement the Aboriginal concept of sharing on a reasonable and equitable basis and thereby improve their access to lands and resources. The spur to action is provided by legal developments over the past several years, which are already improving the standing of Aboriginal people in negotiations. Recent Supreme Court decisions such as *Simon* and *Sparrow*, for example, have acknowledged that Aboriginal title is a unique or *sui generis* interest in land. Accordingly, Aboriginal people have now an opportunity to explain to other Canadians their understanding of the nature of their title and the sources of its uniqueness.

The other major legal development, emanating from the Supreme Court judgements in *Guerin* and *Bear Island*, is the concept of the Crown's fiduciary or trustee obligations to Aboriginal peoples. What Aboriginal people see as a breach of faith — already the subject of most specific land claims — can also be viewed as a breach of the Crown's fiduciary duties. The concept of fiduciary duty has other important implications as well, since section 35 of the constitution gives protection to "existing treaty and Aboriginal rights". It is the Commission's view that Aboriginal people now have the standing to challenge

past and present Crown conduct with respect to their rights.

The Crown's fiduciary duty also means that Parliament has a positive obligation to enact a fair and effective process to facilitate negotiated solutions concerning the recognition and protection of Aboriginal rights to lands and resources. The new approach to treaty implementation and renewal and treaty making, proposed in Chapter 2, would replace the current land claims processes. The new approach would be based on respect for the treaty relationship and would remove the department of Indian affairs from its present controlling and conflicting role. As part of that solution, we recommend the creation of a new Aboriginal Lands and Treaties Tribunal, which would have binding powers over an enlarged category of specific claims and would play a facilitating role with respect to the treaty processes set out Chapter 2.

Treaty making — in areas where no treaties exist at present — and implementing and renewing existing historical treaties is the proper way to negotiate an expanded land and resource base for Aboriginal peoples. The Commission believes that the same general goals should apply to both categories of treaty. It would be inequitable if Aboriginal people who signed earlier treaties were prejudiced as far as the applicable principles are concerned in comparison with those taking part in modern agreements.

For that reason, we outline a model land regime, involving the recognition of three different categories of land (Aboriginal land, shared land and Crown land) in which the respective rights of Aboriginal people and other Canadians would be clearly identified and balanced differently than under the present system.[8] On lands in the first category (which would include those lands now called Indian reserves), full rights of beneficial ownership and primary, if not exclusive, jurisdiction in relation to lands and resources would belong to the Aboriginal party in accordance with the traditions of land tenure and governance of the people in question. Aboriginal understandings of their title with respect to such lands could be recognized more or less in their entirety, leaving the people free to structure their relationship with the lands in accordance with their own world view.

On lands in the second category, which would comprise a portion of the Aboriginal party's traditional lands, a number of Aboriginal and Crown rights with respect to land would be recognized by the agreement, and rights of governance and jurisdiction would be shared among the parties. Co-jurisdiction or co-management bodies, which could be based on the principle of parity of representation among parties to the treaty, could be empowered to manage the

lands and direct and control development and land use.

On lands in the third category, a complete set of Crown rights with respect to land and governance would be recognized by agreement. Even on lands in this category, however, some Aboriginal rights could be recognized, to acknowledge that Aboriginal peoples enjoy historical and spiritual relationships with such lands. For example, Aboriginal people, as a matter of protocol, could serve as diplomatic hosts at significant events of a civic, national or international nature that take place on their territory.

This new approach must, of course, take into consideration the existing rights of the public and of third parties with property interests. The Commission has listened carefully to the concerns expressed by many Canadians about the practical cost of implementing treaty rights and land claims, and we have heard the voices of non-Aboriginal residents in rural and remote parts of Canada who feel excluded by their governments from negotiations with Aboriginal people that might affect them. We therefore outline the principles we believe should govern the selection of lands and resources in treaty negotiations and offer some suggestions for how to accommodate existing rights in new agreements. Fundamentally, however, we believe that a co-operative approach to land and resource management in shared areas can lead to solutions that increase equity, efficiency and sustainability for all Canadians, not just for Aboriginal people.

Several examples of co-operative land and resource management already exist in Canada. We discuss these examples later in this chapter in the context of interim measures to be implemented while the proposed treaty processes are going on. These would go a long way toward expanding the Aboriginal land base and improving access to natural resources. Commissioners realize that it will take time to make the fundamental changes to law and process that we are recommending. In some jurisdictions, governments and Aboriginal peoples have already worked out some innovative new approaches to lands and resources. These deserve to be highlighted.

Expanding the Aboriginal land and resource base is not just about honouring past obligations or paying a moral debt to Aboriginal people. It is about laying a firm consensual foundation for a new relationship between Aboriginal and non-Aboriginal Canadians, one of fair sharing of Canada's enormous land mass, of mutual reconciliation and of peaceful co-existence. Without it there can be no workable system of Aboriginal self-government. There can only be a continuing clash of cultures and interests. The Commission believes it is time to put this

behind us — it has gone on far too long already — to sit down at the negotiating table, and to work out our differences in a spirit of co-operation and good faith.

We trust, however, that these negotiations will be guided by one of the fundamental insights from our hearings: that is, to Aboriginal peoples, land is not just a commodity; it is an inextricable part of Aboriginal identity, deeply rooted in moral and spiritual values.

2. A Story

In Dene Th'a (Slavey) communities of northwestern Alberta, religious leaders still sing Nógha's Song (see box), accompanying themselves on the traditional skin drum. The words belonged to Nógha (wolverine), a Dene prophet from the Bistcho Lake region who died in the mid-1930s. The song expresses the sadness the singer feels for his departed parents and is also a prayer for the land itself, which the singer recognizes as a gift from the Creator.

Nógha's Song

Hee di d'geh elin. Hey, this is the land.

Hee hee hi-a hi-a. He hey hia hia. Ndahet‡ d'geh elin. It is God's land.
Hee hee hi-a hi-a. Hey hey hia hia. Ane la hia hi-a hi-a. Mother! la hia hia hia.

Set‡ la d'geh elin. It is my father's land.

Ane la d'geh elin. It is my mother's land.

Hee hee hi-a hi-a. Hey hey hia hia. Set‡ d'geh elin-a. It is my father's land.

Ha ha hi-a hi-a. Ha ha hia hia Hee hee hee. Hey hey hey.

Set‡ la d'geh elin. My father is the land.

Heya haa hia hia. Hia haa hia hia. Ane la d'geh elin. My mother is the land.

Hee hi-a. Hey hia Hee hee hee. Hey hey hey.

Source: Patrick Moore and Angela Wheelock, eds., and Dene Wodih Society, comp., Wolverine Myths and Visions: Dene Traditions from Northern Alberta (Edmonton: University of Alberta Press, 1990), pp. 71 and 217.

For the prophets, who are called *ndatin* (dreamers), traditional stories of animal people and culture heroes furnish the landscape for their dreams and visions. *Shin* (songs) provide the trail through that landscape. Unlike the modern western tradition that divides music into sacred and secular forms, all Dene Th'a songs are prayers, which are most often directed at the spirits of natural forces, of animals or of people who have died.

Aspiring religious leaders learn to sing the songs of Nógha and the other prophets who have come before them. This allows them both to acquire their own songs and to develop their special ability to direct dreams. Like other Aboriginal societies in Canada and throughout the world, Dene Th'a hold that powerful individuals can pass at will between the material and spiritual worlds, travelling long distances as they sleep. The most skilled prophets, they say, can locate moose in the bush by dreaming, and the prophecies they bring back from the spirit world are invariably proven true.

The prophet Nógha is especially well remembered for the accuracy of his dreams and predictions. Though at the time of his death Dene Th'a were still living for most of the year in small encampments out on the land, Nógha had already witnessed the influence of Canadian frontier society on areas immediately to the north and south. He urged his people to protect their culture by keeping their games, their stories and their songs. According to his spiritual heirs and descendants, he also foresaw the day when they would end up confined to small parcels of land. Don't live on those reserves, he warned them, "because people will be roaming about like packs of dogs". Nógha, they say, also warned of the impact of alcohol on communities and predicted that the payment of money or other forms of government assistance would be a mixed blessing for his people. One of Nógha's last prophecies was that the traditional territories of Dene Th'a would one day be covered with *satsóné* (metal) — which they interpret as a reference to the pipes, seismic lines, and other modern installations of the oil and gas companies.[9]

When Dene Th'a elders speak of the land, therefore, it is with a sense of loss. Within two decades of Nógha's death their lives had changed a great deal.

Instead of dwelling in their small bush encampments, most Dene Th'a now live year-round in the communities of Bushie River, Assumption and Meander River. These are three of the eight small parcels of reserve land (see Figure 4.4) that the department of Indian affairs began surveying in 1946 for the Slavey people of the upper Hay River, as the federal government then called Dene Th'a.[10] Although they had been formally recognized as far back as 1900, when Nógha and others took part in an adhesion to Treaty 8 signed at Fort Vermilion, no reserves had ever been set apart for their benefit. Post-war governments wanted to persuade northern Aboriginal people like Dene Th'a to form more concentrated settlements so that they could be more easily assimilated into mainstream society. This process, which was encouraged by the Catholic missionaries who built a mission and residential school at Assumption in 1951, spurred the growth of the three modern communities.[11]

To Dene Th'a, this community land base is far from adequate. Over the last 50 years, their numbers have expanded to more than a thousand people. For that reason, they are in the process of challenging the federal government that their total entitlement to reserve land under the treaty has not been fulfilled. The department of Indian affairs refers to this sort of grievance as a *specific land claim* and has developed policy criteria for dealing with such issues. Even if Dene Th'a are successful,

however, their room for community expansion may still be limited. Assumption itself is in the middle of a large oil field, and the province of Alberta, which has constitutional jurisdiction over public lands and resources, has granted various kinds of development rights to other parties on the lands that surround the three reserve communities. Current federal policy requires that such rights be respected in land claims settlements.

As matters now stand, Dene Th'a have no say in the awarding of development rights on their traditional territories, nor do they receive guarantees of employment benefits. They do not share in resource revenues or receive compensation for disruption of their lifestyle, and they are not represented in the municipal government structures that cover their traditional lands. Canada and Alberta take the position that any rights Dene Th'a may have had to lands outside their reserves were extinguished absolutely — according to the text of the document — by Treaty 8.

Both governments do acknowledge that Dene Th'a have treaty hunting, fishing and trapping rights on unoccupied Crown lands and waters — but for subsistence purposes only, as defined by government. Dene Th'a have no

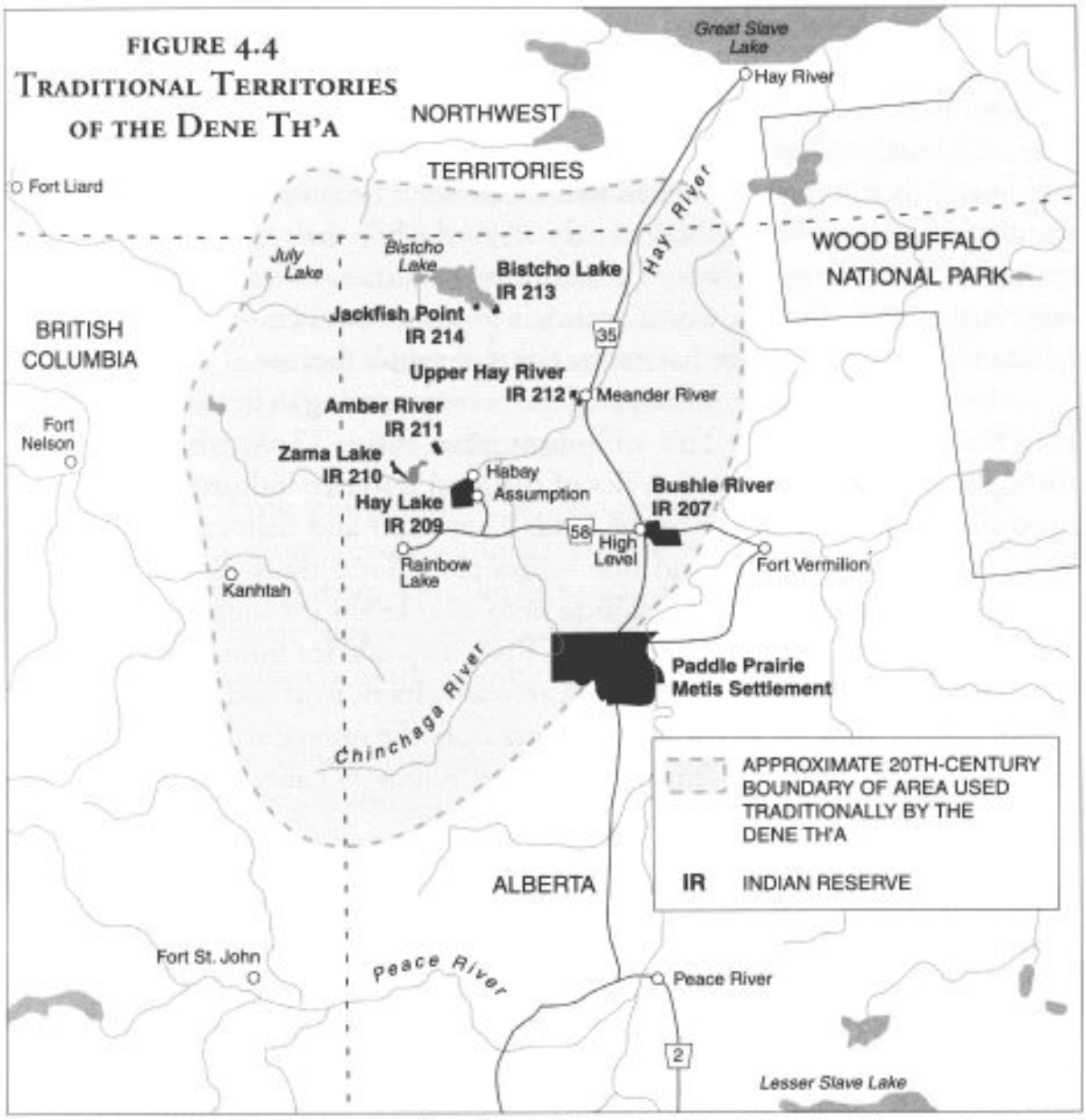
priority allocation or special rights to fish and game within their traditional territories, which are open to licensed recreational hunters and anglers from Alberta and elsewhere. Nor are Dene involved in the management of game, fish and fur-bearing animals — although their hunters complain that moose have declined in number with the opening of access roads and loss of habitat. And while their traditional territories span (like Treaty 8 itself) portions of northeastern British Columbia and the southern Northwest Territories, wildlife officials in those jurisdictions have often been reluctant to acknowledge the harvesting rights of people they see as 'Alberta Indians'.

For many years now, other people have been coming to live along the upper Hay River, though Dene Th'a still outnumber them. Those who have stayed throughout the up and down cycles of the local resource industries have developed their own attachment to the land. They hunt and fish, canoe the rivers, build cabins in the woods and ride horses along local trails. But few of them know about Yamahndeya, the culture hero who killed the animal monsters in ancient times and made the upper Hay River area safe for human life; nor have they heard Dene Th'a stories about the animal helpers, wolf and wolverine. They do not know that some of their neighbours from the reserve at Assumption were born at Bistcho Lake or at Amber River or at Rainbow Lake, nor do they know the meaning of the Dene names for those places.

When Nógha's nephew, Alexis Seniantha, who succeeded him as the head prophet at Assumption, regularly crossed the British Columbia boundary to trap, he would head for July Lake, as it is now called. He knew this lake as Ts'u K'edhe (Girls' Place), so called because a very long time ago, two teenaged girls lived there alone all winter. He learned this from his father, Ahkimnatchie, who also told him that an earlier prophet named Gochee (brother) was buried near that same lake.

In 1979, Alexis Seniantha gave an account of Nógha's prophecies to an assembly at Assumption of Aboriginal elders from across North America:

'Nothing will happen to this land,' Nógha said, 'because the earth is tremendous. Anything can happen on the surface of the earth. There may be bad things happening, but if you yourself are a good person, you shouldn't worry about these things,' he often told us. 'Sometimes far off there may be a huge wind,' he said, 'but it avoids us as long as even one person prays.' He prayed for us, for the future, I think.[12]



Source: Adapted from James Morrison, "The Robinson Treaties of 1850: A Case Study", research study prepared for RCAP (1993), based on Patrick Moore and Angela Wheelock, ed., *Wolverine Myths and Visions: Dene Traditions from Northern Alberta* (Edmonton: University of Alberta Press, 1990).

3. Lands and Resources: Background

3.1 Lessons from the Hearings

The themes of Nógha's songs and prophecies — nurturing communities, making a living, caring for the land — recurred throughout the Commission's public hearings. We have no hesitation in saying that these themes unite all

Canadians. In a country that still derives much of its culture and wealth from the land and its natural resources, this should not be surprising. Over the course of our travels and meetings, the individuals and organizations that spoke to us about such issues, whether Aboriginal or non-Aboriginal, showed a common concern for social and economic well-being, for finding ways to provide for their children and future generations.

But while there are definite similarities, we also learned that there are profound differences between Aboriginal people and other Canadians over fundamental issues associated with lands and resources. As Chief Tony Mercredi of Fort Chipewyan in Alberta reminded us, much of the problem stems from the power imbalance in the current relationship:

Envision, if you will, a circle. The Creator occupies the centre of the circle and society ... revolves around the Creator.

This system is not based on hierarchy. Rather, it is based on harmony. Harmony between the elements, between and within ourselves and within our relationship with the Creator. In this circle there are only equals.

Now, envision a triangle. This triangle represents the fundamental elements of the Euro-Canadian society. Authority emanates from the top and filters down to the bottom. Those at the bottom are accountable to those at the top, that is control. Control in this society is not self-imposed, but rather exercised by those at the top upon those beneath them.

In this system the place of the First Nations peoples is at the bottom. This is alien to the fundamental elements of our society, where we are accountable only to the Creator, our own consciences and to the maintenance of harmony.

By having the institutions and regulations of the Euro-Canadian society imposed upon us, our sense of balance is lost.

Chief Tony Mercredi
Athabasca Chipewyan First Nation Community
Fort Chipewyan, Alberta, 18 June 1992*

The songs of the prophet Nógha convey this idea of harmony in the relationship between the earth and all those who inhabit the lands and waters. This fundamental tenet of Aboriginal spirituality was repeated to us many times during the hearings by individuals like Elder Alex Skead in Winnipeg:

We are so close to the land. This is my body when you see this mother earth, because I live by it. Without that water, we dry up, we die. Without food from the animals, we die, because we got to live on that. That's why I call that spirit, and that's why we communicate with spirits. We thank them every day that we are alive ...

Elder Alex Skead
Winnipeg, Manitoba
22 April 1992

Some Canadians told us that they find resonance in such insights, because they provide a kind of spiritual content that is often missing from public discourse on land and resource issues. Mavis Gillie of Project North, an inter-church coalition in support of Aboriginal peoples, made this point in her appearance before the Commission:

The chief lesson I think I have learned all these years is that there is a moral and spiritual dimension to the right of Aboriginal peoples to be distinct peoples, their right to an adequate land base and the right to self-government.

I believe that the reason Canada has failed so miserably in the past in its relationship with First Peoples is that it failed to take into account the impact of this moral and spiritual dimension, and we had better not make the same mistake this time around.

Mavis M. Gillie
Project North
Victoria, British Columbia
22 May 1992

At the core of Aboriginal peoples' world view is a belief that lands and resources are living things that both deserve and require respect and protection. Grand Chief Harold Turner of the Swampy Cree Tribal Council stressed that his people were "placed on Mother Earth to take care of the land and to live in harmony with nature":

The Creator gave us life, inherent rights and laws which governed our relationship with nations and all peoples in the spirit of coexistence. This continues to this day.

We as original caretakers, not owners of this great country now called Canada, never gave up our rights to govern ourselves and thus are sovereign nations. We, as sovereign nations and caretakers of Mother Earth, have a special relationship with the land.

Our responsibilities to Mother Earth are the foundation of our spirituality, culture and traditions ... .Our ancestors did not sign a real estate deal, as you cannot give away something you do not own.

Grand Chief Harold Turner
Swampy Cree Tribal Council
The Pas, Manitoba, 20 May 1992

Aboriginal peoples believe, therefore, that lands and resources are their common property, not commodities to be bought and sold. Chief George Desjarlais of the West Moberly community in British Columbia told us that the principle of sharing formed the basis of arrangements made between his people and the Crown:

We are treaty people. Our nations entered into a treaty relationship with your Crown, with your sovereign. We agreed to share our lands and territories with the Crown. We did not sell or give up our rights to our land and territories. We agreed to share our custodial responsibility for the land with the Crown. We did not abdicate it to the Crown. We agreed to maintain peace and friendship among ourselves and with the Crown.

Chief George Desjarlais
West Moberly First Nation
Fort St. John, British Columbia, 20 November 1992

Aboriginal people also understand the treaties as instruments through which land-based livelihood and future self-sufficiency for themselves and the newcomers were secured. The late John McDonald, then Vice-Chief of the Prince Albert Tribal Council, stated emphatically that Aboriginal peoples never gave up their right to take part in the governance and management of lands and resources:

If the wealth of our homelands was equitably shared with us and if there is no forced interference in our way of life, we could fully regain and exercise our traditional capacity to govern, develop and care for ourselves from our natural resources. This is what was intended by the Creator, this is what our elders

believe to be the true significance of our treaties. First Nations agreed to share the wealth of their homelands with the Crown, the Crown agreed to protect the First Nations and their homelands from forced interference into their way of life, i.e., culture, economy, social relations, and provide development and material assistance.

Vice-Chief John McDonald
Prince Albert Tribal Council
La Ronge, Saskatchewan, 28 May 1992

Many of the Aboriginal people who appeared before us expressed bitterness at the way they had been treated by society. Elder Moses Smith of the Nuu-chah-nulth Nation on Vancouver Island particularly objected to the assumption that Aboriginal people had not been making proper use of their lands and resources before the settlers arrived:

We got absolutely the short end of the stick. And to quote what was said, what was said of us, we, as Nuu-chah-nulth people, “These people, they don’t need the land. They make their livelihood from the sea.” ... So, here we have just mere little rock piles on the west coast of Vancouver Island, the territory of the Nuu-chah-nulth Nation. Rock piles! Rock piles!

Moses Smith
Nuu-chah-nulth Nation
Port Alberni, British Columbia, 20 May 1992

Many non-Aboriginal Canadians, however, interpret the treaty relationship differently. To Andy Von Busse of the Alberta Fish and Game Association, a modern society calls for modern rules and relationships:

We respectfully suggest that traditions are something that changes in all societies. As an example, Treaty 6 and Treaty 7 Indians in Alberta traditionally subsisted through the hunting of buffalo and, of course, that tradition is not something that could be carried out today because of other changing circumstances.

We feel that the principle of wildlife conservation must override that of treaty rights. Subsistence hunting and fishing should only be allowed in those areas where access to other food sources is limited. Today’s realities are that most Canadians, whether status or otherwise, live within a reasonable driving distance of grocery stores. The reality is today, again the use of high-powered

rifles, night lighting, four-by-four vehicles allow access and success that could not have been foreseen at the time that the treaties were signed.

Andy Von Busse
Alberta Fish and Game Association
Edmonton, Alberta, 11 June 1992

A basic consequence of such differences of opinion about the treaty relationship is that what Aboriginal people see as traditional land use areas, society considers to be lands and resources under public government. Public servants base their actions on the assumption that the Crown ultimately holds title to and hence jurisdiction over lands and resources, even those included within claims settlement agreements:

By encouraging the involvement of residents in renewable resource management, the Department has not compromised its mandate of managing resources ... .Even within land claim agreements, the Minister of Renewable Resources retains the final say in accepting management decisions.

Joe Hanly
Deputy Minister of Renewable Resources
Yellowknife, Northwest Territories, 9 December 1992

Implicit in this perspective is the idea that lands and resources can be separated into distinct units of specific rights of ownership and use by governments, private individuals and corporations. Glen Pinnell of Abitibi-Price Ltd. stressed the importance of the existing arrangements for resource industries and for their employees and their communities:

With the resource, it is important to all the communities. It is important to the livelihood of the mill. If the resource is not there, then there is no possibility for investing in the mill. In order to have the mill, there has to be the right or the commitment to have that resource.

Glen Pinnell
Abitibi-Price Ltd.
Fort Alexander, Manitoba, 30 October 1992

Many Canadians, then, regard access to Crown lands and to the resources on them as common property rights. In its brief to the Commission in September 1993, the Ontario Federation of Anglers and Hunters argued very forcefully that treaty and Aboriginal rights do not give Aboriginal people any exclusive

privileges with regard to Crown lands and resources and that ultimately public government must retain the responsibility to manage and conserve those resources on behalf of all citizens:

Crown lands, and the indigenous natural resources they harbor, are held in trust by the Crown for the continued economic benefits, and social and cultural well being of all the people of Ontario (i.e., society as a whole). Thus, together they are *public common property resources*. Concerning freeliving fish and wildlife, the protection against proprietary, possessionary claims extends even onto patented lands. *No one person or group owns them!* In effect, no individual, group of individuals, enterprise, or political entity can claim proprietary rights over them. Possessory rights to Crown lands are usually conveyed through tenure agreements and licences at fair market value, issued by the Crown for payment of fees/royalties. [emphasis in original]

Ontario Federation of Anglers and Hunters
Toronto, Ontario
3 May 1993

Some recreational hunters and anglers argue that Aboriginal and treaty rights in effect discriminate against poorer residents of rural and northern areas, who may have subsistence needs of their own. Lorne Schollar of the Northwest Territories Wildlife Federation urged that this “imbalance” be addressed, so as to foster better relationships between northern residents of all backgrounds:

We recognize and support the need for true subsistence hunting by Native people. There should, however, be a clear distinction made between actual subsistence hunting and perceived rights. Exclusive Aboriginal rights to hunt at any time of year and without restrictions can hardly be justified as subsistence when an individual is permanently employed.

On the other hand, a non-Aboriginal person, making the same or less money, is subject to strict harvest regulations. Licensing and reporting procedures that apply to all resource users alike are deemed essential components for effective wildlife conservation and management.

Lorne Schollar
Northwest Territories Wildlife Federation
Yellowknife, Northwest Territories
9 December 1992

The Commission was reminded throughout the hearings that non-Aboriginal

Canadians have developed their own identity, history, sense of community, and ties to lands and resources. Don McKinnon, a prospector from Timmins, Ontario, spoke about the lives and livelihood of residents of rural and northern Canada:

Most people work in the north, and especially northern Ontario, because they like it. They work in resource industries and they enjoy the outdoors, for recreation such as skiing, snowmobiling, fishing and hunting. They also like the clean air and fresh water.

They are just as concerned as the Aboriginal about environmental issues and preserving the land and its wildlife. Forestry and mining depend on secure long-term access to Canada's land base ... .I love the fresh water and stately trees and clean air and fruitful land. I want my children and my grandchildren to develop the same strong feelings for the land. More than that, I pledge that there will be a place for them in Northern Ontario.

Don McKinnon
Timmins, Ontario 5 November 1992

Many Canadians are seeking a sense of certainty, as Cor Vandermeulen of the British Columbia Federation of Agriculture put it, for rights of settlement and development in the face of Aboriginal claims to lands and resources:

Uncertainty comes when we hear statements from the Aboriginal leaders such as, "There will be a complete change in the power structure," or "These lands that you are on belong to us." Uncertainty comes when it seems that the indecisiveness of governments leads to higher and higher expectation from the Aboriginal community. Uncertainty comes when we hear that some Native nations want to return to a system of government that will give hereditary chiefs a major role in making decisions ... .

I think, as far as the land question is concerned, we do need a high degree of certainty and finality, but we must proceed cautiously so that the final outcome will be fair and equitable for all parties ... .We understand that the Aboriginal people have their aspirations as well and are entitled to seek redress for past injustices. In addressing these past injustices, we have to be careful that a whole new set of injustices is not created.

Cor Vandermeulen
British Columbia Federation of Agriculture

Kelowna, British Columbia
17 June 1993

This perspective is understood by Aboriginal people, who are attempting to address issues of land and resource development within their own communities. Gilbert Cheechoo, a Cree from Moose Factory on James Bay, pointed out the error of assuming that Aboriginal people are automatically opposed to development:

So a lot of people get mixed up ... when we talk about resource development: the Indians want to keep their culture, the Indians want to trap on that land when they are sitting on a million dollars worth of gold. That is not the only thing we are talking about.

There are debates going on in our reserves right now, our communities, about resource development. But a lot of non-Native people don't know that because they don't take the initiative to find out if our people are talking about these things. They assume that everybody is against them saying, "They want to take our land. They want to take our rights to explore and to take resource development out ... ".

Resource development is a big issue that they talk about in our communities. What are we going to do? Some people say, "Well, we should go and negotiate and try to get a deal." Some people say "no."

Gilbert Cheechoo
Timmins, Ontario 6 November 1992

There are, however, many reasons why Aboriginal people express concerns about resource development. We were reminded by Chief Allan Happyjack of Waswanipi, Quebec, that his people have borne most of the costs, while reaping few of the benefits, of past development activities:

Our trees are gone. When the trees are gone, the animals are gone and all the land is destroyed. They all came from the outside, from non-native economic development. That is where we have our problems, with our hunting and fishing, our traditional way of life has been affected and these developments cause other problems from alcohol and drug abuse, but you have also heard about the dams and the flooding on the territory. You heard about forestry and those people that are leaders of Quebec and Canada, they are the ones that are letting the developers come into our territory to do what nobody has asked

us, asked for our consent or to talk about it. Nobody asked us for our consent, if we approve or are in favour of these projects.

Chief Allan Happyjack
Cree First Nation of Waswanipi
Waswanipi, Quebec, 9 June 1992

We were told of similar kinds of pressure in other parts of Canada. Adrian Tanner of Memorial University in St. John's, Newfoundland, pointed to the rapidity and scale of resource development in his own province:

There is now an increasing pace of large-scale development of the interior of the province. Much of this new activity is incompatible with Aboriginal patterns of land use and with how Aboriginal people envision their own futures. Labrador, in particular, is at a development threshold with actual and planned projects which include the expansion of military training activities, a highway which will, for the first time, open up large areas to contact through Baie Comeau with the rest of Canada, the proposed development of the Lower Churchill and other rivers for hydro-electricity, new mines and new forestry ventures.

The Mi'kmaq on the island of Newfoundland have already experienced the same kinds of intrusions, with the Upper Salmon hydro-electric project, extensive pulpwood cutting and mines, such as the one at Hope Brook.

Little has been done to protect Aboriginal interests in their unsurrendered traditional lands ... .

Adrian Tanner
Native Peoples' Support Group of
Newfoundland and Labrador
St. John's, Newfoundland, 22 May 1992

As Max Morin of the Metis Society of Saskatchewan explained, these continuing, unresolved situations have fostered an increased and compounded sense of frustration, bitterness and resentment on the part of Aboriginal people across Canada and have led at times to conflict between Aboriginal communities:

One of the things I am really concerned about when we talk about self-government and Aboriginal rights is this land has always been ours ... .I believe

that and I continue to believe that, but all of a sudden the government in 1930, the federal government, transferred it to the provincial government without consulting the people in northern Saskatchewan, especially the Aboriginal people.

Weyerhauser Canada, which is a pulp company operating out of Prince Albert, Saskatchewan; and Millar Western, which is a company operating out of Meadow Lake, Saskatchewan, have more rights to this land than we do. They have forest management lease agreements. They are clear cutting our livelihood, our traditional traplines and hunting areas. They are clear cutting right to the lakes, to the rivers. Our rivers are drying up. Our fish are dying out and yet as Aboriginal people when we make a stand and ask for our rights, the general public in Canada, the general public in Saskatchewan say we are a bunch of radicals.

Max Morin
Metis Society of Saskatchewan
La Ronge, Saskatchewan, 28 May 1992

However, in seeking redress for past wrongs as well as an expanded land and resource base, Aboriginal people told us that they are not advocating taking away the rights of others:

But in suggesting that we need a land base, we have to be very careful and we have to be honest in saying it's not our ambition to build boats or to buy boats from the Gander Bay Indian Band Council and take all of the white people that live within our community or our surrounding community and put them in and send them off to drift. That's not our ambition. We want to manage for us and for them also.

Calvin White
Flat Bay Indian Band
Gander, Newfoundland, 5 November 1992

When claims come to the table for our people we don't want society as a whole to be scared of what might come down because we are not looking at making changes that are going to be severely adverse to non-Aboriginal people. We are not looking at chasing them out of this land. We're prepared to sit and talk to them and negotiate and point out and work with them as to how we can both co-operate together.

Hereditary Chief Gerald Wesley

Kitsumkalum Band
Terrace, British Columbia, 25 May 1993

As Chief David Walkem from the Cooks' Ferry community (Nlaks'Pamux Nation) in British Columbia made clear, many Aboriginal groups are willing to implement the notion of shared jurisdiction over territories, as embodied in their understanding of the treaties:

The first principle that has to be incorporated is an increased access to land and natural resources over and above the existing reservations we have been placed upon.

The second one is a shared management and control of all natural resources within our traditional territories, or the development of, for want of a better term, 'interim partnership agreements', with the specifics to be subject to negotiation.

Chief David Walkem
Council of the Nlaks'Pamux Nation
Merritt, British Columbia, 5 November 1992

Commissioners found that many Canadians would support measures that would constitute a significant break with the failed solutions of the past. Gordon Wilson, then opposition leader in British Columbia, and Denis Perron, a member of the Quebec National Assembly, emphasized the potential of new land and resource arrangements:

It is widely recognized that the legal and political structures which currently govern every aspect of the lives of Aboriginal people have been a complete failure. And the attempt at eradication of First Nations culture has left a legacy of poverty and injustice to Aboriginal people across Canada.

Accordingly, we believe that it is time to acknowledge the principle that Aboriginal people have with respect to their inherent right to govern themselves, a right which flows from their long-term occupation and use of the land, and a right which also flows from their long history of self-government, prior to European colonization.

Gordon F.D. Wilson, MLA
Leader of the Official Opposition
Esquimalt, British Columbia, 21 May 1992

Through agreements, it is possible to define the territory within which each Aboriginal nation will have the right to pursue its traditional activities. At the same time, these agreements could set up joint development and management mechanisms for these territories to allow for both traditional Aboriginal activities and sustainable natural resource development. Within the context of these agreements, an Aboriginal government could receive part of the income or royalties that the government of Quebec earns from exploiting resources within that territory. [translation]

Denis Perron, MNA
Opposition Spokesperson on Aboriginal Affairs
Mani-Utenam, Quebec, 20 November 1992

However, a fundamental issue is how non-Aboriginal Canadians are to be involved in resolving these issues. Commissioners recognize the frustration expressed by many participants in the hearings, including municipal representatives like Barrie Conkin, the mayor of North Battleford, Saskatchewan:

Thus far, federal and provincial governments have done all the negotiating of the framework agreements for treaty land entitlements and land claims. Municipal governments have not had input. The federal and provincial governments have made promises the ordinary citizen at the grassroots level does not understand and does not feel part of. This is true, as well, of local government. In other words, the federal and provincial government can put a cheque in the mail but it is at the local level that natives and non-natives will have to implement and live with the actual changes. And profound changes there will be. To avoid the clash of anger and frustration on the native side with fear and uncertainty on the non-native side, it is imperative that people at this level, both native and non-native, be included in the process.

Barrie Conkin
North Battleford, Saskatchewan
29 October 1992

Similar concerns were expressed by Richard Martin of the Canadian Labour Congress:

We believe that labour should be treated as a stakeholder in third-party consultations anywhere in Canada, whether they involve treaty and land settlements, interim measures or co-management agreements with Aboriginal communities.

Governments have taken the position that third-party property rights that are diminished or taken away by Aboriginal land or treaty settlements should be protected or compensated. We believe that this principle should also apply to workers who are substantially affected by land and treaty settlements or other decisions involving Aboriginal groups.

Richard Martin
Canadian Labour Congress
Ottawa, Ontario, 15 November 1993

At an individual level, many residents of rural and northern Canada pride themselves on their pioneer ethos of self-sufficiency and self-reliance. As Don McKinnon put it, they are distrustful of government, which they see as dominated by urban concerns, and they too feel excluded from the negotiation of land claims agreements or other new arrangements with Aboriginal people:

We would like to suggest that the proper way to address the legitimate concerns of the Aboriginal peoples is one step at a time. Much as we recognize their frustration at the slowness of change and their desire to control their own affairs on their land, we feel two wrongs can never make a right ...

Natives cannot build a secure future on the wreckage of the lives of their non-Aboriginal neighbours. There has been too little consultation with the non-Aboriginal residents of northern Canada by the negotiating teams of Aboriginal and faceless bureaucrats ...

No elected or appointed body has the moral right to give away my heritage. No politician or bureaucrat with the wave of a pen will make me disappear. I am prepared to share with others, but I will not be pushed off my land or out of the north.

Don McKinnon
Timmins, Ontario 5 November 1992

On the other hand, Aboriginal people told us that their relationship with other Canadians, including the negotiation of land claims agreements, must be conducted on a government-to-government basis. Chief Peter Quaw of Stoney Creek, British Columbia, rejected any notion that Aboriginal people are simply one among many groups of stakeholders who have interests in Crown lands and resources:

We are not just another ‘interest’ group within the province. We are a people with an inherent right to govern ourselves and control our own resources and economies. We are willing and interested in sharing with the non-Aboriginal peoples and governments, but it must be a joint sharing through joint ventures based on equality, not subordination.

Chief Peter Quaw
Lheit-Lit’en Nation
Stoney Creek, British Columbia, 18 June 1992

Although the views expressed by Aboriginal and non-Aboriginal people are often divergent, Commissioners believe that the concepts of coexistence and shared jurisdiction over lands and resources may provide a unique window for reconciliation. It was encouraging for us to hear the optimism of Canadians like Clifford Branchflower, mayor of Kamloops, British Columbia:

I emphasize that whatever process takes place it is important that we do try to meet with and understand one another ... .It is important that real effort be made to raise the level of person-to-person and family-to-family understanding among our peoples.

I am convinced, being an optimist, that we can live together as neighbours in peace and harmony and that we can enrich one another’s lives by our interactions ... .I don’t believe we can afford not to make the effort to do so.

Clifford G. Branchflower
Kamloops, British Columbia
15 June 1993

According to environmental activist Henri Jacob, differences in views about Aboriginal and treaty rights to lands and resources cannot be resolved without addressing the relationship between diverse cultures. He also argued that reconciling these differing perspectives on land would create opportunities and benefits for all Canadians:

Because of different mentalities and different origins ... there were always compromises to be made, in order to reach agreement ... .There is also the question of consensus. We were used to voting when there was disagreement. Most Canadian environmental groups have now adopted the consensus approach to settling problems and various demands.

When we worked with Aboriginal people, the consensus mentality taught us the meaning of the word ‘respect’. I am talking here not only about respect for individuals, but respect for all parts of every ecosystem, considering ourselves as part of an ecosystem. This gave us a different view of the world in general. [translation]

Henri Jacob
Le regroupement écologiste
Val d’Or et environs
Val d’Or, Quebec, 30 November 1992

The fundamental concern of Aboriginal people, as expressed throughout the hearings, was that the resolution of land and resource concerns — including the recognition, accommodation and implementation of Aboriginal rights to and jurisdiction over lands and resources — is absolutely critical to their goals of self-sufficiency and self-reliance. Cliff Calliou of the Kelly Lake community in northeastern British Columbia made this linkage explicit in his testimony:

A land and resource base must also be provided. A land base is seen as essential for the long-term survival and betterment of our nation. The absence of a land and resource base is the source of poverty which exists amongst our people today. Total control of our own land and resources will generate economic development to create employment ... .The Kelly Lake community is located within Treaty 8 territory. It is time that negotiations proceed. This community is ready to pave the way for other communities similar to ours to follow.

Cliff Calliou
Kelly Lake Community
Fort St. John, British Columbia
19 November 1992

To set the stage for discussing the kinds of changes that would make such goals a reality, we need to examine in more detail the background of the land and resource issues raised at the hearings. These issues did not arise in a vacuum but are the product of the complex interplay of culture, politics and the law in the almost five centuries since first contact between Europeans and the Indigenous peoples of North America.

3.2 Significance of Lands and Resources to Aboriginal Peoples

We lived a nomadic lifestyle, following the vegetation and hunting cycles throughout our territory for over 10,000 years. We lived in harmony with the earth, obtaining all our food, medicines and materials for shelter and clothing from nature. We are the protectors of our territory, a responsibility handed to us from the Creator. Our existence continues to centre on this responsibility.

Denise Birdstone
St. Mary's Indian Band
Cranbrook, British Columbia, 3 November 1992

Aboriginal people have told us of their special relationship to the land and its resources. This relationship, they say, is both spiritual and material, not only one of livelihood, but of community and indeed of the continuity of their cultures and societies.

Many Aboriginal languages have a term that can be translated as 'land'. Thus, the Cree, the Innu and the Montagnais say *aski*; Dene, *digeh*; the Ojibwa and Odawa, *aki*. To Aboriginal peoples, land has a broad meaning, covering the environment, or what ecologists know as the biosphere, the earth's life-support system. Land means not just the surface of the land, but the subsurface, as well as the rivers, lakes (and in winter, ice), shorelines, the marine environment and the air. To Aboriginal people, land is not simply the basis of livelihood but of life and must be treated as such.

The way people have related to and lived on the land (and in many cases continue to) also forms the basis of society, nationhood, governance and community. Land touches every aspect of life: conceptual and spiritual views; securing food, shelter and clothing; cycles of economic activities including the division of labour; forms of social organization such as recreational and ceremonial events; and systems of governance and management.

To survive and prosper as communities, as well as fulfil the role of steward assigned to them by the Creator, Aboriginal societies needed laws and rules that could be known and enforced by their citizens and institutions of governance. This involved appropriate standards of behaviour (law) governing individuals and the collective, as well as territorial rights of possession, use and jurisdiction that — although foreign to and different from the European and subsequent Canadian systems of law and governance — were valid in their own right and continue to be worthy of respect.

Our survival depended on our wise use of game and the protection of the environment. Hunting for pleasure was looked upon as wasteful and all hunters were encouraged to share food and skins. Sharing and caring for all members of the society, especially the old, the disabled, the widows, and the young were the important values of the Mi'kmaq people. Without these values, my people would not have survived for thousands of years as a hunting, fishing and gathering culture.

Kep'tin John Joe Sark
Micmac Grand Council
Charlottetown, Prince Edward Island
5 May 1992

Even today, Aboriginal people strive to maintain this connection between land, livelihood and community. For some, it is the substance of everyday life; for others, it has been weakened as lands have been lost or access to resources disrupted. For some, the meaning of that relationship is much as it was for generations past; for others, it is being rediscovered and reshaped. Yet the maintenance and renewal of the connection between land, livelihood and community remain priorities for Aboriginal peoples everywhere in Canada — whether in the far north, the coastal villages, the isolated boreal forest communities, the prairie reserves and settlements, or in and around the major cities.

Figure 4.5 shows present-day reserves and other Aboriginal communities, as well as the distribution of Aboriginal people and other Canadians. In many parts of the Northwest Territories, central Quebec, Labrador and other parts of eastern Canada, some First Nations communities are not located on reserves. Since the early nineteenth century, Canada's overall population has grown from less than 200,000 to almost 30 million. While Aboriginal people make up no more than 2.5 per cent of that total, this general statistic masks the way their numbers are distributed. As a result of rapid urbanization in the post-war period, more than 90 per cent of all Canadians are now concentrated in the most southerly 10 per cent of the country — basically Atlantic Canada, the St. Lawrence River-Great Lakes waterway, the railway belt of the prairie provinces, and the southernmost parts of British Columbia. Among the 139 communities in the far north (Yukon, Northwest Territories, northern Quebec and Labrador), 96 communities, or 69 per cent, have an Aboriginal majority population. Of communities in the mid-north, 216 of 624 communities (34 per cent) have an Aboriginal majority. However, in the mid-north zones of Manitoba, Saskatchewan and British Columbia, more than half the communities have a majority Aboriginal population.

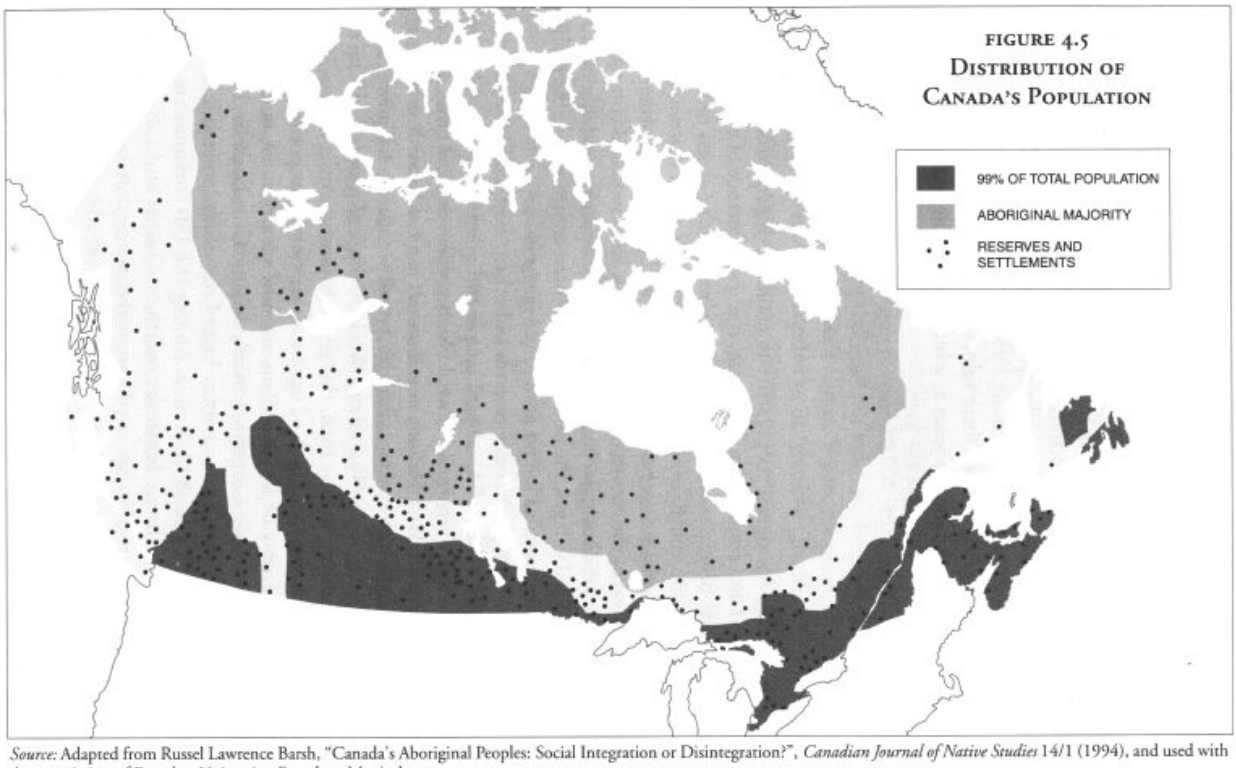


FIGURE 4.5
DISTRIBUTION OF CANADA'S POPULATION

Source: Adapted from Russel Lawrence Barsh, "Canada's Aboriginal Peoples: Social Integration or Disintegration?", *Canadian Journal of Native Studies* 14/1 (1994), and used with the permission of Brandon University, Brandon, Manitoba.

Like Canadian society in general, a steadily increasing number of Aboriginal people live in cities and towns. This migration (discussed in Volume 4, Chapter 7 and in Chapter 5 of this volume) is relatively recent and often tends not to be by choice. While many Canadians have been moving from rural to urban areas in order to find employment, better living conditions, or education opportunities not available in their home communities, Aboriginal people have in addition felt particular pressure from government assimilation policies and other actions designed to move them away from their reserves and settlements.

Nonetheless, Aboriginal communities continue to survive and even grow, and Aboriginal people regard these places as the heartland of their culture. For most, living off the reserve or settlement and in the towns and cities is like being in a diaspora. Mohawk steelworkers who spend much of the year in New York or other urban areas still consider Kahnawake or Akwesasne home. This desire to return is deeply rooted. Alphonse Shawana, an Odawa from the Wikwemikong Unceded Reserve on Manitoulin Island, spent his professional life working in the oil and gas industry in Alberta, Venezuela and Scotland; in the late 1980s, he returned to his home community in Ontario and has since served as chief and councillor.

Among the Crees of Waswanipi, Quebec, as Chief Allan Happyjack explained to us, the urge to centre economic life in their communities and indeed to maintain the link between land, livelihood and community is strong:

Today we are working and we want to go back and take care of the land and clean up the damage that was done. We also want to go back to our traditional territory because that is where our tradition came from ... .Our elders have told us the strengths from our past and we are listening to them and they told us about what happened in the past. We still want to look toward the future with a strong past.

Chief Allan Happyjack
Cree First Nation of Waswanipi
Waswanipi, Quebec, 9 June 1992

Figure 4.5 shows reserves as well as Aboriginal settlements. Fewer than half the reserves are inhabited; many are small, scattered pieces of land. Most of the Aboriginal people of the north reside in about 480 scattered villages ranging in population from less than a hundred to a few thousand persons.[13] In the far north, outside of the few mining communities, at least 80 per cent of village residents are Aboriginal. In the mid-north and in the southern portion of the provinces (apart from urban areas), many of the villages are located on Indian reserves or settlements or are Métis communities and are predominantly Aboriginal. While land and resource activities are a mainstay of the Aboriginal economy in the north, even in more southerly regions, the economy of many Aboriginal communities continues to be based on activities such as commercial fishing or, to a lesser degree, farming. Many Aboriginal people living in urban centres have retained a connection to the land through ties to home communities or participation in ceremonial and cultural events (which include feasting, harvesting, fishing and hunting).

For thousands of years Aboriginal people have practised many forms of self-government. These forms are diverse and incorporate many unique methods of jurisdictional control. Traditional Aboriginal government, culture, spirituality and history are tied to the land and the sea. Our history is passed onto the present and future generations through an old tradition in such forms as songs, dances, legends, ceremonies and kinship relations. Our grandparents believe our old traditions top and strengthen the laws and practices necessary to uphold harmony between people and the world we live in.

Robert Mitchell

University of Victoria Aboriginal Government Program
Victoria, British Columbia, 22 May 1992

Aboriginal territories, use and occupancy

In natural resource law, the state assumes that it owns the resources and that only it can effectively regulate the exploitation by individuals and corporations of the natural resources. The purpose of the state in the area of natural resources law is to balance competing uses between the individuals who live in the state. As in criminal law, those who offend are charged, tried and punished.

Where are we in the scheme of things? We are not the Canadian state. Neither are we simply Canadian individuals. Our communities are not made up of a state and individuals ... .We operate almost as a family where we all have obligations and rights. We do not have crimes so much as we have inappropriate behaviour. We do not punish; rather we seek to heal. Sharing is the basis of our land and resource use. [translation]

Garnet H. Angeconeb
Independent First Nations Alliance
Big Trout Lake, Ontario, 3 December 1992

Before the arrival of Europeans, virtually all of Canada was inhabited and used by Aboriginal peoples. Whether they were comparatively settled fishers and horticulturalists or wide-ranging hunters, each people occupied specific territories and had systems of tenure, access and resource conservation that amounted to ownership and governance — although those systems were not readily understood by Europeans, in part because of language and cultural differences.

Aboriginal societies in Canada were generally either foraging societies — such as those based around seasonal hunting, fishing and gathering — or settled, resource-based communities — such as those based on agriculture. In either case, kinship was the organizing institutional basis of production and consumption. The household was the basic unit of production, several of which constituted a camp or village. The band, tribe or nation (the latter a culturally and linguistically homogeneous entity consisting of several of these groups) numbered from fewer than a hundred to several thousand persons.[14]

Each of the extended families of Dene people have their own traditional land base and, within that land base, they have jurisdiction over all matters

pertaining to human life in relationship with the animals and the land and the Creator.

Rene Lamothe
Deh Cho Regional Council
Fort Simpson, Northwest Territories, 26 May 1992

Each nation's system of territoriality, governance and occupancy was intimately linked to its particular relationship to lands and resources. Northern and western nations, including Dene and Cree, had very large territories, shaping their system of governance to make it easier for them to move in harmony with seasonal activities such as hunting, fishing and harvesting.[15] By contrast, Pacific coast nations such as the Haida and the Tsimshian, whose sustenance and activities were tied to the sea and its resources, resided in settled villages with an elaborate system of governance. As for the east, there are many historical references to established agrarian communities at the time of contact:

When sixteenth-century Europeans encountered Iroquoians, first in the Gaspé and St. Lawrence Valley, and later in their homelands in the Great Lakes region and to the south, they also found gardens, although on a very modest scale in comparison with the Mexica [of Central America], and none was strictly for pleasure. Rather it was the Iroquoian cornfields that immediately attracted European attention: in 1535 Cartier was impressed with Hochelaga's "large fields covered with the corn of the country," which he thought resembled Brazilian millet. Nearly a century later, Recollet Friar Gabriel Sagard, visiting Huronia in 1623-24, reported that it was easier to lose his way in the cornfields than in the forest.[16]

Regardless of the actual pattern of land and resource-based activity, some social and political principles were common to all Aboriginal nations. These included stewardship of the earth and a set of responsibilities and obligations governing individuals, the family or clan, and the collective. These rules guided behaviour with respect to resource access and use and governed, managed and regulated territorial boundaries and resources.

Certain obligations and responsibilities for the larger collective — such as presiding at councils or conducting warfare — were undertaken by designated leadership. In Anishnabe-speaking nations (Ojibwa, Mississauga, Algonquin, Potawatomi and Odawa), these individuals were known as *okima* — a term that Europeans first translated as 'captain', and then as 'chief'.[17] Depending on the nation, leaders were chosen through the male or female line of descent of

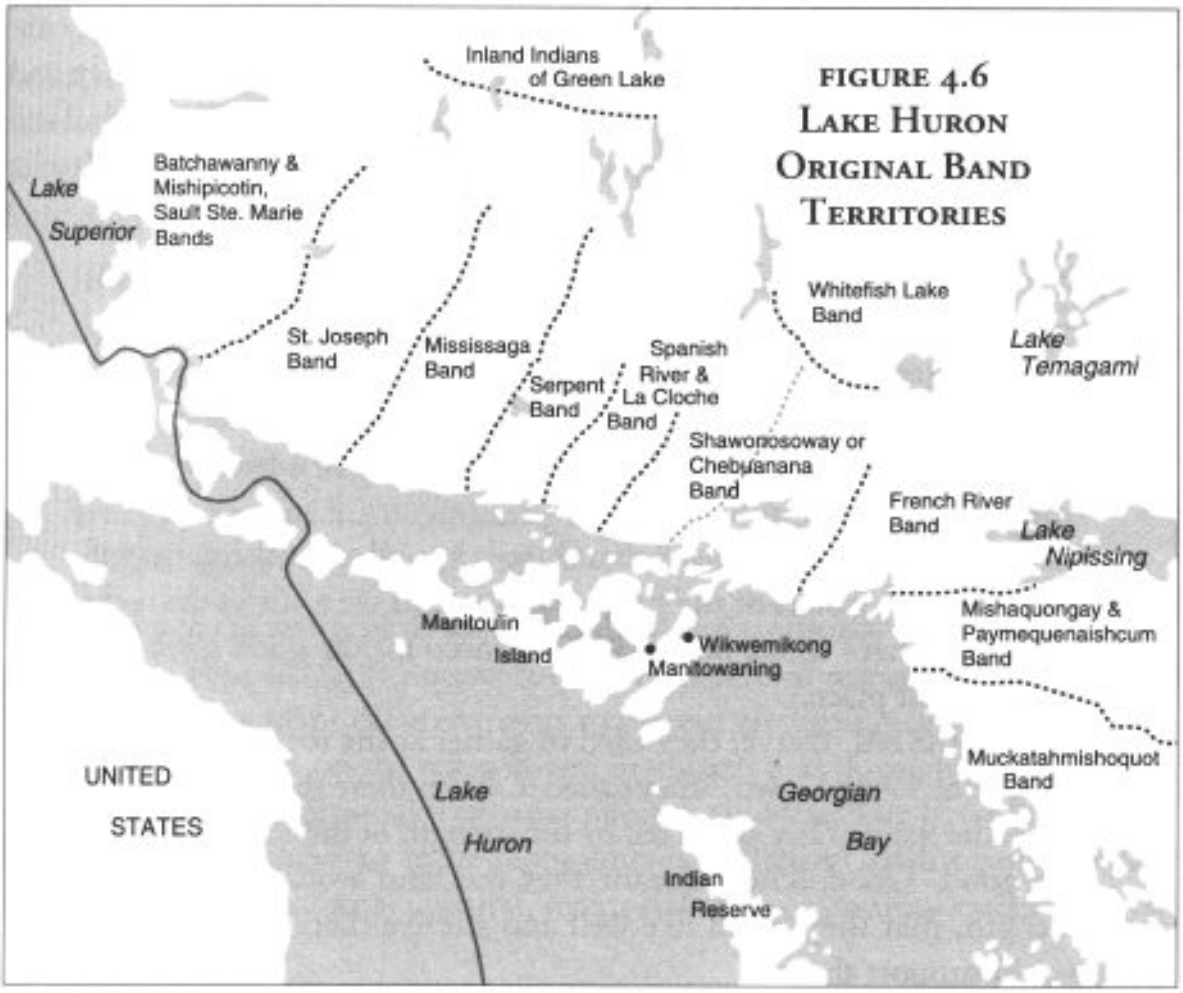
certain key families, or as a result of demonstrated ability in certain areas. Decisions about allocation, access to and use of lands and resources occurred mostly at this broader level.

The relationship to land was also reflected in jurisdictional issues relating to lands and resources. Tribal or band territories — often thousands of square kilometres — were communal property to which every member had unquestioned rights of access. As John Joe Sark, Kep'tin of the Micmac Grand Council, explained during the hearings, the Grand Council "traditionally divided hunting grounds so that all bands within the Mi'kmaq Nation would have adequate resources for their needs".[18]

A similar system existed among the Ojibwa people of northern lakes Huron and Superior, according to the report of two commissioners appointed by the province of Canada in 1849 to investigate Aboriginal grievances on the upper lakes:

Long established custom, which among these uncivilized tribes is as binding in its obligations as Law in a more civilized nation, has divided this territory among several bands each independent of the others; and having its own Chief or Chiefs and possessing an exclusive right to and control over its own hunting grounds; — the limits of these grounds especially their frontages on the Lake are generally well known and acknowledged by neighbouring bands; in two or three instances only, is there any difficulty in determining the precise boundary between adjoining tracts, there being in these cases a small portion of disputed territory to which two parties advance a claim.[19]

The map of Lake Huron that commissioners Alexander Vidal and T.G. Anderson enclosed with their report is shown in Figure 4.6. Although the division lines marking each territory appear as straight lines, most follow major river systems flowing into the lake. Each of these band territories included such resources as lakeshore fisheries, sugar bushes and gardens, as well as interior fisheries and hunting grounds.[20]



Source: Adapted from James Morrison, "The Robinson Treaties of 1850: A Case Study", research study prepared for RCAP (1993), based on maps in National Archives of Canada, Record Group 10 (Indian Affairs), volume 266, pp. 163121-163155, report of treaty commissioners Alexander Vidal and T. G. Anderson, 1849.

Within these band or tribal territories, however, family units or clans retained their autonomy. Day-to-day decision making about production and consumption occurred mostly at the household level, and the families or clans generally returned every year to the same specific areas. In later years, many Ojibwa communities attempted to adapt this traditional pattern of organization and territoriality when they were settled on reserves. This was true, for example, along the English River between what is now Manitoba and northwestern Ontario:

On the old reserve, every family lived together. We weren't all bunched up and mixed together like we are today ... .

On the old reserve, the families were far apart from each other. We lived beside the Fobisters, about a half mile apart; in between us were the Lands. John Loon and his family lived on that island, up the English River. The Assins were more on the Wabigoon side of the river. The Hyacinthes all lived together on one shore ... the next point belonged to the Ashopenaces ... then the Fishers, then the Necanapenaces ... .The Taypaywaykejicks had a different spot too. It was traditional for all the clans to live separately from each other. That's the way they have always lived. It was much better that way.[21]

The geographic extent of territorial rights was based on systematic jurisdiction, use and occupancy, although among the Pacific coast tribes, more formal property rights based on lineage and descent existed. However, the connection between the land and the group lay not simply in use, occupancy, and governance, but in knowledge, naming and stories. These were the cultural and symbolic expression of travel, harvesting, habitation and one's sense of place in the scheme of the universe:

Our people used to believe there is a spirit that dwells in those cliffs over there. Whenever the Indians thought something like that, they put a marker. And you can still see these markers on the old reserve. Sometimes, you see paintings on rocks. These mean something; they were put there for a purpose. You can still see a rock painting when you go up to Indian Lake ....

The rock paintings mean that there is a good spirit there that will help us on the waters of the English River. You see a cut in the rocks over there; that's where people leave tobacco for the good spirit that inhabits that place.

On the old reserve, they used to gather at the rock formation — "Little Boy Lying Down," they called it. From there they sent an echo across the space. They could tell by the strength of the echo if the land was good. Good echoes meant that the land would give people strength, that they could live well and survive there, that the land would support them.

Another way to tell whether the land was good to live on was by the light that comes off the land. The old people used to be able to see this light. The place where the new reserve is, it is not a good place. It is not a place for life.[22]

One criticism that Aboriginal people make of the current comprehensive claims process is that federal policy reduces the geographic basis for claims to evidence of economic use, without adequate recognition of the more fundamental connection with sites and areas of cultural, spiritual and

community significance.

Boundary maintenance

The maintenance of territorial integrity (or, more specifically, access to resources) was effected through defence of social boundaries and of the territorial perimeter itself. The key to survival was access to and control of resources rather than land per se. Territorial boundaries could be variable or somewhat flexible according to social and political rules, such as alliances with other nations. Nonetheless, the limits were known to the members of the territorial group and to their neighbours and were defended accordingly. Unauthorized presence in the territory of another group would lead to disputes and was in most cases regarded as punishable trespass; people governed their behaviour accordingly.

In this respect, individual nations or tribes formed alliances or arrangements as required to address their respective rights of access or land use. In extreme instances, they resorted to war or to spiritual sanctions. In 1913, anthropologist Frank Speck learned about such duties of chieftainship among the Algonquin and Ojibwa peoples of western Quebec and northeastern Ontario:

In time of war, it is remembered, the chief was the head. He decided the fighting policy of the band, where to camp, where to move, when to retreat, when to advance, and the like. Or, if unable to go himself, he would apportion so many men to another responsible leader, whom he might appoint as his proxy. The chief seems to have been expected to learn conjuring in order to send his *ma'nitu* spirit to fight against enemies or rivals.[23]

Although the patterns of social, political and territorial organization have been largely disrupted, it is noteworthy that, in certain respects, communities have attempted to adapt these elements to present circumstances both in terms of settlement patterns on the reserves and in villages and through the demarcation and survey of traditional territories or land use areas. The latter has generally been done in order to meet requirements of federal claims policy or to rediscover or affirm internal cultural, territorial and community integrity.

Property and tenure

You must recognize that although we exercised dominion over these lands prior to the coming of the foreigners, our values and beliefs emphasized

stewardship, sharing and conservation of resources, as opposed to the foreign values of ownership, exclusion and domination over nature. Proprietorship over use of resources within a traditional land base was a well-established concept that influenced our relations among ourselves as a people, and with other people who entered our lands from time to time.

Chief George Desjarlais
West Moberly First Nation
Fort St. John, British Columbia
20 November 1992

Aboriginal property systems can best be thought of as communal because they resemble neither individualized private property systems, nor the system of state management, coupled with open access, that currently prevails on public lands in Canada. Even where family and tribal territories existed, these systems combined principles of universal access and benefit within the group, universal involvement and consensus in management, and territorial boundaries that were flexible according to social rules.[24]

Specific property arrangements have varied widely among Aboriginal nations, but some basic principles are common to all. In no case were lands or resources considered a commodity that could be alienated to exclusive private possession. All Aboriginal peoples had systems of land tenure that involved allocation within the group, rules for conveyance of primary rights (and obligations) between individuals, and the prerogative to grant or deny access to non-members, but not outright alienation.

The land belongs exclusively to the Atikamekw people. There is currently a territorial organization whose division is based on the principle of family clans. At its head is a principal guardian and his role is to manage the clan lands. Generally, the principal guardian is the patriarch of the clan. The clan lands are then divided among the families of the same clan. This land structure is comparable to the Regional Municipal Council and to the administrative divisions of a province. [translation]

Simon Awashish
Conseil de la Nation Atikamekw
Manouane, Quebec
3 December 1992

Formal arrangements could be made between groups, based on mutual recognition of each other’s needs and surpluses, but these required adherence

to rules of conservation as well as norms respecting harvesting, exchange, sharing and consumption. Members of the group either had equal access to the communal lands or were assigned places within them on an ordered basis. In 1913, one of Frank Speck's Ojibwa informants described how this process worked:

One time I went to visit Chief Michel Batiste ... at Matachewan post near Elk lake. He gave me three miles on a river in his hunting territory and told me I could hunt beaver there. I was allowed to kill any young beaver, and one big one, from each colony. He told me not to go far down the river because another man's territory began there. Said he, "Don't go down to where you see a tract of big cedars." And I did not go there. This grove of cedars was the measure of his boundary. Later he gave me another lake where I could hunt marten.[25]

As can be seen from this example, Aboriginal tenure systems generally incorporate two seemingly conflicting principles: permission must be sought to use another's territory, but no one can be denied the means of sustenance. The key is the acceptance of the obligations that go with the right. In general the bundle of rights included use by the group itself, the right to include or exclude others (by determining membership), and the right to permit others to use lands and resources. Excluded was the right to alienate or sell land to outsiders, to destroy or diminish lands or resources, or to appropriate lands or resources for private gain without regard to reciprocal obligations.

Available records of early treaty making confirm that Aboriginal systems allowed for a conception of land that included the notion of property. This can be seen from the report of a speech by Chief Ma-we-do-pe-nais, chief of the Saulteaux of Fort Frances in northwestern Ontario, to Commissioner Alexander Morris during the negotiations of Treaty 3 in 1873:

What we have heard yesterday, and as you represented yourself, you said the Queen sent you here, the way we understand you as a representative of the Queen. *All this is our property where you have come*. We have understood you yesterday that Her Majesty has given you the same power and authority as *she* has, to act in this business; you said the Queen gave you her goodness, her charitableness in your hands. *This is what we think, that the Great Spirit has planted us on this ground where we are, as you were where you came from. We think where we are is our property*. I will tell you what he said to us when he planted us here; the rules that we should follow — us Indians — He has given us rules that we should follow to govern us rightly. [emphasis added][26]

Management

It is commonly assumed that when Europeans first arrived in North America, they found a vast wilderness dotted with occasional Aboriginal settlements. Even today, many people think of wilderness parks or similar protected areas as regions "untrammelled by man".[27] But while many parts of North America were certainly more heavily forested in 1500 than they are now, Aboriginal people have lived on this continent for tens of thousands of years, and during that long period, they have intensively modified the landscape in a variety of ways.

One important tool was fire. Environmental historians have shown, for example, that in the mixed deciduous forest areas of what are now New England, Nova Scotia, New Brunswick and southern Quebec, Aboriginal people not only cleared land for their corn fields and gardens, they burned forests at least once a year to keep them open and parklike.[28] In northern Alberta during this century, Dene and Cree were still using fire as a management tool for increasing the abundance of crops and the diversity of animal species in certain locations. As one of ecologist Henry Lewis's informants explained:

In the spring when there is still some snow in the bush that's the only time most people could burn the open places. It is then that people think that it is best to start the burning. There are a lot of places they don't burn; they don't burn all over. But there are many places people know to burn. In time many animals go there; some like the beaver, about four to five years after. Especially the bear because of the new bushes of berries growing in the burned places.[29]

Aboriginal management systems rested on their communal property arrangements, in which the local harvesting group was responsible for management by consensus. Management and production were not separate functions, although leadership and authority within the group were based on knowledge, experience and their effective use. For example, those individuals and families that possessed and demonstrated extensive knowledge, experience and ability regarding traditional medicines, including tending, harvesting, use and application, became the acknowledged community experts in that sphere of land and resource management.[30]

Traditional ecological knowledge

Management data included not only immediate observations of variation and

theories of cause and effect, but also the accumulated knowledge of countless generations of harvesters. Various tools and techniques are still employed to modify the land and its resources, both to encourage an abundant harvest and, in fulfilment of their roles of stewards and brethren to the earth's creatures, to conserve the ecosystem and its inhabitants. In a case study prepared for the Commission, Andrew Chapeskie describes his experiences working with Aboriginal communities in northwestern Ontario:

One Anishinaabe "trapper" ... I work with, for example, told me in the spring of 1993 about his feeding of fish to certain species of the furbearers that he customarily harvests. When I asked why, he responded with the following explanation. By feeding these animals at certain times of the year they can be attracted to specific locations. This makes it easier to catch them. A trapper like himself will want to do this so that a certain amount of carnivorous furbearers can be caught to maintain balanced levels of other furbearers that they prey upon, but which at the same time are important to his livelihood.

As well, since the collapse of the market for furs, his livelihood rationale to trap has diminished. The consequence is that populations of predator species such as mink have risen sharply since the customary balance between the furbearer species mosaic and himself as a trapper is no longer maintained. If he did not feed them they would not only disturb this optimal species balance with prey species such as muskrats, but they would also turn to cannibalism. He felt obligated to assume some sort of responsibility to ameliorate this situation to the extent that his time permitted.[31]

Oral culture, in the form of stories and myths, was coded and organized by knowledge systems for interpreting information and guiding action. Spiritual beliefs, ceremonial activities, and practices of sharing and mutual aid also helped to define appropriate and necessary modes of behaviour in harvesting and utilizing resources. These techniques thus had a dual purpose: to manage lands and resources, and to affirm and reinforce one's relationship to the earth and its inhabitants. Andrew Chapeskie describes the behaviour of another Anishnabe trapper from the Kenora region of northwestern Ontario:

She would open up beaver lodges at certain times of the year to see where the various 'bedrooms' and other rooms were located and to visit with the beaver in them. This work was also part of a broader spectrum of 'census-taking' activities designed to maximize the efficacy of her trapping work.[32]

Although these practices did not operate in the manner of western 'scientific'

management, they regulated access to and use of resources. It was these cultural constraints on behaviour with respect to communal property, rather than ‘natural’ predator-prey relationships, that normally guarded against resource depletion.

When the people came and started hunting at hunting time, maybe we picked on one area too much. The elders used to get together and say, “That land is going to rest. There is to be no more hunting. There will be no deer hunting for two, three, four years.” But the system as it is now, the white man goes and gives a hunting permit, a hunting licence to everyone to shoot everything they see in sight and we have so much respect amongst our people we don’t even go to other tribes’ territory to hunt moose or deer or bear. We stay out of there unless we are invited by that tribe.

John Prince
Stoney Creek, British Columbia,
18 June 1992

We use the term ‘management’ for these practices and beliefs as an analogy, rather than a description. Aboriginal languages did not have such a term, and many Aboriginal people today do not feel comfortable applying that term to their own ways of doing things.[33] However, social scientists have termed the content and use of such knowledge ‘traditional ecological knowledge’ or simply, traditional knowledge. The term itself is somewhat ambiguous, as it applies to a host of cultural concepts, understandings, tools and techniques from nations as diverse as the Wuastukwiuk (Maliseet) and the Shuswap. Given its cultural (and oral) context and the inherent difficulty of relating the underlying concepts, references to traditional knowledge tend to be general statements of principle. This lack of precision has led to misunderstandings and sometimes outright rejection of its value by western scientific practitioners and administrators.[34]

We also have a considerable amount of information within our communities. There is a lot of wisdom there; there is a lot of experience there; there is a lot of knowledge. It is going to take time, it is going to take people and it is going to take resources to access that. We have research we have to undertake. We have to be able to collect that information, store it and retrieve it ... .

When we sit down with the Ministry of Forests or Energy, Mines and Resources or any particular area, we find that we have to rely on their information. The things we know and believe, we often have a difficult time proving because we simply don’t have the detailed technical information at our fingertips.

Bruce Mack
Cariboo Tribal Council
Kamloops, British Columbia, 14 June 1993

Subsistence

The word subsistence is a western concept, which carries with it the negative connotation of a hand-to-mouth existence. According to former British Columbia Supreme Court Justice Thomas Berger, who learned first-hand about the northern economy when he headed the Mackenzie Valley Pipeline Inquiry of the 1970s, many people down the centuries have tended to dismiss Aboriginal economies as "unspecialized, inefficient and unproductive".[35] But while Aboriginal people have lived more "lightly on the land" than most of those who have come to join them, many of the resources they used were extraordinarily productive, even by modern standards.

A classic example, though far from the only one, is fisheries. On the east and west coasts of Canada, Aboriginal people harvested enormous quantities of fish and shellfish both for personal consumption and for exchange. Historian Dianne Newell has shown that, at the time of extensive non-Aboriginal settlement in British Columbia in the last quarter of the nineteenth century, the annual salmon catch of the Stó:lo and other tribes from the waters of the Fraser River and the coast was already close to modern levels for all fishers.[36]

The same was true of inland fisheries. In the mid-nineteenth century on lakes Huron and Superior and in the later nineteenth century in the Rainy River-Lake of the Woods area of northwestern Ontario and southeastern Manitoba, Ojibwa and Odawa fishers were running the equivalent of full-fledged commercial operations for sturgeon, trout and other species. Historical and archaeological evidence suggests that such fisheries had been managed on a maximum sustained yield basis for centuries.[37]

Even today, many Aboriginal communities — particularly in the far and mid-north — have mixed, subsistence-based economies, meaning that people continue to make their living by combining subsistence harvesting with wage labour, government transfer payments and commodity production.[38] In particular, hunting, fishing and trapping continue to be central economic activities, and, in a larger sense, subsistence has remained very much a part of the way of life (see Chapter 5 of this volume and Volume 4, Chapter 6).

Subsistence activities are economically productive as a source of income in kind, and they provide nutritious and highly valued food such as fish and wild meat, for which there is often no import replacement. Social scientists have estimated that Aboriginal people continue to eat about seven times as much fish as the average Canadian, and their relative consumption of wild game is even greater.[39] There is a strong link between the consumption of such country food and lower instances of lifestyle diseases such as obesity and diabetes.[40]

Without this subsistence base, the informal sector of the mixed, subsistence-based economy that typifies many communities becomes largely non-viable. Subsistence, in its broadest sense, is also a key means of reaffirming Aboriginal identity and of intergenerational transmission of skills and values. Subsistence is also valued as a sphere of Aboriginal autonomy; it provides for the retention of traditional and fundamental ties to the earth and is thus the aspect of life where control by federal or provincial management agencies is least appropriate. Gerry Martin, an Ojibwa from the Matagami First Nation community, explained to us that this close connection is not only economic, but also cultural, social and spiritual:

Most Indians ... will say, “If you take that money out in the bush it is worth nothing to you, but what you have in your mind, in experience, with how you know how to live with the land and what it offers you — that is worth something.” Money can’t buy that and the only way you are going to learn that is to listen to your elders and the teachings and take the time to learn those lessons — by being out on the land.

Gerry Martin
Timmins, Ontario
6 November 1992

Thus, subsistence is part of a social and cultural system. Family ties form the basis of its social organization; kinship is in turn reinforced by hunting, fishing, harvesting and sharing. While some Canadians — residents of Newfoundland outports, for example — will recognize this kind of system, it is unknown to most non-Aboriginal systems of governance. Yet extended families and the many kinds of land-based activities they practised continue to be an integral part of Aboriginal nationhood and governance.

What Aboriginal peoples do on the land (and on the rivers, lakes and oceans) has certainly evolved over time, as has the way they do it. But it remains just as important to them as a means of securing the future as well as affirming their

connection to the past.

To live on our land for periods of time throughout the year continues to be of central importance to maintaining our culture. We are a hunting people. Life in the country, away from the villages, is not sufficient for us. It is what is at the heart of who we are as a people. In the country, we have the skills passed to us from our mothers and fathers. In the country, we are the teachers, passing on Innu skills to our children. It will be a major role of the Innu government to do whatever is necessary to ensure that our rights to use and occupy our lands are protected.

All of these are examples of what Innu government means. I think it is obvious how recognition of Innu government and the Innu rights will lead to political and economic self-sufficiency. Recognition of our rights means recognition of our nationhood, and recognition of our nationhood brings all we need to be politically and economically self-sufficient.

George Rich
Innu Nation
Davis Inlet, Newfoundland and Labrador
1 December 1992

To the Innu people of northern Labrador, as to other Aboriginal peoples in Canada, the link between self-sufficiency and self-government is an obvious one. But that link has been far from obvious to the broader society. Indeed, most of the land use rights and practices referred to in this section have survived with the greatest difficulty, for only in the past two decades have Aboriginal property rights begun to be reconsidered in the law and on the facts, after more than a century of atrophy. This is the subject to which we now turn.

4. How Losses Occurred

As we saw earlier in this chapter, Dene Th'a prophet Nógha warned his people that they would end up confined to small parcels of land. How Nógha's prophecy became a reality is a tragic story of forgotten promises and abandoned responsibilities — and this story is not unique to Dene. Although the law of Aboriginal title initially promised respect for Aboriginal relationships with lands and resources, Aboriginal peoples increasingly were separated from their traditional territories and shunted to the margins of Canadian society. While they continued to occupy large regions of the country, their recognized land holdings — their reserves and settlements — had been reduced during the

years between Confederation and the end of the Second World War to a series of small plots of land with few natural resources. The process of settlement and economic development had devastating effects on their traditional land use areas.

Aboriginal peoples were also ignored in the collective memory of Canadian society. Their history since Confederation was not taught in schools or recognized as integral to the founding of Canada.[41] Government policy makers had little consciousness of Aboriginal issues. Some academics, mainly anthropologists like Diamond Jenness, Jacques Rousseau and Thomas McIlwraith, had developed close relations with Aboriginal people, but their publications did not reach a wide audience.[42]

In recent years, there has been an explosion in historical, social, scientific and popular writing by and about Aboriginal people and their concerns. Some of it has been spurred by research into land claims and related issues, but much of it is the result of Aboriginal issues being recognized as legitimate areas of academic study. Various publications are bringing about a reassessment of the history of the past century or more.[43] We are only beginning to understand the myriad factors that made Nógha's prophecy concerning Aboriginal lands and resources a reality. In the rest of this section we describe in some detail how, despite the law's initial promise, these losses occurred. As our hearings showed, Aboriginal people have always known what happened to them, but many Canadians still do not.

4.1 The Law's Initial Promise

Our songs, our spirits, and our identities are written on this land, and the future of our peoples is tied to it. It is not a possession or a commodity for us. It is the heart of our nations. In our traditional spirituality it is our mother.

Grand Chief Anthony Mercredi
Assembly of First Nations
Ottawa, Ontario, 5 November 1993

Despite claims of territorial sovereignty over North America by European nation-states at the time of contact, Aboriginal relationships to land and its resources were initially respected by imperial and colonial authorities.[44] Indeed, the law of Aboriginal title, as initially expressed in British colonial law, emerged out of the very process of colonization and settlement, through practices of Aboriginal

people and colonial officials in their attempt to maintain peace and co-operation with each other. The law of Aboriginal title initially took the form of consistent norms of good practice necessary for initiation and expansion of the trade in fish and fur, but grew quickly to reflect intersocietal norms that enabled the coexistence of colonists and Aboriginal peoples on the North American continent.[45]

This body of law prescribes stable ways of handling disputes between Aboriginal and non-Aboriginal people, especially disputes over land. It recognizes Aboriginal title, namely, occupation and use of ancestral lands, including territory where Aboriginal people hunted, fished, trapped and gathered food, not just territory where there were Aboriginal village sites or cultivated fields. It restricts non-Aboriginal settlement on Aboriginal territory until there is a treaty with the Crown. It prohibits the transfer of Aboriginal land to non-Aboriginal people without the approval and participation by Crown authorities. And in its most developed form, it prescribes safeguards for the manner in which such treaties can occur and imposes strict fiduciary obligations on the Crown with respect to Aboriginal lands and resources.[46]

That these norms are stable, consistent and intersocietal does not mean that they were always scrupulously observed by colonial authorities. Settlement frequently outran governmental authority and often was ratified retroactively by governments. Agents of government, attracted by the potential for profit in land speculation, occasionally connived in the evasion of the standards contemplated by the law. Aboriginal interests in land and resources were increasingly ignored in the formulation of public policy designed to open up the continent for non-Aboriginal settlement and exploitation.

But the initial story of colonial encounters with Aboriginal relationships with land and resources is one of respect and recognition, reflected in the law of Aboriginal title (see Volume 1, Chapter 5, and Chapter 3 of this volume). Although the existence of Aboriginal nations on the continent did not preclude European powers from asserting territorial sovereignty over North America, Aboriginal title survived such assertions and protected Aboriginal lands and resources from non-Aboriginal

settlement.[47] Whether Aboriginal title was extinguished by the French regime before 1760 is a matter of some scholarly controversy. The older view is that extinguishment did occur, but more recent scholarship working from a pluralist perspective, which we find persuasive, reaches a different conclusion.[48] In the words of Andrée Lajoie, “the French cohabited with their Aboriginal allies in

North America in ambiguity, without acquiring territory or subjugating any population other than, perhaps, certain individuals who had settled in villages".[49] In 1867, Justice Monk of the Quebec Superior Court described these initial relations between French settlers and trading companies and Aboriginal nations in the following terms:

The enterprise and trading operations of these companies and the French colonists generally extended over vast regions of the northern and western portions of this continent. They entered into treaties with the Indian tribes and nations, and carried on a lucrative and extensive fur trade with the natives. Neither the French Government, nor any of its colonists or their trading associations, ever attempted, during an intercourse of over two hundred years, to subvert or modify the laws and usages of the aboriginal tribes, except where they had established colonies and permanent settlements, and, then only by persuasion.[50]

Respect for and recognition of Aboriginal title is apparent in the *Royal Proclamation of 1763*, which codified British colonial practice with respect to Aboriginal lands and resources. The Proclamation forbids the purchase of Aboriginal territory by entities other than the Crown and provides rules governing the voluntary cession of Aboriginal territory to the Crown.[51]

Recognition of the importance of land and resources to Aboriginal people is also reflected in a number of other constitutional instruments, including the *Constitution Act, 1867*, the *Rupert's Land and North-Western Territory Order* and the *Adjacent Territories Order*, the *Manitoba Act*, the *British Columbia Terms of Union*, the Natural Resources Transfer Agreements and, of course, the *Constitution Act, 1982*.[52]

Norms of conduct recognizing the importance of Aboriginal relationships with lands and resources and enabling Aboriginal and non-Aboriginal people to live alongside each other are also embodied in countless treaties entered into by Aboriginal nations and government authorities. As Justice Lamer of the Supreme Court of Canada said in *Sioui*:

Great Britain and France felt that the Indian nations had sufficient independence and played a large enough role in North America for it to be good policy to maintain relations with them very close to those maintained between sovereign nations.

The mother countries did everything in their power to secure the alliance of each Indian nation and to encourage nations allied with the enemy to change sides. When these efforts met with success, they were incorporated in treaties of alliance or neutrality. This clearly indicates that the Indian nations were regarded in their relations with the European nations which occupied North America as independent nations.[53]

Respect for Aboriginal relationships with lands and resources is apparent not only in early treaties of alliance, but also in more contemporary agreements that authorize the sharing of territory by Aboriginal nations and the Crown (discussed at greater length in Volume 1, Chapter 5, in Chapter 2 of this volume, and in Appendix 4B to this chapter).

4.2 Losing the Land

Although the law recognizes Aboriginal title in terms of a range of inherent rights with respect to lands and resources, Crown respect for the existence of Aboriginal title, as we will see shortly, was most consistent during the eighteenth and early nineteenth centuries, when settlers and colonial officials still needed or valued Aboriginal people as friends and military allies. This respect was eroded by the decline of the fur trade and the concomitant decline of Aboriginal and non-Aboriginal economic interdependence. Increased demands on Aboriginal territory occasioned by population growth and westward expansion, followed by a period of paternalistic administration marked by involuntary relocations and resettlement, only exacerbated the erosion of respect. The treaty-making process fell into disuse, and treaties that had been concluded were often vulnerable to manipulation and misinterpretation by government officials.

The Loyalist settlers who fled to Canada at the close of the American Revolution brought with them the treaty-making practice that had been enshrined in the *Royal Proclamation of 1763*, and various agreements with Aboriginal nations cover southern Ontario and portions of southern Quebec.[54] If the dates of first surveys in various parts of southern Ontario are compared with the dates of the creation of the first farms, it can be seen that (unlike the United States) Crown survey invariably preceded settlement. This was because, in accordance with the rules set down in the Royal Proclamation and subsequent regulations, lands did not become waste lands of the Crown — that is, lands available for disposition to settlers (now known as public lands) — until after a treaty with their Aboriginal inhabitants.[55] In 1794, the commander in

chief in British North America, Lord Dorchester, had enshrined such rules for all of His Majesty's surviving colonies on that continent (including Upper and Lower Canada, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland).

While the language of the Dorchester regulations is that of a real estate transaction, this was not how the subsequent agreements were perceived by the Aboriginal participants. The *Royal Proclamation of 1763* had stated that treaties would be made only if the Indian Nations were "inclined" to part with their lands. In effect, however, what had been designed originally as measures for the protection of Aboriginal people contributed to their dispossession. With large-scale immigration to Canada, particularly in the period after the War of 1812, the understanding that Aboriginal people had of the treaty relationship — that they would continue to have access to their traditional lands and that the Crown was to function as the referee between their interests and those of the settlers — was, in their view, violated. In 1829, the chiefs of the Mississauga Nation of the Credit River, whose lands included what is now the greater Toronto area, expressed to Lieutenant Governor John Colborne their disappointment with the Crown's interpretation of a treaty they had made in 1820:

Several years ago we owned land on the Twelve mile [Bronte] creek, the Sixteen [Oakville] and the Credit. On these we had good hunting and fishing, and we did not mean to sell our land but keep it for our Children for ever. Our Great Father sent to us by Col[onel] Claus and said. The White people are getting thick around you and we are afraid they, or the yankees will cheat you out of your land, you had better put it into the hands of your very Great Father the King to keep for you till you want to settle. And he will appropriate it for your good and he will take good care of it; and will take you under his wing, and keep you under his arm, & give you schools, and build houses for you when you want to settle.

Some of these words we thought good; but we did not like to give up all our lands, as some were afraid that our great father would keep our land. But our Great Father had always been very good to us, and we believed all his words and always had great confidence in him, so we said "yes", keep our land for us. Our great father then thinking it would be best for us sold all our land on the Twelve the Sixteen and the upper part of the Credit to some white men. This made us very sorry for we did not wish to sell it.[56]

What the Aboriginal nations were not aware of was that, in the Crown's view,

once a particular treaty had been concluded, the lands covered by the agreement could be turned into private property. By the turn of the nineteenth century, Aboriginal people in southwestern Ontario were complaining that farmers were setting their dogs on them if they tried to cross an open field to get to a hunting or fishing site. And there were other consequences. In 1806, the same Mississauga people were protesting to Deputy Superintendent General William Claus that the waters of the Credit River at its entrance into Lake Ontario “are so filthy and disturbed by washing with soap and other dirt that the fish refuse coming into the River as usual, by which our families are in great distress for want of food”. They asked that the settlers be moved away from the river.[57]

In our area, Aboriginal people are denied access to most Crown lands because we have to cross private property to get to the land. As an example there is one person in our area who owns almost 1,000 acres and he has signs posted saying private property on his own property but he retains a hunt camp on Crown land. In order for us to get to that Crown land we have to cross his property but we can’t cross it.

On one piece of land where I hunted and fished for years, MNR [ministry of natural resources] changed it to a designated park and we were charged that fall for hunting there.

Paul Day
Toronto, Ontario
4 June 1993

The Dorchester Regulations of 1794

To Sir John Johnson, Baronet, Superintendent General and Inspector General of Indian Affairs, or, in his absence to the Deputy Superintendent General.

Art. 1st. It having been thought advisable for the King’s Interest that the system of Indian Affairs should be managed by Superintendents under the direction of the Commander in Chief of His Majesty’s Forces in North America; no Lands, therefore, are to be purchased of the Indians but by the Superintendent General and Inspector General of Indian Affairs, or in his absence the Deputy Superintendent General or a Person specially commissioned for that purpose by the Commander in Chief.

2d. When Indian Territory shall be wanted by any of the King's Provinces, the Governor or Person administering the Government of the respective Province will make his Requisition to the Commander in Chief, and also to the Superintendent General of Indian Affairs, or in his absence the Deputy Superintendent General, accompanied with a sketch of the Tract required, who will endeavour to find out the probable price to be paid therefor, in Goods the Manufacture of Great Britain, and Report the same to the Commander in Chief, that measures may be taken to get them out from England by the first opportunity. Presents sent to the Upper Posts for the ordinary purposes of the Indians inhabiting the Neighbourhood of, or visiting the said Posts, are not to be appropriated to the purchase of Indian Lands without the express Order of the Commander in Chief.

3d. All Purchases are to be made in public Council with great Solemnity and Ceremony according to the Antient Usages and Customs of the Indians, the Principal Chiefs and leading Men of the Nation or Nations to whom the lands belong being first assembled.

4th. The Governor or Person administering the Government of the Province in which the Lands lie, or two Persons duly commissioned by him, are to be present on behalf of the said Province.

5th. The Superintendent General or in his absence the Deputy Superintendent General negotiating the purchase shall be accompanied by two other Persons belonging to the Indian Department together with one, two, three or more Military Officers (according to the Strength) from the Garrison or Post nearest to the place where the Conference shall be held.

6th. The Superintendent General or Deputy Superintendent General negotiating the Purchase will employ for the purpose such Interpreters as best understand the Language of the Nation or Nations treated with, and during the time of the Treaty every means are to be taken to prevent the pernicious practice of introducing strong Liquors among the Indians, and every endeavour exerted to keep them perfectly sober.

7th. After explaining to the Indians the Nature and extent of the Bargain, the situation and bounds of the Lands and the price to be paid, regular Deeds of conveyance (Original, Duplicate and Triplicate) are to be executed in Public Council by the Principal Indian Chiefs and Leading Men on the one part, and the Superintendent General, or in his absence

the Deputy Superintendent General or Person appointed by the Commander in Chief on His Majesty's behalf on the other part, and attested by the Governor or Person administering the Government in which the ceded Lands lie, or the Person commissioned by him and by the Officers and others attending the Council. Descriptive Plans signed and witnessed in the same manner are to be attached to the Deeds of Conveyance, one of which is to be transmitted to the Office of the Superintendent General to be there entered and remain on Record, a second to be given to the Governor or Person administering the Government of the Province in which the lands fall or the Person appointed by him, and the third is to be delivered to the Indians, who by that means will always be able to ascertain what they have sold and future Uneasiness and Discontents be thereby avoided.

8th. All other matters being settled, Indian Goods to the amount agreed upon are to be given in payment of the Territory ceded, the said Goods to be delivered in Public Council with the greatest possible Notoriety and the Delivery certified and witnessed in the same manner as the Deeds of Conveyance.

9th. When the Council is finished the Proceedings are by the first convenient Opportunity to be transmitted to the Office of the Superintendent General for the information of the Commander in Chief.

Guy Carleton, Lord Dorchester

Source: Lord Dorchester, "Additional Instructions, Indian Department", letter to Sir John Johnson, superintendent general and inspector general of Indian affairs, 26 December 1794, in The Correspondence of Lieut. Governor John Graves Simcoe, with Allied Documents relating to His Administration of the Government of Upper Canada, cd. Brigadier General E.A. Cruikshank, Volume III (Toronto: Ontario Historical Society 1925), pp. 241-242.

The settlers believed that they had acquired a valid title to land, a fact acknowledged by Crown officials, and they were generally mystified by the Aboriginal response. They had their own cultural reasons for acquiring land. Except on the east coast, the vast majority of North American settlers until the

mid-nineteenth century had arrived in search of land; many of them believed that they were fulfilling a biblical injunction to subdue the earth.[58] Particularly for agricultural colonists from

England, where much of the forest cover had disappeared by Norman times (though not France, where large tracts of woodland remained) — forested lands were considered wild and unproductive.[59] This meant that Aboriginal people were not making proper use of them. Lieutenant Governor Francis Bond Head of Upper Canada summed up the prevailing attitudes in a speech to Aboriginal nations assembled on northern Lake Huron in the summer of 1836:

In all parts of the world farmers seek for uncultivated land as eagerly as you, my red children, hunt in your forest for game. If you would cultivate your land it would then be considered your own property, in the same way your dogs are considered among yourselves to belong to those who have reared them; but uncultivated land is like wild animals, and your Great Father, who has hitherto protected you, has now great difficulty in securing it for you from the whites, who are hunting to cultivate it.[60]

Even today, such sentiments have resonance, even though only a small percentage of Canadians remain on the farm. Government programs for farmers have until recently been regarded with greater favour that those for fishers or resource workers. Attitudes about “uncultivated land” also have had a subtle and lingering influence, leading to the view that what Aboriginal people did (or still do) on the land has been neither efficient nor productive enough to be considered real economic activity.[61]

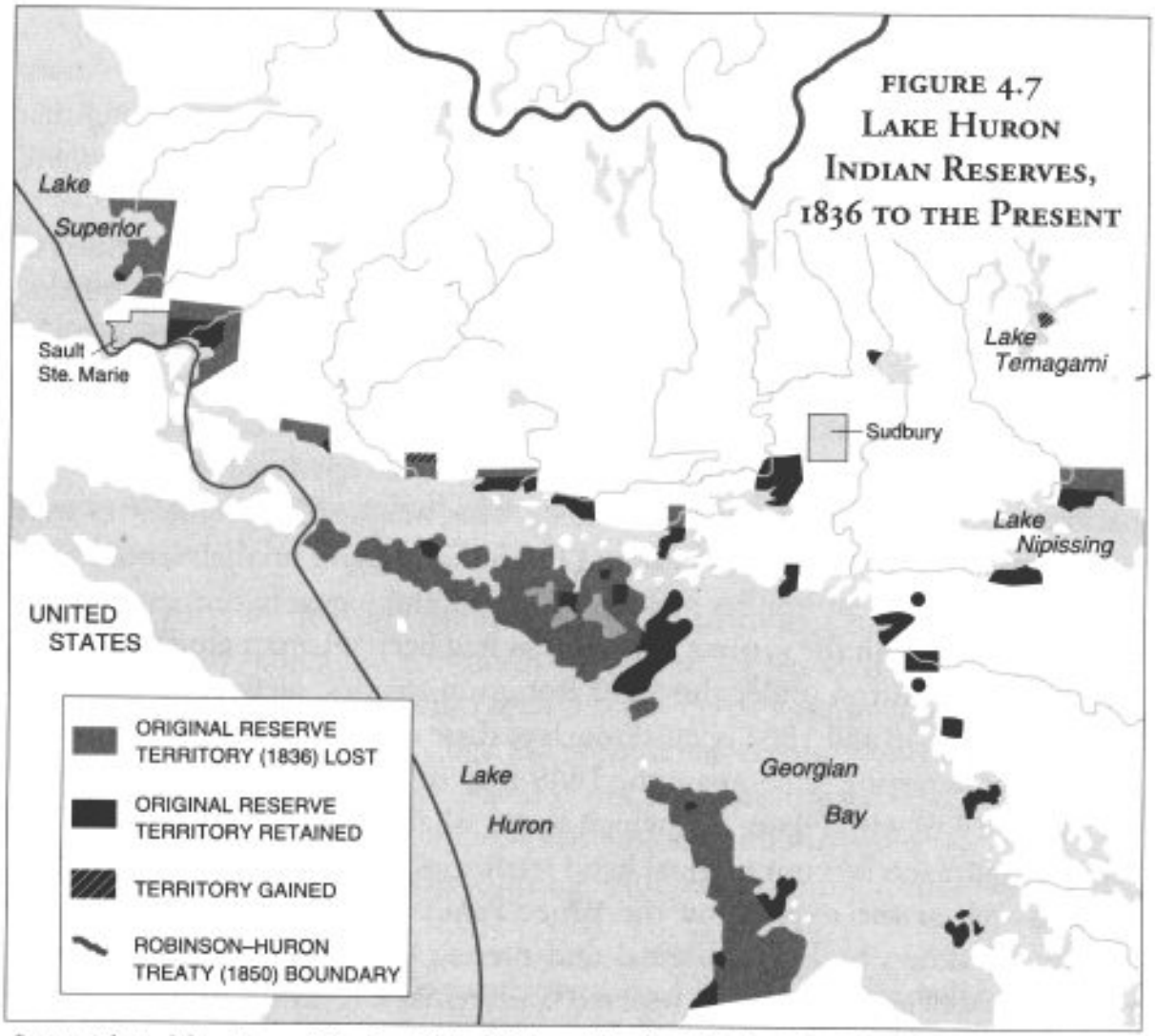
The first reserves

As early as the beginning of the seventeenth century in New France and Acadia, lands were being set aside for missionary orders to concentrate Indian people in a single location and instruct them in the Christian religion. These ‘reductions’, as they were termed, were modelled on earlier Jesuit missions to the Indigenous peoples of Central and South America. For example, the present lands of the Mohawk people at Kahnawake (Sault Saint Louis) and Kanesatake (Lake of Two Mountains) had been part of Christian missions run by the Jesuits and the Sulpicians, respectively, in the late seventeenth and early eighteenth centuries.[62] The Mohawk people, however, regarded the lands as theirs, not the missionaries’; both during the French regime and with the arrival of the British, they continually pressed for recognition of their own titles.

“It is our earnest prayer”, Agneetha, the chief at Kanesatake, told Superintendent General Sir John Johnson in 1788, “that a new Deed for the Lands we live on be made out for us, and that we may hold them on the same tenure that the Mohawks at Grand River and Bay de Quinte hold theirs”.[63]

Throughout the first half of the nineteenth century, reserves continued to be set aside in the Maritimes, Quebec and Ontario, sometimes as part of treaties, sometimes not. Yet even these reserves were a target for settlement pressure. The purpose of Lieutenant Governor Bond Head’s trip to the upper lakes in 1836 was to persuade the nations of that region to allow the Bruce Peninsula and the Manitoulin chain of islands in Lake Huron to be set apart as reserves for any nations that might choose to locate there. This was so that people who were occupying smaller reserves in southern Ontario would give up their lands to settlers. As the settlement frontier moved northward, these areas in turn came under pressure, along with the various reserves that had been set apart along Georgian Bay and Lake Huron under the 1850 Robinson treaties. New land treaties in 1854, 1857, 1858 and 1862 opened much of these reserved areas to settlement.[64]

It is interesting to compare the 1849 map of Lake Huron referred to earlier (Figure 4.6) with Figure 4.7, which shows what happened to reserves in the region. Figure 4.6 lays out original band territories along the north shore of the lake, as well as the reserves on the Bruce Peninsula and Manitoulin Island. Figure 4.7 shows both the original and present size of the Robinson treaty reserves, as well as the size of the reserved lands remaining on the Bruce Peninsula and Manitoulin islands. The two current reserves at Sault Ste. Marie (Garden River and Batchewana) have lost almost four-fifths of their territory since the 1850 treaty, and the Saugeen (Bruce) reserve is now represented on the map by a few tiny dots. Indeed, the Indian people of this region have been doubly dispossessed.



Source: Adapted from James Morrison, "The Robinson Treaties of 1850: A Case Study", research study prepared for RCAP (1993).

Reserves were regarded for much of the nineteenth century as places for people to be confined until they became 'civilized'. Once they had learned 'proper habits' of industry and thrift, they could then be released (enfranchised, in the language of Indian legislation from this period) into the general society as full citizens with equal rights and responsibilities, taking with them a proportional share of reserve assets.[65] An Indian person could not be both Aboriginal and a citizen of Canada; to own property, one would have to leave the reserve.[66]

The prairie west

The treaty-making process that had its origins in central Canada was continued in northwestern Ontario and the prairie west after Confederation. The Cree, Assiniboine, Saulteaux and Siksika nations saw that life would change with the arrival of so many newcomers, and they tried to secure both an economic base and a promise of continued government support. Part of that economic base would be the various reserves set apart under the so-called numbered treaties.

The prairie treaty nations were not told that, with the treaties, they would be made subject to existing policies and legislation, particularly the *Indian Act*. In addition to its extensive list of measures governing the everyday lives of Indian people, the 1876 act specifically prohibited Indians from acquiring a homestead in Manitoba, the Northwest Territories, and the territory of Keewatin — unless they were enfranchised.[67] Until that time, they were to remain on their reserves. Métis people, who had formerly used the open spaces of the west, along with their Indian brethren, were reduced to seeking a living on the margins of Crown land.[68]

In 1885, the Indian department brought in a pass system, requiring Indian people to get signed permission from the Indian agent before they could leave their reserves. The system, which was used for about two decades, had been designed in part to prevent the movement of Indian leaders in the aftermath of the Riel rebellion.[69] Once the military threat had diminished, however, both the settler population and government officials came up with other motives for keeping it. The settlers, who often complained that Indian people were killing their cattle, saw the pass system as a way of keeping Indians from loitering about their towns — and of preventing them from competing for game and fish. To government officials, the system was intended to discourage participation in ceremonies such as the sundance or thirst dance, to prevent nations such as the Plains Cree from asking for larger reservations, and to establish reserve agriculture by preventing Indians from travelling when there was work to be done in the fields (see Volume 1, Chapter 9).[70]

Despite the latter goal, some prairie treaty nations never received their full entitlement of reserve lands and therefore never even had the opportunity to try farming. Moreover, in the land rush that accompanied the building of the Canadian Pacific Railway, many First Nations lost parts of their reserves. In southern Saskatchewan alone, close to a quarter-million acres of reserve land had been sold by 1914. In very few instances were First Nations willing vendors; usually they were subject to relentless pressure from government officials and local settlers to part with their land.[71] Sometimes reserve lands were expropriated for railway easements or the needs of neighbouring

municipalities. In other cases, reserve lands were lost through questionable transactions involving government officials and land speculators. In a famous case, documented in the 1970s by the Federation of Saskatchewan Indian Nations, forensic evidence established that fraudulent deeds for lands belonging to the White Bear First Nation community had been typed up in the office of the local Indian superintendent.[72]

Whether or not outright corruption was involved in the transfer of reserve land, the reluctance of the new residents of western Canada — whether government officials, settlers, or elected politicians — to accept the continuing existence of reserves had a number of fundamental causes. One was the prevailing view that there ought to be a free market in land. No land would then remain 'idle' (as defined by the general society), and the most profitable use would prevail. The behaviour of government officials therefore had a certain logic. By engineering the surrender and sale of reserve lands, they were ensuring that the broader public interest (as they interpreted it) would prevail over the Aboriginal interest in maintaining a land base.[73]

The federal government, which retained control of lands and resources in the prairie provinces until 1930, also took reserve lands for other reasons that it considered to be in the broad public interest. In 1896, for example, the department of Indian affairs set aside 728 acres on Clear Lake in southwestern Manitoba as a fishing reserve for the Keeseekoowenin Band of Saulteaux. Some 30 years later, the federal government declared the enabling order in council inoperative and included the fishing reserve in the new Riding Mountain National Park, established in 1933. Keeseekoowenin Band members were evicted and their houses burned down. In 1994, the department of Indian affairs finally settled a specific land claim based on its actions; by order in council, the disputed portion of the national park was returned to the Keeseekoowenin Saulteaux.[74]

British Columbia

At this very moment the Lieutenant-Governor of Manitoba has gone on a distant expedition in order to make a treaty with the tribes to the northward of the Saskatchewan. Last year he made two treaties with the Chippewas and Crees; next year it has been arranged that he should make a treaty with the Blackfeet, and when this is done the British Crown will have acquired a title to every acre that lies between Lake Superior and the top of the Rocky Mountains.

But in British Columbia — except in a few cases where under the jurisdiction of the Hudson Bay Company or under the auspices of Sir James Douglas, a similar practice has been adopted — the Provincial Government has always assumed that the fee simple in, as well as the sovereignty over the land, resided in the Queen. Acting upon this principle, they have granted extensive grazing leases, and otherwise so dealt with various sections of the country as greatly to restrict or interfere with the prescriptive rights of the Queen's Indian subjects. As a consequence there has come to exist an unsatisfactory feeling amongst the Indian population.[75]

Frank Oliver and the Michel Band

A prominent journalist and pioneer settler in Edmonton, Alberta, Frank Oliver (1853-1933) was one of the most powerful politicians in the history of western Canada. As minister of the interior and superintendent general of Indian affairs from 1905 to 1911 in Sir Wilfrid Laurier's government, Oliver did his utmost to obtain surrenders of the various Indian reserves in and around his home city.

One of these reserves, located in what is now northwestern Edmonton, belonged to the Michel Band (of Iroquois, Cree and Métis ancestry) under Treaty 6. In 1906, after considerable pressure from Frank Oliver and officials of the Indian department (and the promise of horses and farm implements), the band agreed to part with some of its reserve lands. At the auction sale in December of that year (supervised personally by Oliver), 8,200 acres of Michel land sold in four hours at a price of $9.00 an acre. Three-quarters of the land went to two speculators, Frederick Grant and Christopher Fahrni, who were both political allies of Oliver and the Laurier government.

By 1910, neither speculator had yet paid a cent of the purchase price. Under the Indian Act, the sales ought to have been cancelled immediately for non-payment. In the case of the Grant lands, the sales were not cancelled until 1927, after continuing futile attempts to secure payment. Indian affairs had cancelled the Fahrni sale in 1910 — only to withdraw the cancellation a few days later without explanation. Shortly thereafter, the Fahrni lands were sold to Edmonton bank manager J.J. Anderson at a quarter of their original purchase price. In 1914, Anderson transferred title to these lands to his father-in-law — none other than Frank Oliver.

Source: See Bennett McCardle, The Michel Band: A Short History (Indian Association of Alberta, 1981). See also Tyler and Wright Research Consultants Limited, “The Alienation of Indian Reserve Lands During the Administration of Sir Wilfrid Laurier, 1896-1911: Michel Reserve #132”, report prepared for the Federation of Saskatchewan Indians (1978).

As the governor general noted in his official dispatch to the colonial secretary, treaties were being made in the prairie west but not in mainland British Columbia. The Earl of Dufferin had in fact been trying for more than a year to persuade the government of Canada to force British Columbia to follow the treaty-making policy stipulated in the 1871 act admitting that province to Confederation.[76] The settlers, however, held firm views on the subject. “If you now commence to buy out Indian title to the lands of British Columbia”, Lieutenant Governor Joseph Trutch told Sir John A. Macdonald in 1872, “you would go back on all that has been done here for 30 years past and would be equitably bound to compensate the tribes who inhabited the district now settled and farmed by white people equally with those in the more remote and uncultivated portions”. With respect to the Indian nations, the most the provincial government was prepared to do was reserve from time to time “tracts of sufficient extent to fulfil all their reasonable requirements for cultivation and grazing”.[77]

Like Manitoba in 1870, British Columbia actually had an overwhelming Aboriginal majority (at least 70 per cent) when it entered Confederation. The federal census for 1871 put the total population at 36,247 — of which 25,661 were Indian and another 1,000 Chinese — although other estimates place the Aboriginal population considerably higher.[78] An 1872 provincial act had removed the right of both groups to vote in provincial and federal elections, however, so that all political decisions in the province were being made by the tiny settler minority.[79]

It was therefore the settler minority that determined what the “reasonable requirements” of the Indian nations actually were. Crown land ordinances both before and after Confederation prevented Indian people from pre-empting land without the written permission of the governor, which was almost never given.[80] Reserves in the colony/province were limited, on average, to less than 10 acres per family, compared to between 160 and 640 acres per family of five allocated under the prairie treaties.[81] By Confederation, this had effectively transferred most of the land owned and used by Indian nations in southern and central British Columbia to non-Aboriginal farmers and ranchers.[82]

In 1875, the federal cabinet approved a legal opinion from the minister of justice that urged the Crown to disallow British Columbia's first public lands act on the grounds that it did not make adequate provision for Aboriginal interests in land.[83] In addition to citing the *Royal Proclamation of 1763*, the opinion argued that Aboriginal title constituted an interest other than that of British Columbia in the lands within its boundaries by virtue of section 109 of the *British North America Act*.[84] Instead of proceeding with disallowance, however, the federal government proposed negotiations to the province, which agreed. In 1876 the governments set up a joint commission to investigate the Indian land question. Provincial commissioner G.M. Sproat suggested that the commission be instructed on the principle of Indian title in order to permit them to make treaties, but this was never done. During its five- year existence, the commission allotted several reserves for treaty Indians on Vancouver Island, but never completed its work on the mainland.[85]

By national standards, reserves in British Columbia remained small, and they were to get even smaller. Another joint federal-provincial royal commission (McKenna-McBride), appointed in 1912 to deal with the long-standing Indian land question, recommended that 19,000 hectares, including areas long coveted by settlers, be eliminated from existing Indian reserves and communities in the province as surplus to their requirements.[86]

From the time of the failure of the first joint commission in 1875-1880, Indian nations in British Columbia pressed the Crown for recognition of their land rights as well as compensation for lands taken from them. In 1913, for example, the Nisg_a'a people of the Nass valley presented a petition to the imperial privy council asking for recognition of their Aboriginal title; the petition was referred to the Canadian government. The federal government bowed to provincial pressure, however, and did not proceed with a case by reference to the Exchequer Court of Canada with a right of appeal to the judicial committee of the privy council — then the country's highest court.[87] The failure of such attempts to settle their grievances eventually led the Nisg_a'a to take both governments to court, an action that led to the 1973 Supreme Court decision in *Calder* and to a new era in federal land claims policy. The recent creation of the British Columbia Treaty Commission, then, is but the latest in a long series of attempts to deal with unresolved issues dating back to before the province's entry into Confederation.

The North

The Indians were generally averse to being placed on reserves. It would have been impossible to have made a treaty if we had not assured them that there was no intention of confining them to reserves. We had to very clearly explain to them that the provision for reserves and allotments of land were made for their protection, and to secure to them in perpetuity a fair portion of the land ceded, in the event of settlement advancing.[88]

While the policy goal of turning Aboriginal people into farmers prevailed in much of Canada, even Indian department officials realized that such programs would be difficult, if not impossible, in more northerly regions of the country where agricultural land was either scarce or non-existent. By the turn of the twentieth century, the resource development frontier extended from the north shores of lakes Huron and Superior, where minerals had been discovered in the mid-1840s, to the boreal forest and Arctic regions of Canada. The development of these resources went in step with, but was independent of, the colonization of fertile lands.[89]

Indian Reserves in the Okanagan

James Douglas proclaimed colonial government on the mainland in 1858, but civil authority was not established in the southern interior until Governor Douglas himself visited the middle Fraser, Similkameen, and Okanagan valleys in the spring of 1860. Indian concurrence was necessary before settlement could proceed, so Douglas sought public agreement to a proposal....[Under the agreement,] the Okanagan and other interior Indians retained the right to hunt and fish on unoccupied Crown lands....The agreement which secured Okanagan Indian acquiescence in the settlement of their territory [also] included the maintenance of exclusive Indian rights to resources on reserves of land of whatever size and location they demanded. The Okanagan people...in 1861....chose most of the good bottom land at the Head of the Lake and at Penticton. They retained their village sites, their fishery locations and garden plots, and a good base for winter-ranging their livestock. However, both reserves were reduced to a small fraction of their previous size in 1865 after J.C. Haynes, the local Justice of the Peace, argued that the reserve awards were excessive and beyond the requirements of semi-nomadic Indians....Land on both the Head of the Lake and the Penticton reserves was reduced from approximately 200 to about twenty-five acres of land per household, of which perhaps ten acres was arable....With Indian holdings thus reduced, white stock holders moved to acquire the newly available bottom land as the nucleus of their livestock operations....

When the restricted size of the Haynes reserves began to hamper Native agricultural production and the implications of the English concept of private property began to be felt by the presence of fences and trespass laws, the Okanagan and neighbouring Indians became agitated and threatened war. In an attempt to assuage Indian discontent, the federal and provincial governments established the Indian Reserve Commission (irc) and dispatched it to the Shuswap and Okanagan in 1877. The irc scrutinized each reserve with a view to determining and meeting minimal Indian demands, and then recommended enlarged reserves (which were not formally granted until the early 1890s), based on a ratio of twenty-four acres per head of livestock then held. The new Nkamaplix (Head of Lake) Reserve, for example, with over 25,000 acres, plus a 25,000-acre grazing Commonage, was estimated to include 1,200 acres of arable land, or nineteen acres per male adult....However, in 1880 the settler-dominated government categorically denied Indians the right to purchase land off the reserve, and in 1893, the Indian Reserve Commissioner, Peter O'Reilly, was instructed to "cut off" the Commonages attached to the Nkamaplix, Penticton, and Douglas Lake reserves. The Indian land base was eroded again in the 1890s when the government allowed white settlers to purchase land immediately adjacent to various reserves, thereby eliminating Indian access to Crown lands lying beyond. Further reductions were recommended by the McKenna-McBride Commission of 1912-1916, resulting in the Penticton, Westbank, and Spallumcheen reserves being reduced by 14,060, 1,764, and 1,831 acres respectively, and the Nkamaplix Reserve by the loss of various small outlying reserves.

Source: Duane Thomson, "The Response of Okanagan Indians to European Settlement", B.C. Studies 101 (Spring 1994), pp. 101-104.

There had been earlier attempts to deal with Aboriginal people living in resource-rich sections of the country. In 1851, the province of Lower Canada appropriated some 250,000 acres of land for Indian peoples resident in that province. The three largest reserves — established at Maniwaki, at the head of Lake Timiskaming, and at Manicouagan (Betsiamites) on the north shore of the St. Lawrence — were intended (mainly as a result of representations by Oblate missionaries) to protect the Attikamek, Algonquin and Montagnais peoples from the depredations of lumbermen and settlers in the upper valleys of the St. Lawrence, St. Maurice and Ottawa rivers, where the forest industry had been making serious inroads since the 1820s.[90] In contrast to previous practice in

Upper Canada, these reserves were not the result of treaties, nor did the enabling 1851 legislation refer to the cession or extinguishment of Aboriginal title.[91] However, some of the Aboriginal nations in question — particularly the Algonquin and closely related Nipissing who maintained summer villages at Oka and Trois Rivières — had been protesting to the Crown since the late eighteenth century that settler governments had permitted settlement and development on their hunting grounds in the Ottawa and St. Maurice river valleys before any treaties had been made with them. Those unresolved grievances lie behind the current claims of the Algonquin people of Golden Lake in Ontario and the various Algonquin nations in Quebec (see Appendix 4B).[92] The present claim negotiations with the Attikamek-Montagnais people are also based on the fact that their Aboriginal title previously had not been dealt with.[93]

At the same time as lands were being set apart in the eastern half of the Province of Canada, Aboriginal protests in the western half (now Ontario) did result in the making of treaties. From the time that the first exploration parties arrived in 1845, the Ojibwa and Métis peoples of lakes Huron and Superior had taken strong exception to the use of natural resources without their consent. In the fall of 1849, a war party led by the elderly chief Shinguacšuse actually took possession of an operating mine at Mica Bay, just up the shoreline from Sault Ste. Marie. The government sent troops, and the perpetrators were arrested, but at the same time, Governor General Lord Elgin ordered the province to make a treaty. A prominent politician, William Benjamin Robinson, was commissioned to undertake the task and in September 1850 made the two agreements that bear his name with the Ojibwa people of the upper lakes.[94]

The Robinson treaties provided for the recognition of various reservations, mostly along the lakeshore. Commissioner Robinson knew the resources of the region first-hand, however, (he had been a fur trader and had managed one of the mining operations) and insisted that the Ojibwa people were not being required to give up all connection to their traditional lands. He reported to the superintendent general of Indian affairs:

I explained to the chiefs in council the difference between the lands ceded heretofore in this Province, and those then under consideration: they were of good quality and sold readily at prices which enabled the Government to be more liberal, they were also occupied by the whites in such a manner as to preclude the possibility of the Indian hunting over or having access to them: *whereas the lands now ceded are notoriously barren and sterile, and will in all probability never be settled except in a few localities by mining companies*,

whose establishments among the Indians, instead of being prejudicial, would prove of great benefit as they would afford a market for any things they may have to sell, and bring provisions and stores of all kinds among them at reasonable prices. [emphasis added][95]

The later-numbered treaties (8 through 11, plus adhesions to treaties 5 and 6) made in the period 1898-1930 (see Figure 4.8) can also be considered resource development treaties in whole or in part. While reserves were set apart out of the territories covered by agreement — often in a formula of 640 acres per family of five, rather than the 160 acres that had prevailed on the prairies — the nations that participated, like those on lakes Huron and Superior, were constantly reassured that they would not be forced to reside on those lands, nor would their traditional economies be interfered with. Thus, the commissioners for Treaty 9 noted the reaction of the chief of the Osnaburgh Band, from the Albany River region between northern Ontario and the Northwest Territories, in 1905:

Missabay, the recognized chief of the band, then spoke, expressing the fears of the Indians that, if they signed the treaty, they would be compelled to reside upon the reserve to be set apart for them, and would be deprived of the fishing and hunting privileges which they now enjoy. On being informed that their fears in regard to both these matters were groundless, as their present manner of making their livelihood would in no way be interfered with ... .the Indians signified that ... they were prepared to sign, as they believed that nothing but good was intended.[96]

While many of the reserves stipulated in these treaties were in fact surveyed and established, others were not. This was particularly true of treaties 8, 10 and 11, which cover much of northern Alberta, Saskatchewan, northeastern British Columbia and the Northwest Territories. Many Treaty 8 reserves in northern Alberta and British Columbia were not created until the 1950s, for example, and Treaty 10 reserves in northern Saskatchewan did not come into existence until the 1970s. The lack of reserve creation in the Northwest Territories was one of the reasons that led Justice Morrow of the Supreme Court of the Northwest Territories to conclude that there had been no valid extinguishment of Aboriginal title under Treaties 8 and 11.[97] This court decision was a major precipitating factor behind comprehensive claims negotiations with Dene and Métis peoples of the Northwest Territories.

The idea of Aboriginal intent is essential to understanding the treaty relationship. In the case of the northern treaties, for example, there is

considerable evidence that various groups were unaware of the actual content of the treaty document or were reluctant to take part.[98] In 1903, agent H.A. Conroy explained to the department of Indian affairs about his difficulties with the Beaver Indians of the Fort St. John region:

The Indians at this place are very independent and cannot be persuaded to take treaty. Only a few families joined. The Indians there said they did not want to take treaty, as they had no trouble in making their own living. One very intelligent Indian told me that when he was old and could not work he would then ask the government for assistance, but till then he thought it was wrong for him to take assistance when he did not really require it.[99]

Some groups never did take treaty, even though their traditional areas were included in the metes and bounds descriptions in particular treaty texts. A prominent example is the Cree people of the Whitefish, Little Buffalo and Lubicon lakes area of northern Alberta, who are considered to be covered by the terms of Treaty 8. For many years, the Lubicon Cree have disputed government claims that they are part of that treaty, and they have been asserting their Aboriginal title in a variety of forums.[100]

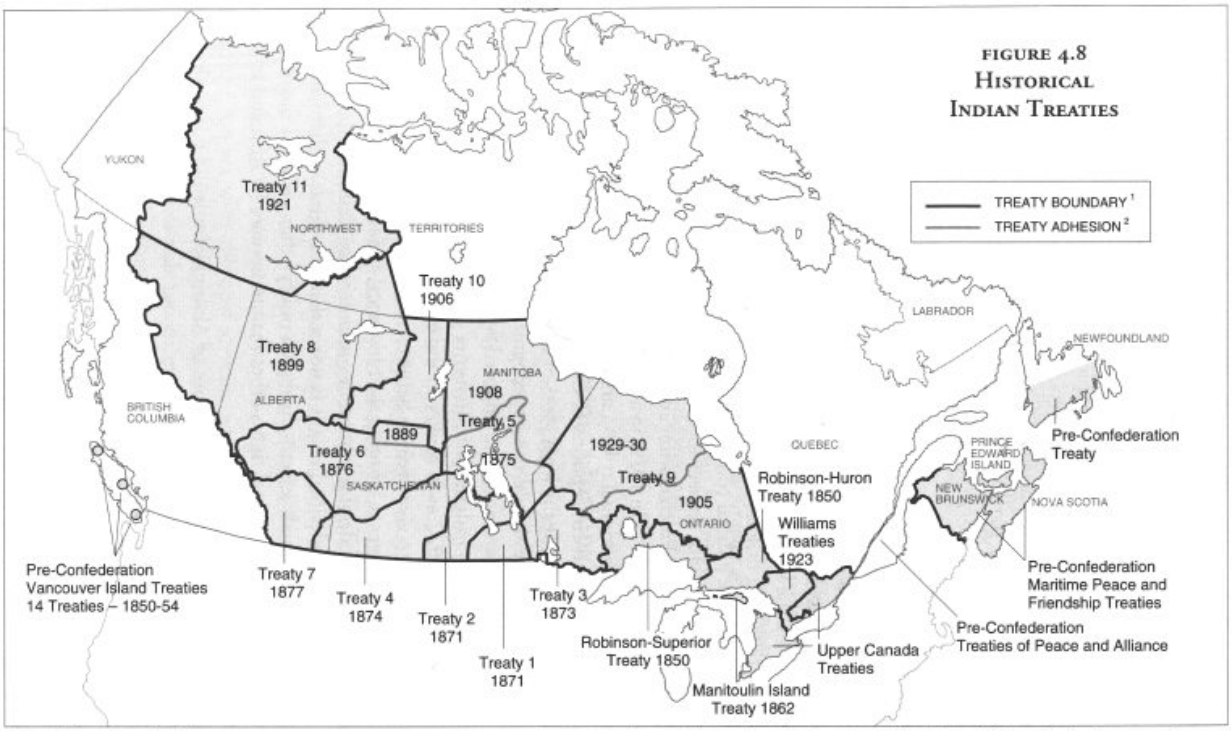
Forgotten promises

The difficulties Aboriginal people experienced in securing or retaining a land base in the period between Confederation and the Second World War were intimately linked to the overall decline in the Crown's respect for their rights to lands and resources. By the late nineteenth century, in all parts of the British Empire, the law was reflecting official doubts about the existence and nature of Aboriginal title. In 1888, the judicial committee of the privy council (JCPC) intimated that Aboriginal rights with respect to lands and resources did not predate but were created by the Royal Proclamation and, as such, were "dependent upon the good will of the Sovereign".[101] In 1919, in a case arising in Southern Rhodesia, the JCPC stated that some "aboriginal tribes ... are so low in the scale of social organization that their usages and conceptions of rights and duties are not to be reconciled with the institutions or the legal ideas of civilized society" and that, as a result, their Aboriginal title should not be recognized by colonial law.[102] These kinds of views both reflected and were adopted by members of society. Thus, W.E. Ditchburn, federal Indian commissioner for British Columbia, described Aboriginal title in 1927 as "a canker in the minds of the Indians".[103]

Courts began to view treaties between Aboriginal nations and the Crown as at best private contracts, ignoring their historical and fundamental character.[104] As late as 1969, the federal government could describe claims of Aboriginal title as “so general and undefined that it is not realistic to think of them as specific claims capable of remedy except through a policy” that included the termination of all distinct Aboriginal rights other than temporary benefits and rights to reserve land.[105]

Official resistance to the existence of Aboriginal title did not occur without Aboriginal protests. As we will see in our discussion of claims policy, Aboriginal peoples made consistent demands for recognition of their rights to lands and resources and sought to enter into treaties that would protect their systems of land tenure and governance from encroachment and erosion. In 1913, for example, the Nisg_a’a Nation sent a petition to authorities in London seeking the protection of Nisg_a’a title:

We are not opposed to the coming of the white man into our territory, provided this be carried out justly and in accordance with the British principle embodied in the Royal Proclamation. If, therefore, as we expect, the aboriginal rights which we claim should be established ... we would be prepared to take a moderate and reasonable position. In that event, while claiming the right to decide for ourselves the terms upon which we would deal with our territory, we would be willing that all matters outstanding between the Province and ourselves should be finally adjusted by some equitable method to be agreed upon ... [106]



Note: 1. Treaty boundary lines are approximate.
2. Extension of a treaty boundary as a result of later signatories who adhered to the terms of the original treaty.

Source: Information taken from the National Atlas Information Services map sheet number MCR4162 © 1991. Her Majesty the Queen in Right of Canada with permission of Natural Resources Canada.

But, as the remainder of this section will outline, these demands were all too often ignored. When Aboriginal peoples sought judicial assistance, they frequently found obstacles placed in their paths. Some of these obstacles were the result of legislative action. In 1927, for example, Parliament amended the *Indian Act* to require anyone soliciting funds for Indian legal claims to obtain a licence from federal authorities,[107] impeding Aboriginal people from seeking to enforce their claims of Aboriginal title in court.[108] And, as already mentioned, other obstacles were the product of judicial interpretation. As a result, Aboriginal peoples' experience with the law of Aboriginal title was, until relatively recently, one of continuing frustration.

4.3 Failure of Alternative Economic Options

If we return to the map at the beginning of this chapter showing the present distribution of the Canadian population (Figure 4.5) and compare it with the treaties map (Figure 4.8), we can see that the boundaries of the northern resource development treaties generally cover areas where Aboriginal people still make up either an absolute majority or a sizeable minority of the population (though some of the majority areas, such as northern Quebec and the eastern Arctic, would wait until the modern era of comprehensive claims settlements for their agreements). In this sense, Robinson's prediction, made in 1850 to the

Ojibwa people of the upper Great Lakes — that these regions would probably never be settled except by mining or other resource industries — has proved substantially accurate.

Robinson also predicted, however, that Aboriginal people would benefit from their contact with the new arrivals, who would provide them with a market for their products (fish, meat, fur, maple sugar and other fruits of the harvest). He even wrote into the text of the Lake Huron treaty a clause guaranteeing the Ojibwa people an increased share in government revenues if the value of the resources extracted went up:

Should the Territory hereby ceded by the parties of the second part at any future period produce such an amount as will enable the Government of this Province, without incurring loss, to increase the annuity hereby secured to them, then and in that case the same shall be augmented from time to time, provided that the amount paid to each individual shall not exceed the sum of one pound Provincial Currency in any one year, or such further sum as Her Majesty may be graciously pleased to order.[109]

Robinson cannot be blamed for failing to predict the scale of resource development that eventually took place across the north and the west or the fact that the Ojibwa and other Aboriginal peoples would never get a share of the benefits. In 1850, railways were only beginning to be built in eastern Canada; lumbering had just reached the upper lakes and still had not seen the boreal forest; and no one had discovered yet that water could be used to produce hydroelectricity. Gauging the impact of these kinds of developments on Aboriginal people would have to wait until the new century.

For their part, neither did First Nations or Métis peoples foresee the scale and speed of agricultural settlement and industrial development after Confederation — or the arrival of so many immigrants to take up lands and jobs in frontier regions. But they did acknowledge that life would change. The treaties and scrip entitlements were intended, from their perspective, not only to protect the basis of their self-governance and economy but also to secure access to new economic endeavours. Many of the numbered treaties, for example, contain provisions for the supply of seed, cattle and agricultural implements, because the Cree, Dakota and Ojibwa nations had expressed an interest in expanding their economies to include farming. Other treaties provided for the distribution of fishing nets, net twine, guns and ammunition so that First Nations could blend their subsistence activities with participation in the new economy.[110]

Had those policies worked, there is no doubt that Aboriginal people would now be better off. But they did not and they are not. Nominally, at least, Canada's policies at the time of Confederation were designed to integrate Aboriginal people into the national economy. In practice, however, federal legislation (most notably the *Indian Act*), coupled with federal and provincial policy and actions, made it more, not less, difficult for Aboriginal people to pursue other economic options. As a consequence, change was abrupt and sudden and by no means based on reciprocity.

As we will see, in all parts of Canada and in every major sector — land, timber, minerals, fisheries, fur and game — First Nations and Métis peoples (and somewhat later, Inuit) not only lost control of resources on what are now considered public lands, but were denied even the same terms of access as non-Aboriginal people. In the process, governments unwittingly — and, in some important instances, consciously — violated treaty and Aboriginal rights. The net effect was to force increasing numbers of Aboriginal people onto government relief or other forms of public assistance.

As for what were supposed to be their own lands — the reserves — Indian people found themselves under the control of government officials rather than their own leadership. Not only did the Indian department's stewardship of reserve lands and resources turn out to be abysmal, but the employment policies that were to be based on those lands and resources were mostly a failure (see Volume 1, Chapter 9). By the time these policies began to be reversed (by federal-provincial economic development agreements beginning in the mid-1960s, as well as by court- or claims-imposed allocation freezes), Indian participation in trapping, logging, fresh-water commercial fishing and farming had already declined drastically and, in many cases, ceased altogether, and Indian people had been largely excluded from the mining and forest industries. We begin with the instructive case of federal Indian agricultural policy.

Agriculture

Several nations in eastern Canada — the Huron-Wendat, members of the Iroquois Confederacy, and some Ojibwa nations — were already raising crops at the time of contact, and many took easily to the introduction of European farming methods. Recent research has shown, for example, that many Iroquois and Chippewa (Ojibwa) farmers in southwestern Ontario were as productive as their non-Aboriginal neighbours in the nineteenth century.[111] Other nations, such as the Saulteaux (Ojibwa) of northwestern Ontario and northeastern

Manitoba, took up farming in the eighteenth century for the purpose of commercial sales to fur traders.[112] In principle, many western peoples welcomed the introduction of agriculture at a time of social and economic change. As the late George Manuel, a distinguished leader from the Shuswap Nation, put it in 1974:

The people of the plateau saw farming differently; it was an addition to the existing economy and not a second-rate substitute. It did not bring down our whole social order. It did not take children away from the family circle. It did not take men away from jobs at which they were skilled to do menial work for strange men far away. Farming, for us, was a change in land use that did not require a complete renunciation of the relationship between the land and the men who lived on it.[113]

But federal laws and policies after 1881 placed restrictions on commercial agriculture carried out by First Nations members. As the example of the Dakota people shows (see accompanying box), the department developed a policy of non-mechanized peasant agriculture that required the use of hand tools on small plots.[114]

Dakota Farming in Western Manitoba: 1880-1900

The Dakota communities of Oak River, Birdtail and Oak Lake in southwestern Manitoba adapted easily to commercial-based agriculture by the mid-1880s. They had acquired a variety of livestock and were the first to plant test crops successfully, including Red Fife wheat, clover and alfalfa.

However, the orientation of federal Indian agricultural policy was not commercial in nature. Rather, the department of Indian affairs sought to create a form of ‘peasantry’ farming with a dual purpose: to ‘civilize’ the Indians and to prevent their direct competition with settler farmers.

The relative isolation of the Dakota had previously served them well. It prevented both the intrusion of Indian agents and competition for land and resources from settlers. This was to be short-lived. When the Dakota appealed to Indian affairs for more and better seed, implements and farming instruction, the department insisted that control over agriculture planning and practices be vested in Indian agent(s) and/or farm instructors. By the end of the nineteenth century, Indian agents or their

designates (the reserve farm instructors) had control over every aspect of Dakota farming: seeding, deployment of labour, the division of reserve lands into individual plots, harvesting, marketing and the revenue gained, etc. In effect, the Dakota lost all political autonomy, and their social fabric was severely damaged. Previously, Dakota communities farmed on a communal basis, which enabled them to shift labour easily from farming to hunting and fishing, without disrupting either endeavour. The policy changes had the further effect of hastening soil depletion and erosion, and the practice of cattle farming soon declined, owing to the lack of communal land for grazing.

Dakota communities attempted to compensate for the changes by purchasing more efficient technology through private means. The Indian commissioner, however, was strongly opposed to Indian people using labour-saving devices. What proved to be fatal, however, was the Department's introduction of the permit and 'chit' system in the 1890s. The former meant that Indian farmers had to obtain a permit to sell grain and other produce, or to buy stock and implements. The latter meant that all cash transactions became illegal; instead Indian farmers were to be paid in chits that could be exchanged at stores. The policy regulations were condemned by both Indian and non-Indian farmers: "They farm their own land, work hard all summer, and through the obnoxious order are not allowed the full benefit of the fruit of their own labour. They are thus placed at a disadvantage in competition with their white and more highly civilized neighbours."

Although the federal government received numerous complaints and petitions, the department pressed ahead and began to charge Dakota who defied the policy, threatening non-Indian businesses with the same treatment should they buy grain or sell implements without a permit. Eventually, Dakota farmers became completely frustrated and stopped complaining, as those who did were frequently refused permits. By the turn of the century, most Dakota had abandoned farming altogether. By this time, it appears that the federal government became equally frustrated, since the department turned its attention away from agricultural policy to social matters such as the residential school system.

Source: Based in part on Peter Douglas Elias, The Dakota of the Canadian Northwest: Lessons for Survival (Winnipeg: The University of Manitoba Press, 1988).

In northwestern Ontario, after a promising start, Ojibwa people also abandoned

farming because of the same federal policies; as a result, agriculture had virtually ceased in the area by the 1890s. By 1905, the Ontario minister of lands, forests and mines was noting complaints from settlers in the Rainy River district about “the large areas of agricultural land that are locked up by Indian reserves”. The minister wanted the department of Indian affairs to engineer surrenders of the reserves, “as the Indians are few in number and will never cultivate the land to any extent”.

By 1915, despite Ojibwa protests, the department had enforced the sale of over 43,000 acres of the best farming land in northwestern Ontario to local settlers.[115]

In British Columbia, it was provincial control of pre-emptions and of grazing and water rights, even more than federal policies, that made it difficult for Aboriginal people to take up commercial agriculture. In most areas of the province, arable land was scarce, and for reasons discussed earlier, reserves had ended up too small to be adequate for farms. When Aboriginal people looked elsewhere for land, they found themselves shut out. As late as the 1920s and ‘30s, federal officials in the Lytton and Williams Lake regions were complaining that “provincial authorities will not sell or lease lands to Indians”, were denying them water rights, and were “chasing the Indians’ horses off the Crown Ranges”.[116]

The lack of guaranteed access to water was particularly important in the Okanagan region, where fruit farming is almost impossible without irrigation. The provincial government consistently denied water licences (known in B.C. as water records) to Indian people because they were not the owners of lands in fee simple. In 1911, for example, Paul Terrabasket applied for a licence to irrigate 50 acres of land, including an orchard, on Reserve No. 6 in the Lower Similkameen, which his family had been cultivating for decades. The board of investigation refused Mr. Terrabasket’s application and instead confirmed the licence held by the Similkameen Fruitlands Company, successor in title to the water record once owned by a local pioneer rancher. The company’s title, however, was conditional on its making beneficial use of the water by 1916, which it failed to do, although in 1921 it was able to secure an extension until November 1922. When the company finally began using the irrigation ditch, after decades of non-use, it tried to prevent Paul Terrabasket from using the water upon which his orchard depended. The company obtained a restraining order from the British Columbia Supreme Court, and when Mr. Terrabasket ignored the order in an attempt to save his crops, he was jailed.[117]

One of the major problems for policy makers was that the government’s Indian

agriculture programs (and, indeed, all economic programs for Aboriginal people) were perceived by non-Aboriginal people as creating unfair competition. This may have been the way it looked to struggling pioneer farmers, but in fact Indian people were not eligible for the information and assistance that settlers themselves received from federal and provincial departments of agriculture. In the Cowichan area of British Columbia, for example, the only assistance available to Indian farmers was a single inspector whose job was to make sure that their orchards were sprayed with pesticides — not to improve their crop, but to prevent pests from spreading to adjacent non-Aboriginal orchards.[118]

Minerals, oil and natural gas

At present, mineral revenues from reserve lands are a significant source of wealth for some Indian people, although revenues have fallen drastically since the boom years of the late 1970s and early 1980s, when they amounted to as much as $200 million annually.[119] Almost all the revenues derive from oil and natural gas on certain reserves in Alberta. While many Aboriginal people in other parts of the country live in regions rich in minerals, they derive far fewer benefits from those resources.

One important reason is that, in the parts of western and northern Canada covered by the numbered treaties, the federal government tried to ensure that the reserves selected contained no valuable minerals. In 1874, for example, the federal cabinet directed the officials in charge of locating reserves under Treaty 3 to ensure that they did not include “any land known ... to be mineral lands” or any lands for which patents had been sought by either the Ontario or the dominion government.[120] In fact, because of what would become a long-standing federal-provincial dispute over the boundaries of those reserves and resource rights within them, an 1894 agreement between Canada and Ontario stipulated that any future treaties with the Indians of Ontario would “require the concurrence of the government of Ontario”.[121] The province used this veto power during the negotiation of Treaty 9 in 1905-1906 to ensure that no water power sites or known mineral deposits were included within reserve boundaries along the Albany River.[122]

Further to the northwest, one of the government’s principal motives for making Treaty 8 in 1899 was to prepare the way for resource development. The Yukon gold rush was already under way, and there was extensive exploration for gold and other minerals in the basins of the Peace and Athabasca rivers. But while

officials hoped to protect the Aboriginal population from the worst effects of contact with the miners, they had no intention of including existing mining claims within the reserves set apart by treaty.[123] At the time, however, few people suspected the existence of oil and natural gas, nor were those resources being actively sought. Like the province as a whole, therefore, the resource-rich Alberta bands are the accidental beneficiaries of the discovery of oil at Leduc in the late 1940s.

Had oil and gas been discovered in the 1920s and 1930s, the latter bands might not have been as lucky. In the northern parts of the prairie provinces, there was a long interval between reserve selection and survey, and many reserves were not even selected until many years after treaty. Here too there was considerable pressure to ensure that valuable minerals were not included within reserve boundaries. In a 1925 letter to the federal minister of the interior, Premier Dunning of Saskatchewan urged the minister not to allow the Lac La Ronge band to select the 30 or so square miles of treaty land entitlement in areas with mineral potential. “If mineralized sections are kept out of Indian Reserves,” wrote the premier, “there is a chance for their development in the future. The placing of them within the borders of the Reserves would hamper development very materially.” Band members, he said, were aware of the activity of prospectors in the area and wanted to prevent further development by having the territory in the vicinity made into reserve land.[124]

The premier was expressing a general societal belief that Aboriginal people were either uninterested in, or incapable of, taking part in resource industries. But Aboriginal opposition to resource development was not uniform, and some of the opposition was based on fears of being excluded from its benefits. During the copper boom of the 1840s on Lake Superior, Ojibwa chiefs from the Sault Ste. Marie area had protested to the governor general that prospectors were staking mining claims without their consent. The Great Spirit, said the chiefs, had originally stocked their lands with animals for clothing and food, but now these were gone; however, the Great Spirit had foreseen that this would happen and had “placed these mines in our lands, so that the coming generations of His Red Children might find thereby the means of sustenance”.[125] In fact, most of the major deposits of copper (a mineral that had been used by Aboriginal people for centuries) had been found not by exploration, but after Aboriginal people told prospectors where to look.

In many parts of Canada, such as northern British Columbia, the Yukon and the Northwest Territories, and the mineral belt that straddles northwestern Quebec and northeastern Ontario, Aboriginal people not only guided geological

surveyors and mining exploration parties, but they also staked claims themselves. Popular narratives of the Yukon gold rush tell colourful stories about the Tagish people: Skookum Jim (his actual name was Keish), his sister Kate (Shaw Tlaa) and his brother Tagish Charley (Kaa Goox) who, along with Kate's non-Aboriginal husband George Carmack, triggered the rush with their strike along the Yukon River in 1896, then headed off to Seattle to spend their new-found wealth.[126] Though Keish never made another major find, he continued to prospect along the Teslin, Pelly, Stewart and upper Liard rivers until his death in1916.[127]

Though some Aboriginal people did explore for minerals themselves, they were more likely than other small prospectors to suffer discrimination in registering their claims. An Ojibwa named Tonene, a former chief of the Teme-Augama Anishinabai, took up prospecting during the Cobalt silver rush that began in 1903. He is credited with discovering the ore body near the Quebec border that led to the famous Kerr-Addison mine — at one time the largest single producer of gold in the western world.[128] Unfortunately for the chief, his claim was jumped. "Damn the Indian who moves my posts" the other prospector had written on Tonene's own claim markers, after the chief had replanted them. The local mining recorder refused to recognize the chief's grievance, and the department of Indian affairs was unable to secure him redress.[129]

With respect to the mineral rights of Aboriginal peoples, especially the status of minerals on reserve lands, the state of the law has played a particularly important role. We referred earlier to the overall decline in official respect for Aboriginal title during the late nineteenth century. In the most important judgement of that period, the judicial committee of the privy council characterized Aboriginal rights with respect to lands and resources in 1888 as "personal and usufructuary".[130] The provinces argued that this meant that the usufruct (a Roman law concept meaning 'use') of reserve lands, not being true ownership, did not extend to minerals, which therefore was vested in the provinces by virtue of section 109 of the *Constitution Act, 1867*. In 1921, the privy council ruled that this was indeed the case with respect to the minerals on reserves set apart in Quebec before Confederation.[131]

Other provinces (especially Ontario) also claimed rights to gold and silver on reserve lands, on the grounds that such "royal mines" had always been regarded as belonging to the Crown (not the landowner) by virtue of the royal prerogative. In 1900, in *Ontario Mining Company* v. *Seybold*, Chancellor Boyd agreed with this argument, ruling that the precious metals on reserves set apart under Treaty 3 of 1873 had already passed to Ontario under section 109; that

decision was upheld by the Supreme Court of Canada a year later.[132]

First Nations people maintained that the provincial position violated their treaties, which in their view guaranteed them full rights to the minerals on their reserves. That understanding is reflected, for example, in the wording of the 1850 Robinson treaties, which refer to the rights of the "said Chiefs and their Tribes ... to dispose of any mineral or other productions upon the said reservations".[133] During the negotiation of Treaty 3 in 1873, Commissioner Alexander Morris had assured the chiefs that "if any important minerals are discovered on any of their reserves the minerals will be sold for their benefit with their consent ... ".

While federal officials had tried their best to exclude mineral lands from subsequent reserve selection, in 1876 the *Indian Act* basically reflected the Indian understanding, in that it defined reserves as including the "stone, minerals, metals and other valuables thereon or therein".[134] But the provincial position, buttressed by court decisions, made it virtually impossible to develop mineral resources on reserves. Once a band had surrendered mineral rights for the purposes of development (a requirement of the *Indian Act*), the beneficial interest automatically flowed to the province, not the band.

As a result, Canada entered into a series of federal-provincial statutory agreements that gave many of the provinces a measure of control over reserve lands, as well as a share in resource revenues.

Under the terms of the 1924 Indian lands agreement with Ontario, for example, the province obtained 50 per cent of the revenues from mineral development on reserves.[135] An identical provision was included in the 1930 natural resource transfer agreements, under which Canada transferred ownership and jurisdiction of Crown lands and resources to Manitoba, Saskatchewan and Alberta, although it was not to apply to reserves set aside before 1930.[136] In 1943, Canada reached a similar agreement with British Columbia, recognizing the province's right to 50 per cent of mineral revenues from reserve lands.[137]

Forestry

The action of the Band in this matter exemplifies in a marked degree the incapacity of the Indians to manage their own affairs. Because of the stubborn waywardness of one old man, their Chief, they refuse to execute an act that would place all in the most comfortable circumstances ... .In view of the

incapacity of the Dokis Band to exercise any judgement in the matter of the surrender of their timber, the Department should seek or take the exceptional authority to dispose of their Timber without their consent or without previously having obtained from them the surrender of same.[138]

What one elderly chief from a reserve on the French River in northern Ontario had done was very unusual in the late nineteenth century. He and his band had refused to allow their white pine timber to be cut down. Many other reserves east of the Great Lakes were not so lucky; most had already been stripped of their valuable trees. In the department of Indian affairs' defence, the pressures on them were enormous — lumbermen from Canada and the United States were after what remained of the virgin white pine stands that had once covered much of eastern Canada. By 1900, all that was left were small pockets on eastern Georgian Bay and a narrow strip along the north shore of Lake Huron; by 1920, these stands, including the pine on the various reserves along the shore, were gone as well. The scale of forest operations had been prodigious, with sawmills along Georgian Bay and Lake Huron producing hundreds of millions of board feet every year, but once the trees had been cut down, most of the sawmills closed and the lumbermen moved on.[139]

In addition to the revenues they received from the surrender of their reserve timber, some Indian people worked in the sawmills or on river drives. But if they sought cutting rights themselves on the reserve, they were almost invariably advised that logging was better left to the large companies; if they sought timber rights off-reserve, the Crown timber office told them that those rights had already been allocated, or that only the most uneconomic areas were available.

In their recent report respecting timber management on Crown lands, the Ontario environmental assessment board criticized the provincial government for pursuing policies over the past century that have denied Aboriginal people access to forest resources and a share of their social and economic benefits. But blame was also placed squarely on the federal government for allowing First Nations to be deprived of their reserve timber resources. The example the board used was the fate of timber in northwestern Ontario (see accompanying box).

In British Columbia, which was as heavily forested as eastern Canada, Aboriginal people were at first able to benefit from the logging economy. As settlements expanded in the immediate pre- and post-Confederation period, so did the demand for lumber. While colonial ordinances had declared timber a Crown resource, Aboriginal men were nonetheless able to cut trees on their

ancestral lands and sell them to sawmills without being harassed by government officials. In 1888, however, the province of British Columbia changed the law to require a handlogger's licence for cutting timber anywhere in the province not already licensed or leased to larger companies. Because of this regulation, many coastal Aboriginal people acquired licences.

By the turn of the century, handlogging was a major source of income for the Kwakwa ka'wakw, Haisla, Tsimshian, Sechelt and other coastal peoples. But between 1904 and 1907, a great timber rush alienated more than 11.4 million acres of the best forest land. Not only did Aboriginal people find their access limited, but the government also stopped issuing licences for handlogging in 1907. Though some Aboriginal men subsequently found work as wage labourers and some bought the equipment necessary to bid on smaller timber sales, they found other obstacles, including general stereotypes about Aboriginal people. "There is a good body of timber in here," one assistant district forester wrote in 1924 on the rejected application of a Haisla logger, "and we do not want it alienated by any Indian reserve applications."[140]

Treaty No. 3 First Nations Forestry Experience

During the mid-1880s, Ojibwa nations in the Treaty 3 area of northwestern Ontario sold or traded cord wood to road contractors and steam barges operating along the Dawson Road (near Kenora). During treaty discussions, the Ojibwa negotiated unsuccessfully for compensation for resources, including timber, that they argue were not surrendered to the Crown. Subsequent to the Ojibwa peoples' relocation to reserves, large-scale non-Aboriginal logging occurred in the area.

Initially, Ojibwa people were employed by logging companies; however, employment declined steadily as settlers took over cutting jobs. Denied employment off-reserve, by the early 1900s, most Ojibwa had returned to their communities and attempted to cut timber on reserves. However, attempts at establishing viable commercial operations were often frustrated by the department of Indian affairs, which would frequently give permits for dead and downed timber to Indian bands while pressuring communities to surrender more valuable timber to the department for sale to non-Aboriginal companies at auction. Monies from such auctions, as well as stumpage fees for cutting reserve timber, were not paid directly to the band(s) but held in trust and controlled by Indian affairs.

By the time the federal department began undertaking surveys of timber resources on each reserve (1920s), the resource had been severely depleted as a result of external contractors, trespass and theft. Further, there are few records of any regeneration efforts. Indeed, a 1983 study by Indian Affairs and Northern Development indicated that forest inventories conducted between 1947 and 1960 showed that most of the good wood had been cut and that major reforestation was needed. This did not occur. At present, reserve timber resources consist primarily of immature stands or rehabilitation efforts.

Source: Based on Ontario Environmental Assessment Board, Reasons for Decision and Decision: Class Environmental Assessment by the Ministry of Natural Resources for Timber Management on Crown Lands in Ontario (Toronto, 20 April 1994), pp. 353-354.

With access to Crown forests becoming more restricted, Indian people found, as in eastern Canada, that federal government regulations prevented them from harvesting their own reserve timber. Indian agents would permit their charges to cut timber for bona fide land clearing purposes, but they were not allowed to log for the purpose of sale. In the words of the McKenna-McBride commissioners, who seemed astounded to discover this during their 1913 tour of investigation, Indian people were “not allowed to do what a white man could do on his own land”.[141]

Provincial policy throughout Canada continues to restrict Indian access to off-reserve forest resources for commercial purposes. British Columbia remains the sole provincial jurisdiction that has made specific legislative provision for Indian access to Crown timber — although the Ontario environment assessment board ruling requires the ministry of natural resources to find allocations, if at all possible, for First Nations.[142]

The way Aboriginal people were treated in the immediate aftermath of Confederation can be attributed in large part to misunderstandings, to the division of constitutional responsibilities between federal and provincial governments, or to differing priorities with regard to lands and resources. But in one area — wildlife harvesting — the agents of the Crown consciously and openly violated Aboriginal and treaty rights.

Wildlife harvesting