

aboriginal people would otherwise have to hunt certain migratory birds. Before the enactment of s. 35 of the *Constitution Act, 1982*, it was settled law that the federal government through ratifying legislation such as the *Migratory Birds Convention Act*, could abrogate treaty obligations to aboriginal people. These decisions have now been called into question by recent court decisions holding that s. 35 requires that aboriginal rights take precedence over conflicting international treaty obligations. Issues of policy also are raised, such as whether or not Canada should negotiate international treaty agreements that conflict with prior obligations to Canada's aboriginal people.

### **13. The Aboriginal Affairs Policy Development Process**

The Department of Indian Affairs is often embroiled in heated policy disputes with the aboriginal community it is intended to serve.

The "dialogue" between the federal government and aboriginal people frequently consists of talking at each other. Significant human and financial resources on each side are used to repeat known positions and engage in media wars.

The controversy over changes to the post-secondary education assistance program is a recent example and one that made clear the particular need of this Department for an efficient and effective means of resolving policy disputes and for particular attention to be paid to how and when it carries out consultation with the people affected by its policies and programs.

The Department of Indian Affairs is especially vulnerable to highly visible policy disputes because:

- 1) unlike other Departments, it has a clearly defined, small but constant clientele to serve (by contrast Consumer & Corporate Affairs serves consumers but this is a fluid group that each of us moves into and out of several times a day);
- 2) the degree of control and influence the Department exercises over the status Indian population (despite current attempts to devolve responsibilities to reserve communities) is quite high and has no parallel among any population group in the country (perhaps other than the prison population but in a different sense);