

House
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CANADA

UNFINISHED BUSINESS:



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An Agenda for all Canadians in the 1990's

Standing Committee on
Aboriginal Affairs

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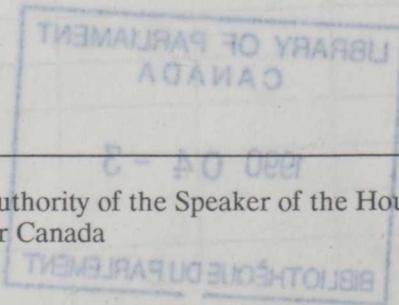
**UNFINISHED BUSINESS:
AN AGENDA FOR ALL CANADIANS
IN THE 1990's**

**SECOND REPORT
OF THE
STANDING COMMITTEE ON ABORIGINAL AFFAIRS**

MARCH 1990



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Wednesday, February 14, 1990
Wednesday, February 21, 1990

Chairman: Ken Hughes

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Fascicule n° 20

Le mercredi 31 janvier 1990
Le lundi 5 février 1990
Le mercredi 7 février 1990
Le lundi 12 février 1990
Le mercredi 14 février 1990
Le mercredi 21 février 1990

Président: Ken Hughes

Minutes of Proceedings and Evidence of the Standing Committee on *Procès-verbaux et témoignages du Comité permanent des*

Aboriginal Affairs

Affaires autochtones

RESPECTING:

In accordance with its mandate under Standing Order 108(2), to obtain the latest information on current matters, relating to aboriginal affairs

INCLUDING:

The Second Report to the House

CONCERNANT:

En conformité avec son mandat en vertu de l'article 108(2) du Règlement, pour obtenir l'information la plus récente sur les sujets actuels des affaires autochtones

Y COMPRIS:

Le deuxième rapport à la Chambre

Second Session of the Thirty-fourth Parliament,
1989-90

Deuxième session de la trente-quatrième législature,
1989-1990

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ABORIGINAL AFFAIRS**

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CHAIRMAN: Ken Hughes

VICE-CHAIRMAN: Allan Koury

Ethel Blondin

Robert E. Skelly

Wilton Littlechild

Stanley Wilbee

Robert Nault

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Bob Hicks

Chris Axworthy

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Gilles Bernier

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Lee Richardson

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CLERK OF THE COMMITTEE

Martine Bresson

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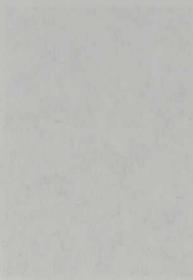


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STATIONERY DEPARTMENT OF THE
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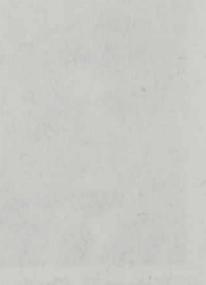
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FROM THE [Faint text] BRANCH OF THE
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Special Agent in Charge
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FOREWORD

The purpose of this report is to share some of the understanding we have accumulated. The report does not present the views of either the governments, but rather the views of the Standing Committee on Aboriginal Affairs. This is not a challenge facing only one government or only one Minister. This is a challenge for all Canadians, a circumstance that has developed over a series of governments, and one which will require sustained commitment over many years.

has the honour to present its

While there are many challenges to be met, there are also many positive developments in this field. In the course of their work, members of the committee have found successes and advances in many spheres of collective and individual endeavour. These successes deserve greater public recognition. Canadians struggling with the same problems

SECOND REPORT

The committee invites all Canadians to become aware of the issues that face aboriginal Canadians, because these issues do not affect aboriginal Canadians alone. These issues affect all Canadians. They affect the future strength, prosperity, sense of fairness and

In accordance with its mandate under Standing Order 108(2) and an Order of the Committee dated October 25, 1989, your Committee, in the autumn of 1989, undertook a thorough review of public policy issues affecting aboriginal people in Canada.

Canadians to participate each in their own way, to advance these issues. Awareness of aboriginal issues and challenges is a necessary first step.

The committee and the Chair in particular are greatly indebted to the outstanding research and guidance provided by Parliamentary Researcher, Wendy Moore. We are also very grateful for the dedicated efforts and work of Clerk of the committee, Marjorie Simpson. I particularly thank all members of the committee for their guidance, cooperation and hard work. I look forward to working with them as we take on this agenda, important to all Canadians, and particularly important to aboriginal Canadians.

THE STANDING COMMITTEE ON
ABORIGINAL AFFAIRS

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SECOND REPORT

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an Order of the Committee dated October 25, 1989, your Committee
in the autumn of 1989, undertook a thorough review of public policy
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FOREWORD

The purpose of this report is to share some of the understanding we have accumulated. The report does not prescribe specific actions, other than to strongly suggest that Canadians, through their governments, have a lot of work to do in this decade. This is not a challenge facing only one government or only one Minister. This is a challenge for all Canadians, a circumstance that has developed over a series of generations, and one which will require concerted commitment over many years.

While there are enormous challenges to be met, there are also many positive developments in this field. In the course of their work, members of the committee have found successes and advances in many spheres of collective and individual endeavour. These success stories deserve greater public exposure to help other Canadians struggling with the same problems and issues in their own communities.

The committee invites all Canadians to become aware of the issues that face aboriginal Canadians, because these issues do not affect aboriginal Canadians alone. These issues affect all Canadians. They affect the future strength, prosperity, sense of fairness and tolerance that allows all Canadians to define themselves.

As we enter the decade of the 1990's, Canadians will want to consider to what extent the enclosed list of issues will have been advanced by the end of the decade. The committee also invites all Canadians to participate, each in their own way, to advance these issues. Awareness of aboriginal issues and challenges is a necessary first step.

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FOREWORD

The purpose of this report is to identify some of the outstanding issues that have emerged in the past few years and to provide a framework for other than to simply repeat the Committee's findings. This is not a comprehensive list of issues in the decade. This is not a challenge to any one government or any one Minister. This is a challenge for all Canadians, a commitment that has developed over a period of generations and one which will require concerted commitment over many years.

While there are numerous challenges before us, there are also many positive developments in the field. In the course of their work, members of the Committee have been impressed and inspired in many spheres of collective and individual achievement. Their success stems from greater public exposure to health care, Canadian strategies with the same problems and issues in their own countries.

The Committee invites all Canadians to become aware of the issues that face Aboriginal Canadians, because their issues do not affect Aboriginal Canadians alone. These issues affect all Canadians. They affect the future health, prosperity, sense of fairness and tolerance that allow all Canadians to define themselves.

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The Committee and the Chair in particular are greatly indebted to the outstanding research and guidance provided by Tony Weir, Director, World Health, for the advisory panel for the report. I also wish to thank all members of the Committee for their continued cooperation and hard work. I look forward to working with them as we take on the agenda, important to all Canadians, and particularly important to Aboriginal Canadians.

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AN AGENDA FOR ALL CANADIANS IN THE 1990's

UNFINISHED BUSINESS : AN AGENDA FOR ALL CANADIANS IN THE 1990's

THE HOUSE OF COMMONS STANDING COMMITTEE ON ABORIGINAL AFFAIRS

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March 1990

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AN AGENDA FOR ALL CANADIANS IN THE 1990's

The Standing Committee on Aboriginal Affairs has completed a series of hearings intended to gauge the priorities and key policy concerns of aboriginal people at a national level. In the course of this inquiry, submissions were received from a number of national aboriginal organizations as well as the Canadian Bar Association and the Canadian Human Rights Commission. The Assembly of First Nations, the Native Council of Canada, the Prairie Treaty Nations Alliance, the Inuit Tapirisat of Canada and the Indigenous Bar Association appeared before the Committee in late 1989. This report describes the results of this brief yet broad ranging inquiry and the Committee's own research. The submissions touched on almost every aspect of life. This reflects the fact that the quality of life for most aboriginal people in Canada still remains far from satisfactory and that some very important political, legal and constitutional issues remain unresolved.

By reporting in this way, the Committee wishes to share with Parliament and all Canadians what it has learned about current concerns of aboriginal peoples in Canada and hopes to convey a sense of the depth and breadth of these concerns. This report is also intended to provide an introductory overview of aboriginal affairs matters at the national level.

As a result of this preliminary series of hearings, the Standing Committee on Aboriginal Affairs has concluded that the 1990's should be a decade devoted to achieving substantial movement on all fronts in respect to aboriginal affairs. The Committee urgently wishes to draw the attention of Parliament to this long yet not exhaustive list of current issues and recommends that particular attention be devoted to the issue of self-government over the next decade. The Committee's concern with self-government matters is not intended in any way to direct attention away from any First Ministers Conferences (FMC) or the participation of national organizations in the FMC process.

The Committee encourages Canadians, and particularly interested parties such as Parliament and the Legislatures, through

Committees or other forums, to examine self-government issues over the 1990's: issues such as land claims, fiscal arrangements, the trust relationship, resource issues and others listed here. Studies of this kind would help identify and explain to Canadians the essential building blocks for First Nations Government as well as the progress made towards that goal since the 1983 Report of the Special Committee on Indian Self-Government. It is clear that all Canadians need to increase their understanding of aboriginal self-government over the next decade and seek to address intercultural conflicts in this area. This work will necessarily involve reviewing and updating the work of the Special Committee on Indian Self-Government.

THE SELF-GOVERNMENT AGENDA

Self-government is a common thread running throughout many of the topics and issues brought before the Committee, such as child welfare, treaty rights, education and policy development, to name just a few. As the Special Committee on Indian Self-Government concluded in 1983, the task of realizing aboriginal self-government involves breaking with the past pattern of paternalistic aboriginal affairs policies and implementing a new relationship between aboriginal government entities and the federal and provincial governments. The overriding concern of aboriginal people in this regard is reinitiating some high level political forum for action on self-government such as the First Ministers Conferences on the Constitution that occurred in the 80's or the joint NIB/Cabinet Committee that existed in the 70's. From a substantive viewpoint, aboriginal self-government can be examined by looking in detail at specific sub-topics while realizing that there are many interrelationships between these topics. An examination of the following issues would assist in clarifying pre-requisites for realizing aboriginal self-government and providing Canadians with an idea of what aboriginal self-government involves.

1. Land Claims

That aboriginal people were in possession of distinct land rights and cultural rights when peoples from other parts of the World arrived to settle in this Continent, is a fact of Canadian law. The legal existence of the distinct rights of aboriginal people encompassed in the term

“aboriginal title” has been confirmed in several decisions of the Supreme Court of Canada. Further, subsection 35(1) of the *Constitution Act, 1982* affirms and recognizes the existing aboriginal and treaty rights of the aboriginal peoples of Canada. What is not known is the extent to which the territory of Canada is still subject to aboriginal title and the scope and content of that term. Existing federal policy in respect to land claims is intended to provide a means of negotiating the practical implications of aboriginal rights and of settling claims based upon aboriginal title without resorting to the courts. The specific and comprehensive claims policies have been reviewed by several bodies in recent years and yet there is still a very high level of dissatisfaction. In particular, the very slow rate at which comprehensive and specific claims are being dealt with, is considered symptomatic of fundamental problems in policy and process.

One recurring suggestion is that the land claims process including the funding aspect, should be managed or monitored by a body or bodies independent of the Department of Indian Affairs and the Department of Justice. Various recommendations have been made, from creating a legislative base to govern the negotiation of claims, to creating an administrative tribunal or commissioner to deal with claims and claims funding. Further, aspects of federal policy on self-government affecting the scope of land claims negotiations have met with considerable criticism.

2. Other Land and Resource Issues

There are other land and resource issues apart from outstanding land claims. Many of these were reviewed by the Special Committee on Indian Self-Government, such as the nature of the legal interest of First Nations in their reserve lands and their power to manage them. These issues remain largely unresolved although some are being examined in the course of the Department's Lands, Revenues and Trusts Review.

3. Constitutional Issues

Constitutional issues respecting self-government have been briefly referred to above. There are two overriding constitutional concerns of aboriginal people at the present time: to convince Canada

of the urgent need to reinitiate constitutional discussions on aboriginal rights issues and to address the concerns of aboriginal people regarding the Meech Lake Accord. In a series of First Ministers Conferences that ended in 1987 a consensus was reached on the desirability of entrenching some form of aboriginal self-government guarantee in the Constitution. Unfortunately, agreement could not be reached on how this guarantee should be expressed.

With respect to the Meech Lake Accord, the Assembly of First Nations in its most recent appearance before this Committee highlighted its concerns respecting the distinct society clause and the proposed changes to the federal spending power.

In the North, constitutional issues are further complicated by issues relating to the settlement of land claims, the process of devolution of powers from the federal to the territorial governments, the issue of the division of the Northwest Territories and the evolution of the territories to provincial status.

4. Treaty Rights and Relations with Treaty Nations

There is a range of issues concerning the proper implementation of treaty provisions. Aboriginal representatives emphasize the need perceived by treaty nations to reorder the nature of federal-aboriginal relations in accord with the original spirit and intent of the Indian treaties.

The specific claims policy encompasses claims based upon outstanding treaty obligations but is considered by many to be too narrow in scope to be able to deal with the level of political and legal rights being claimed by treaty people. Many treaty rights disputes involve questions of interpretation that cannot be adequately dealt with by the specific claims policy. The Committee was also informed that there are a number of issues respecting treaty implementation that do not involve compensation and are not dealt with appropriately because the specific claims policy is designed only to address land entitlement or compensation issues. Further, federal claims policy has no mechanism to deal with disputes over the classification of a particular claim as comprehensive or specific. Recommendations from several sources have been made to establish some form of independent claims tribunal to effectively address some of these questions.

5. INAC's Self-Government Negotiations Policy

The federal government's "Indian community self-government negotiations policy" has been in operation for approximately four years and many bands and tribal councils have entered into such negotiations with the federal government. The policy allows, among other things, the negotiation of new legislative arrangements on local self-government matters that may, at the option of the group concerned, modify the application of the *Indian Act* to their case or replace the *Indian Act* provisions regarding local government matters with new legislation. The parameters of authority allowed bands under this policy (essentially municipal-like powers) do not meet the level of demands put forward in the constitutional conferences. Nevertheless, a significant number of bands are involved in the process and there seems to be little public information on how the process has been working and the level of satisfaction with it in the aboriginal community.

6. Scope of Federal Activity Under s. 91(24) of the Constitution Act, 1867

Aboriginal organizations have demonstrated some interest in the recommendation of the Special Parliamentary Committee on Indian Self-Government, that the federal government should expand its legislative activity under s. 91(24) to encompass new subject-matters affecting aboriginal people that would otherwise fall under provincial jurisdiction; and then delegate these powers to aboriginal governments. Many aboriginal representatives appear to endorse the Special Committee's recommendation that as an interim measure (pending a constitutional amendment on self-government) the federal government should occupy more of the legislative field available to it under s. 91(24) in order to provide indigenous governments the broadest range of legislative powers possible under the existing Constitution. There is particular interest in seeing this done with respect to aboriginal child welfare because of the special cultural and socio-economic needs of aboriginal children and their families.

7. Indian Act Amendments and the Role and Mandate of the Department of Indian Affairs and Northern Development

(i) DIAND's Lands, Revenues and Trusts Review

One element of federal policy on self-government is to find ways to modify administrative practices and policies to make them more consistent with the principle of aboriginal self-government and to provide opportunities to amend the *Indian Act*, pending its replacement by new legislation. The Department is aware of the obstacles the Act presents to bands wishing to engage in everyday economic or government activities. The Department views a government initiative referred to as the Lands, Revenues and Trusts Review (LRT Review) as a means of identifying ways of removing as many of these obstacles as possible. The stated goals of the LRT Review are to propose legislative changes recognizing greater "Indian" control of their own affairs; the development of policies and mechanisms supporting legislative changes and community objectives; adequate resourcing of the LRT Sector of the Department. In the course of this review, the Department is looking at a range of matters such as taxation, trust accounts, estates, land registry and management, Indian moneys, by-laws, elections, membership, legal liaison and support. The LRT Review has been divided into three phases including consultation with the concerned aboriginal communities. While the Department clearly regards this initiative as an important one, aboriginal organizations appearing before the Committee communicated their uncertainty about the direction of the Review, the quality of the Department's consultation efforts and the Department's motives in conducting it.

(ii) Implementation and Impact of the 1985 Amendment to the Indian Act ("Bill C-31")

The 1985 amendments to the *Indian Act* (commonly referred to as "Bill C-31") were intended to eliminate gender-based discriminatory aspects of provisions establishing entitlement to registration as an "Indian" and to "band membership". The amendments also extended a degree of control over band membership to band councils. "Bill C-31" seems to be as controversial now as it was when it was introduced. In August 1988, the Standing Committee on Aboriginal Affairs and Northern Development reviewed the implementation of

the 1985 amendments in its Fifth Report to Parliament. Part of this review included the June 1987 Implementation Report of the Minister of Indian Affairs and Northern Development. The Minister was unable at that time to report, as required by statute, on the impact of the amendments on band resources. The Honourable Pierre Cadieux, when serving as Minister of Indian Affairs and Northern Development, indicated his intention to table such a report in June 1990. Three national aboriginal organizations have been funded by the Department to assist in gathering information on this subject.

8. Traditional and Elective Systems of Government

The *Indian Act* allows bands to operate their local system of band government either under an elective system or by "custom" (traditional forms of government) pursuant to ss. 74-79 of the Act. More than 40% of *Indian Act* bands select their leaders according to custom.

The elective system of band councils under the *Indian Act* was initially created by the federal government, and in the late 19th century was imposed on many First Nations with the objective of displacing traditional forms of government. Today however, the government seeks to accommodate traditional and contemporary political values of the communities concerned, within the limitations of the *Indian Act* and to improve the elective system for those who want it. As part of its Lands, Revenues and Trusts Review, the Department of Indian Affairs and Northern Development is examining such issues as: how to strike an appropriate balance between individual and collective rights; the extent of federal review powers over locally developed election rules; how best to meet the wishes of bands under the elective system to define their own rules for conducting elections (this matter is currently prescribed by a uniform set of federal regulations); and in general how to realize greater control by First Nations people over the election and appeal process.

9. The Trust Relationship

A fundamental aspect of the historical relationship between the Crown and the aboriginal peoples of Canada is the special relationship established between the federal Crown and the First Nations of Canada. This relationship is reflected in the assignment of federal

jurisdiction over "Indians and Lands reserved for the Indians" under s. 91 (24) of the *Constitution Act, 1867*. It is often described as a trust relationship as a result of the legal and moral obligations imposed on the Crown when dealing with First Nations rights in reserve lands and in their traditional lands. As reported by the Special Committee on Indian Self-Government, aboriginal people have called for a renewal of this special relationship by rejecting paternalistic notions about the "protection" of aboriginal people and returning to the state of relations in early colonial times when First Nations were treated as political equals acting on the basis of consent and equality.

This issue of renewing the trust relationship in a manner consistent with the aspirations of aboriginal self-government, arises in a number of contexts such as relations with Treaty Nations, amendments to the *Indian Act* and the activities of the Lands, Revenues and Trusts Sector of the Department of Indian Affairs and Northern Development.

10. Fiscal Arrangements

No government can be effective without adequate financial resources at its disposal. Reserve-based governments currently operate within a complex web of financial arrangements and government programs and services in order to fulfill the most basic of community needs such as roads, sanitation, schools, public health, economic development, etc. This complex system has grown in an *ad hoc* fashion reflecting the priorities and policies of various federal governments. The burden placed on band governments of operating under this system is obvious and represents a drain on local resources and energies that could be better spent actually addressing the needs of the community. It seems clear that a review is required of the current system of financing aboriginal governments. Such a review would include band management funds as well as program and service monies in order to find more effective and less burdensome fiscal arrangements. In this regard, past work such as the Report of the Special Committee on Indian Self-Government could be built upon.

11. Justice

Justice issues in relation to aboriginal people have dominated headlines recently and are receiving an increasing amount of attention

at the federal and provincial level. Several provinces have either completed, or are in the process of conducting inquiries into aboriginal justice issues (Nova Scotia, Ontario, Manitoba, Alberta, Saskatchewan). These inquiries vary in scope but have focused on issues of discrimination by law enforcement officials in dealing with aboriginal offenders and victims, policing services on reserve, the extent to which the justice system is meeting the needs of aboriginal people particularly in remote northern communities and the merits of creating distinct aboriginal court systems. A recent Angus Reid poll found that 51% of the general Canadian population feel aboriginal people are treated unfairly by the courts and 63% believe that aboriginal people should have their own police and justice systems. A 1988 research report of the Canadian Sentencing Commission (*Native Offenders' Perceptions of the Criminal Justice System*) concluded that "...many Native offenders view the justice system as a critical component of the dominant society that is excluding them or rendering them marginal. Furthermore, the data indicates that they believe that virtually the entire justice system as a system — in contrast to many of the individuals who work within it — is biased against Native people" (p. 84).

Provincial inquiries are revealing problems in the status and treatment of aboriginal people in all aspects of the justice system from policing to incarceration. The prospect that racism in one form or another may underlie many of these problems is causing Canadians to ask questions about the extent to which racist or ethnocentric tendencies may exist in Canadian society and to seriously examine the state of interethnic relations. As each of the current inquiries is concluded, more will be known about the experience of aboriginal people in the justice system and about the scope of federal action that may be required and considered desirable by the aboriginal community. The federal government has an important role in reviewing the issues raised from a national perspective.

12. International Treaties Affecting Aboriginal Rights

Canadian court decisions have noted that international treaties entered into by Canada have often had a negative impact on the rights of aboriginal people arising from "Indian" treaties or other sources. For example, the *Migratory Birds Convention Act* has restricted rights

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);

- 3) it is only since the Second World War that the government has recognized the need to consult with aboriginal people on major legislative initiatives and even more recently, has the government acknowledged the need for consultation on major policy initiatives as well; however, consultation has been sporadic and inconsistent and, from the aboriginal viewpoint, generally inadequate; and
- 4) relations between the Department and its clientele necessarily involve all the complications of interethnic relations and in addition are becoming more and more intergovernmental in nature because of the requirements of realizing indigenous self-government.

A consensual approach to aboriginal policy development has historical and contemporary precedent. The essence of the treaty process was a consensual process of deciding the parameters of indigenous / non-indigenous relations. This tradition has been revived to some extent in recent years — most notably through the Constitutional Conferences on aboriginal rights. Although no more scheduled conferences remain to be held, section 35.1 requires that any amendments to s. 91(24) of the *Constitution Act, 1867* or sections 25 or 35 of the *Constitution Act, 1982* will require the participation of representatives of aboriginal people in a constitutional conference that must be called to discuss such amendments.

Consequently, the unique constitutional position of aboriginal people and the high degree of government involvement and influence over their day to day life makes disputes more likely and underlines the need and importance of formalized consultative mechanisms before policy changes are introduced. For the same reasons, there is a need for mutually satisfactory means of resolving major policy disputes that cannot or have not been dealt with through prior consultation.

Proper consultative and dispute resolution mechanisms also seem to be required by the current policy endorsing aboriginal self-government. Even when the band council system is replaced by more appropriate self-government arrangements (through legislative or constitutional reform) consultation and dispute resolution will be a necessary element of successful intergovernmental relations and will

be needed so long as the federal government continues to pass legislation or formulate policy affecting aboriginal people. In other words, there is a need to establish a constructive and ongoing dialogue with the aboriginal community while striving for and implementing self-government.

The conclusion to be drawn is that there is an obvious need to examine the extent to which consultation is required in the day to day operations of the Department and in its process of policy development and implementation — particularly how and when consultation should be carried out. There also appears to be a need to examine the need for dispute resolution mechanisms — both for major policy disputes and for certain disputes over legal rights, such as treaty matters over which parties may not wish to resort to the courts.

Some studies and recommendations in this area have been made from time to time (e.g. the Canadian Bar Association Committee report, *Aboriginal Rights: An Agenda For Action*, Mr. Oberle's *Treaty No. 8 Renovation Report*, the *Report of the Task Force to Review Comprehensive Claims Policy*, Professor Morse's *Labour Relations Dispute Resolution Mechanisms and Indian Land Claims*), but there is no one comprehensive study of the issue of consultation and dispute resolution in the aboriginal affairs policy area.

Views in the aboriginal community and in government could be canvassed on the following subjects:

- 1) Consultation as part of the the process of policy development
 - under what circumstances should consultation be initiated?
 - how should it be conducted?
 - what are the requirements of adequate consultation and are there special requirements arising from the government's fiduciary obligations or the commitment to self-government?
 - what are the views of aboriginal people on consultation and the need for alternative

dispute resolution mechanisms — what expert knowledge is available in the field of alternative dispute resolution mechanisms (mediation, arbitration, commissioners, etc.) and how could it be applied to the field of aboriginal affairs?

- 2) dispute resolution mechanisms for major policy disputes not involving legal rights per se (e.g. for discretionary programs)
 - where the parties agree that legal rights are not involved, what mechanisms could be used to resolve such disputes that are consistent with the principle of self-government and Ministerial and federal authority?
- 3) alternative mechanisms to resolve disputes over rights questions where all parties do not wish to litigate or where they view litigation as a last resort
- 4) how to deal with disputes that are a mixture of policy and legal issues (e.g. post-secondary education assistance).

A background study could be commissioned on how consultation has historically been dealt with in the aboriginal affairs area. Practically every government since the second World War has launched a major policy or legislative initiative that has been criticized on the grounds of inadequate or non-existent consultation. It may be useful to analyse the pattern of these occurrences and the implications of continuing this practise.

A Committee study of these subjects could be carried out with the purpose of making recommendations to government on developing a policy in conjunction with aboriginal people on how and when consultation should occur and on the types of dispute resolution mechanisms available and most likely to succeed.

Such a study

- would flow naturally out of the work of the House Standing Committee on Aboriginal

Affairs on the post-secondary education issue;

- could produce some practical and useful recommendations of broad application to many key areas of aboriginal policy;
- could assist non-aboriginal society in understanding the decision-making traditions and values of aboriginal peoples while building bridges between both sectors of society;
- could address the feelings of mistrust in the aboriginal community of the court and other institutions of government because they are based on and driven by non-aboriginal values alone.

14. Organizations Representing Aboriginal Peoples

(i) Funding

A program administered by the Department of the Secretary of State provides funding for the basic operations of dozens of aboriginal organizations at the national and regional level (the Aboriginal Representative Organizations Program). This program has played a critical role in the ability of aboriginal people to effectively capture the attention of government on many important issues. Funding under this program was recently cut in the 1989 Budget by 10% and 15% and several organizations feel their very existence is in jeopardy. The Native Council of Canada raised this issue in the larger context of the need to examine how adequate consultation with the aboriginal community can occur on constitutional, legislative and policy initiatives without a secure funding base for aboriginal organizations.

(ii) Ex Officio Representation on the House Standing Committee on Aboriginal Affairs

Some aboriginal representatives have urged the Committee to repeat the precedent set by the Special Committee on Indian Self-Government, in allowing designated members of the aboriginal

community to take part in Committee proceedings with all rights and responsibilities except voting.

ADDITIONAL NATIONAL ISSUES

In addition to issues directly relating to self-government, there are many major aboriginal affairs issues deserving national attention. Classifying aboriginal affairs matters according to their connection with self-government is a difficult task. In most cases, a connection of some kind can be found because of the over-arching goal of reaching an acceptable degree of autonomy and control in all matters affecting aboriginal interests collectively. The following list of issues is in no way to be taken as having any less priority than those listed above under a general self-government agenda. In examining the socio-economic conditions and the political status of aboriginal people in Canada, the web of interconnections between various issues soon becomes obvious.

15. Aboriginal Women

The Native Women's Association was unable to appear before the Committee during the recent set of hearings. However, the Committee is aware that aboriginal women are concerned with the whole range of aboriginal affairs but have focused particular attention on: residual sex discrimination in the Indian Act and the implementation of the 1985 amendments to the Indian Act; family violence; child care; education; funding of the Native Women's Association and its provincial and territorial affiliates.

16. Employment and Economic Development

All relevant socio-economic indicators continue to show that little improvement has occurred in recent years in bridging the socio-economic gap between the aboriginal and non-aboriginal population in Canada. It is generally accepted that improving the employment and economic development opportunities of aboriginal people, collectively and as individuals, is a key priority in addressing this problem. Employment and economic development issues will continue to be fundamental concerns for the indefinite future and will be an important aspect of successful self-government initiatives.

There is a number of encouraging initiatives in the area of economic development, such as the great interest shown by aboriginal people and communities in developing new businesses and establishing their own trade and business organizations, such as the Native Investment and Trade Association. Government funded initiatives include the opening of the aerospace technology program at the First Nation Technical Institute and the launching of the Canadian Aboriginal Economic Development Strategy (CAEDS). CAEDS is intended to create new opportunities for aboriginal people and communities and is funded in the amount of \$873.7 million over the next five years. While there is much progress to be made in improving the economic conditions of aboriginal people, the aboriginal community is demonstrating a wealth of ideas and energy in taking up this challenge. One of the most important issues directly involves the federal government and that is, legal restrictions blocking economic development on reserve.

17. Off-Reserve Aboriginal People: Metis, Non-Status Indians and Off-Reserve Status Indians

The socio-economic and legal status of Metis, "non-status Indians" and off-reserve "status Indians" is an issue raised by several witness groups as one requiring urgent attention. Aboriginal people living off-reserve have far less access to government programs and services than the on-reserve population and yet they suffer similar socio-economic deprivations. Off-reserve aboriginal people are often caught in the middle of federal-provincial disputes over legislative jurisdiction and government responsibility. In the meantime, the quality of life of many urban-based people is shockingly poor.

18. Environmental Issues

Environmental issues have always been a major concern of aboriginal people. There are several important reasons why this is so. In a very practical way, the economic well-being of aboriginal people is closely tied to the land in its natural state because of the continuing importance of traditional pursuits (hunting, fishing and trapping). Just as importantly, aboriginal people engage in these activities for cultural and spiritual reasons. The continuing spiritual relationship of

aboriginal peoples to the land and its living resources, is a fundamental aspect of contemporary aboriginal cultures. It is diffused through almost every aspect of their spiritual life. Aboriginal people therefore have much to offer by way of factual knowledge about the environment, the identification of environmental concerns and assisting the industrialized world in reordering its relationship to the planet and its living and non-living resources.

Past patterns of planning and implementing mega-development projects involving little or no consultation with the aboriginal people affected are being continued across the country. Aboriginal people continue to experience devastating impacts to their lifestyles and cultures as a result of such projects and other development activities. Nevertheless, Canada has yet to resolve the fundamental question of how competing, and often incompatible, land and resource uses and value systems should be resolved. At a minimum, governments must give serious consideration to the role of aboriginal people in achieving sustainable development.

19. Housing

It would be difficult to overstate the importance of adequate housing to the challenge of substantially improving the quality of life for aboriginal people in Canada. The critical need for adequate housing on and off reserve continues to be one of the most difficult problems facing aboriginal people and government. The Department of Indian Affairs and Northern Development is currently reviewing its on-reserve housing program and a report is expected by June of 1990. An Indian Affairs program for off-reserve housing was eliminated in 1985.

A 1984 on-reserve housing study provides information on housing conditions before the significant increase in the status Indian population due to amendments to the *Indian Act* in 1985. (Additional housing funds have been allocated since 1985 to deal with increased pressure on the housing stock as a result of these amendments but the adequacy of these funds and access to them has been a point of considerable controversy.)

The Department's 1984 study assessed the adequacy of housing in terms of three major dimensions: physical condition, crowding, and

access to basic facilities and amenities. Using these criteria, only 27.3% of on-reserve housing was found to be "completely adequate"; 11.4% of the housing stock was deficient in all three dimensions; and 61.3% were deficient in one or more aspects. In particular, 47% of the stock failed to meet basic standards of physical house condition and 38% lacked one or more of the following basic amenities: running water, indoor toilet and bath or shower. The report also stated that while 2.5% of Canadian households live in crowded conditions, 36% of reserve households are overcrowded. "Crowded conditions" are defined as a dwelling with more than one person per room. Over the period 1977 to 1984, the average number of persons per on-reserve household decreased from 5.4 to 5.1 (compared to 2.9 for the general Canadian population) and the incidence of households with more than one family remained in the range of 18-20%.

It is generally recognized that housing conditions for off-reserve people are similarly desparate, although there are no national figures on off-reserve housing conditions for Metis, non-status Indians and off-reserve status Indians.

The figures that are available dramatically demonstrate the magnitude of the housing crisis in aboriginal communities both on and off reserve; a crisis that has an impact on other concerns such as health and education. Housing conditions for the aboriginal population have always been significantly below those of other Canadians, a fact that says more about their socio-economic status than perhaps anything else.

20. Northern Issues

A substantial portion of the aboriginal population of Canada lives in the Yukon and the Northwest Territories. The land mass covered by the two northern territories is immense. Aboriginal people living in this region have concerns covering the whole range of human and governmental activity along with concerns about wildlife and the environment. The complexity and range of northern issues may surprise many. Any of the following subjects could be appropriate topics of Parliamentary study such as:

- the policy development process on matters affecting the Arctic (e.g. military activities and Canadian Arctic sovereignty initiatives)
- aboriginal sovereignty issues
- the funding of territorial governments
- the devolution process (the delegation or transfer of powers from the federal government to territorial governments)
- northern land claims
- oil and gas development
- Meech Lake and other constitutional reform matters
- health and social services
- aboriginal language retention and literacy
- development of an Arctic conservation strategy and other environmental issues such as PCB's and other toxic pollutants
- the fur issue (the impact of the animal rights movement on the trapping and traditional pursuits sector of the northern economy)
- export and trade in reindeer
- aboriginal people's concerns respecting methods of bison disease control
- compensation for "high arctic exiles" (Inuit who were moved from Northern Quebec to NWT in the 1950s)
- northern energy and resource policies
- postal rates and the high cost of store-bought food
- the impact of the GST on northern living costs
- the cumulative impact on the Inuit economy of various factors such as the GST and fur and ivory bans.

21. Circumpolar Issues

Many of the issues affecting the Arctic have a broader and international aspect when considered as circumpolar issues affecting all countries and peoples with interests in the region of the polar ice cap. The Inuit people of Canada are naturally concerned with the development of domestic and foreign policy in this area and have a vital interest in issues such as communications, the environment, renewable and non-renewable resources, trade and military activities. A number of protocol agreements have been entered into between Canada and the U.S.S.R. on subjects such as education, culture, communications, cold weather construction and technology and activities in the circumpolar region affecting the interests of Inuit and other aboriginal people will occur as a result of these agreements. The rest of Canada is only just beginning to perceive the existence of common interests between people of different nations living in the same climatic region.

22. Human Rights Issues

While there is a range of human rights issues involving aboriginal people, the Committee will highlight the following four issues: 1) discrimination and employment equity issues; 2) aboriginal people in the justice system; 3) international human rights initiatives affecting aboriginal people; and 4) women's equality rights under the Indian Act.

Discrimination and employment equity issues with respect to aboriginal people arise from recent statistics showing little improvement in the employment rates of aboriginal people in the federal public service and other employers falling under federal jurisdiction. The 1988 Annual Report of the Canadian Human Rights Commission also raised a range of human rights issues involving aboriginal people such as the disproportionate number of aboriginal people in incarceration.

A recent report by Judge Heino Lilles has identified the existence of a cultural bias at each step of the justice system as a major factor contributing to the high involvement with the criminal justice system by aboriginal people. A groundswell of national support is developing for the notion that governments should examine traditional aboriginal

values and means of dealing with offenders and as Judge Lilles has put it, "to develop new co-operative approaches to the administration of justice in our northern communities."

Since 1982, several important initiatives have been undertaken to address aboriginal rights at an international level. International standard setting activities by the International Labour Organization and the United Nations may have implications for domestic Canadian policy on aboriginal rights. In addition, allegations by several aboriginal groups that Canada is in violation of existing international human rights standards may have an impact on Canada's international reputation and on domestic policy. In other words, policy development, legislative action and administrative action on aboriginal affairs in Canada is now increasingly taking place against an international backdrop that includes international norms of acceptable government action. The adoption by the I.L.O. of Convention 169 ("the Convention Concerning Indigenous and Tribal Peoples In Independent Countries") raises the issue of whether Canada should ratify the only existing international convention on aboriginal rights. Reaction from the aboriginal community so far has been mixed. At the United Nations, the Working Group on Indigenous Populations is in the process of drafting a Declaration on Indigenous Rights, that may eventually come before the U.N. General Assembly for consideration.

One of the most difficult human rights issues facing the aboriginal community is the question of women's equality rights under the Indian Act. Many aboriginal groups maintain that despite the attempt in 1985 to remove legislative sex discrimination from the Act, there is residual sex discrimination that violates Canada's international human rights commitments. There is also a continuing debate regarding the appropriate way to implement the 1985 amendments in a way that respects the rights of persons reinstated to Indian status as well as the collective self-government rights of aboriginal nations.

23. Health

There is a great number of important health issues from health services on and off reserve, to substance abuse, to long-term care, to

child welfare. While a mixture of provincial and federal services are provided, statistics in this area continue to reflect significantly higher rates among aboriginal people of infant mortality, violent death, physical handicaps, family violence, nutritional problems, and diseases such as whooping cough and tuberculosis. Aboriginal health concerns are too numerous to deal with in any adequate fashion here, but special mention might be made of the standard of health care available to aboriginal people and the importance of traditional holistic approaches to health care in aboriginal communities.

A study published in 1989 entitled "Lords of the Arctic: Wards of the State" by Colin Irwin provides considerable food for thought on the scope and magnitude of health issues facing the Inuit people of Canada. Studies such as this one demonstrate the need to understand and address the continuing socio-economic impacts of the cultural and psychological upheaval experienced by all aboriginal peoples as a result of European settlement.

24. Childcare and Child Welfare

The access of aboriginal people to quality childcare and child welfare programs varies considerably from province to province and the current role of the federal government is that of providing funds or programs to supplement what it regards as a provincial responsibility. Aboriginal people have a number of concerns with the present state of affairs. Provinces can only enact laws of general application in this area and do not have the constitutional authority the federal government has to specifically address aboriginal child welfare concerns in legislation. For this and other reasons, aboriginal organizations have been pressing the federal government to use its s. 91(24) legislative powers to provide an opportunity for aboriginal governments to legislate in respect to the welfare of their own children (through delegated federal powers in the absence of specific self-government powers entrenched in the Constitution).

The aboriginal population as a whole has a much higher proportion of children than the general Canadian population. Access to affordable and quality childcare has an obvious connection to the ability of parents to seek employment or upgrade their skills through education. This is especially true of single parent families, the majority

of which are urban based and headed by women. As part of a larger report on child care, aboriginal concerns were briefly addressed in the Report of the Special Committee on Child Care (Sharing the Responsibility, March 1987). Aboriginal people have expressed their concerns that any funds allocated to address childcare needs in the aboriginal community should be administered directly by aboriginal governments instead of provincial governments. The study of childcare needs in the aboriginal community is a relatively recent phenomenon but is likely to increase over the short and long term.

25. Traditional Economy (Hunting, Fishing, Trapping and Gathering)

The critical importance to aboriginal cultures of traditional pursuits such as hunting, fishing and trapping was referred to above. The legal status of aboriginal hunting rights varies considerably by region depending on the existence of treaty protected rights, statutory provisions, claims settlements, provincial law and the current status of common law respecting aboriginal rights. Since s. 35 of the *Constitution Act, 1982* was enacted, affirming and recognizing "existing aboriginal and treaty rights", considerable litigation has ensued to determine its impact on aboriginal hunting, fishing and trapping rights. Eventually, decisions by the Supreme Court of Canada will provide guidelines on the extent to which provincial and federal powers to regulate such activities have been limited by s. 35. In the meantime, aboriginal people wishing to engage in such activities in their traditional lands are faced with an uncertain and complex legal situation. Added to this are the continuing confrontations in all parts of the country between different sectors of society competing for the same resources or seeking to use the land in a way incompatible with other users. The traditional aboriginal economy is often in conflict with mega-development projects, resource exploration, mining, clear cut logging and even military activities. With the nature and scope of aboriginal title yet undetermined by the courts, the resolution of such confrontations is especially difficult. These confrontations also tend to be highly emotional when each side (aboriginal and non-aboriginal) feels its particular way of life and economic well-being is at risk. Litigation will only provide some of the answers and then, only as quickly as cases can be brought before the courts and appeals exhausted or abandoned. In

the meantime, both aboriginal and non-aboriginal interests require some innovative policy and action in the area of claims settlement as well as some assistance in terms of community and inter-ethnic relations.

26. The Fur Issue

Another issue affecting the traditional economy of aboriginal people is the fur issue: the threat to aboriginal trappers posed by the animal rights campaign. A well-organized international lobby effort is aimed at halting the sale of furs obtained through the use of the leg-hold trap. While the leg-hold trap has supposedly been the target of this campaign, it seems clear that it is the killing of fur-bearing animals for any reason or under any conditions that is the real target. The socio-economic impact of the collapse of the seal industry in 1983 due to increasing pressure in Europe to ban the import of seal furs is still being felt throughout Arctic communities. A successful assault on the remainder of the fur industry will have a devastating impact on the aboriginal economy and on aboriginal cultures.

From the aboriginal viewpoint, the campaign against fur trapping represents the latest imposition of foreign values to the point of destroying what remains of the aboriginal economy and a way of life with it. The relationship of aboriginal trappers to the animals they kill is regulated by a body of spiritual norms that are based on respect and gratitude to Mother Earth and for "gifts" from the animal spirits. A report of the Standing Committee on Aboriginal Affairs and Northern Development in December 1986 (*The Fur Issue: Cultural Continuity, Economic Opportunity*) found that "such customs are the important link between trapping and the maintenance of culture."

Some of the arguments raised by anti-trapping activists reveal a fundamental conflict in values that raises some serious human rights questions. In addition to dismissing the spiritual aspect of hunting and trapping activities, the anti-trapping movement places a greater priority on animal rights than human rights. And in the context of the anti-sealing campaign, the welfare of baby animals has taken precedence over that of baby Inuit.

While not all Canadians sympathize with the anti-trapping movement, it is nevertheless a growing one. The Fur Issue Report

stated: "...animal rights is a wealthy growth industry. An international organization, the International Fund for Animal Welfare (IFAW), has over 500,000 members and a net income of over \$6 million a year within the U.S. alone. Greenpeace, with about the same membership, has an income in the neighbourhood of \$7 million." Throughout their history of contact with non-aboriginal people, aboriginal people have had to deal with the devastating spiritual, cultural and socio-economic consequences of past attempts to impose foreign values on them.

Many of the arguments of the animal rights movement attack the cultural legitimacy of trapping as an aspect of aboriginal cultures and are based on numerous misconceptions about the role of fur trapping in aboriginal cultures. For example, animal rights activists argue that fur trapping is not a valid part of aboriginal culture because it is assumed to be profit motivated and because it was introduced by Europeans; that the economic hardship resulting from destruction of the fur industry can be simply replaced by "economic development"; that aboriginal culture is dead or beyond hope of revival and that if aboriginal people were simply provided an opportunity to enter the wage economy, they would abandon fur trapping and other hunting related activities; that aboriginal culture is defined by its content and practise in pre-contact periods and that to the extent aboriginal cultures deviate from this historical model, they are no longer truly aboriginal. The Fur Issue Report has helped in the effort of aboriginal organizations to dispel such misconceptions and to explain the fundamental cultural importance of hunting and trapping activities, but the controversy has continued to escalate.

Cultures, by definition, and human beings, by nature, are dynamic and ever changing. Aboriginal people can no more be expected to conform to some historical picture of what aboriginal culture is, than European cultures can be exclusively defined by their content in the 17th and 18th centuries. The adoption by aboriginal people of fur trapping into their hunting economy was a practical and normal part of their adaptation to new circumstances thrust upon them. Further, aboriginal people have found trapping to be consistent with their spiritual values requiring respect for animal life. The contents of aboriginal cultures and specifically, the cultural legitimacy or relevancy of trapping, is determined by those cultures. The right to define the content of one's own culture is an aspect of

self-determination and the right to practise one's culture is an element of ethnic minority rights as set out in international human rights instruments such as the International Covenant on Economic, Social and Cultural Rights. Continued interference with this essential aspect of the economy and culture of aboriginal people therefore raises some international human rights issues.

The essence of this controversy is really a human rights issue. By whose standard is the morality or humaneness of certain activities to be measured? How is it possible for persons outside a particular culture, to judge the relative morality of that culture in respect to its treatment of animals? Are aboriginal people to suffer still more cultural upheaval because of negative moral judgments of their cultures based on foreign values?

27. Taxation

Aboriginal people with status as "Indians" under the federal *Indian Act* are entitled to a tax exemption in relation to personal property situated on reserve pursuant to s. 87 of the *Indian Act*. Aboriginal people assert that exemption from tax is a treaty and aboriginal right irrespective of what the federal law may provide from time to time. This position, and disputes about the proper interpretation and application of s. 87, have raised a large number of taxation issues involving practically every form of taxation: sales, income, municipal, provincial and federal.

28. Education

The Committee has also been made aware that serious concerns exist about the quality of education received by aboriginal students at the elementary and secondary level. In particular there are concerns that there is a critical need for curriculum changes to upgrade the standards in aboriginal schools. While recent policy changes allowing greater control by parents and band councils are expected to have a significant impact on rates of high school completion for aboriginal students, it is felt that there is still much work to be done to ensure that the educational needs of aboriginal children are adequately met. In 1988, the Education Secretariat of the Assembly of First Nations published four volumes of a comprehensive review of education issues

at all levels in terms of jurisdiction, quality, management and resourcing. The fourth volume entitled, *A Declaration of First Nations Jurisdiction over Education*

- affirms the inherent aboriginal right to self-government;
- states that education is both an inherent aboriginal right and a treaty right;
- calls on the Government of Canada to vacate the field of administering First Nations education and for the radical reform of the Indian Act;
- affirms that First Nations education includes a holistic approach covering the complete range of education needs, including post-secondary education, and must be of a standard at least comparable to provincial schooling;
- states that jurisdictional control requires that all necessary and required financial resources previously managed by other governments be managed by First Nations educational authorities;
- calls for adequate resourcing, a multi-year budget system, and the elimination of cyclical shortfalls in federal budgets; and
- declares the implementation of First Nations jurisdiction over education requires the recognition of the sovereign status of First Nations and reforms of federal policy and legislation.

In 1989, this Committee reviewed the matter of post-secondary education assistance to aboriginal students and tabled a Report to Parliament. Since then the Department has revised the program. The Committee may return to this issue during the current Session to review government action since the Committee's report.

29. Aboriginal Language Retention

There are eleven "language families" in Canada and at least fifty distinct aboriginal languages currently exist. Aboriginal languages other than these have already disappeared. One survey has concluded that only three of the existing fifty languages (Cree, Ojibwa and Inuktitut) have excellent chances of surviving; all others are endangered and several are considered to be on the verge of extinction. In the territories, aboriginal people constitute a significant proportion of the general population. In the Northwest Territories, they are a majority. Consequently, there has been pressure to recognize aboriginal languages as official languages of the territories. Aboriginal people who speak only their native language are now permitted to serve on juries in the Northwest Territories as a result of recent legislative amendments and translation services in nine aboriginal languages are provided to Members of the Territorial Council.

The federal government recently concluded agreements with the two territories for language retention but some aboriginal advocates believe that little is being done south of the 60th parallel. The Committee has also been told that aboriginal language issues require separate legislative treatment from "heritage language" concerns. There is currently a private Member's Bill before the House which proposes the establishment of a national aboriginal language foundation. The concerns of aboriginal people on language issues extend from the home to government services.

30. Literacy

Since 1990 is International Literacy Year, literacy issues are commanding attention at the international, national and local level. In Canada, literacy is a national concern as well as an immediate and serious problem in the aboriginal community. Literacy in English or French for aboriginal people and other Canadians has a clear connection to employment opportunities. While specific statistics on literacy in the aboriginal community are not easily available, some conception of the seriousness of the problem can be acquired simply by considering the percentage of people who have not attended high school. In 1986, the percentage of persons without any amount of high school education was very high among the aboriginal population:

Status Indians (on-reserve) 45%, Status Indians (off-reserve) 24%, Inuit 53%, Metis 35%, Canada 17%. Aboriginal literacy issues also have some distinctive aspects such as aboriginal language retention and literacy in aboriginal languages.

The potential for aboriginal people to improve their economic prospects through literacy in one or both of the official languages is great and the potential to strengthen their cultures through aboriginal language and literacy programs equally so. Many aboriginal communities have launched successful literacy initiatives, inspired and designed by aboriginal people themselves. A review of aboriginal literacy issues with a focus on successful programs and the connection to aboriginal language issues, could assist in the task of acquiring a national perspective on the status of literacy in the aboriginal population.

CONCLUSION

The list of issues in this Report represents an urgent agenda of unfinished business between Canada and the aboriginal people of this country. If a significant and positive impact were made on this agenda, the 1990's could in fact become "the decade of aboriginal peoples".

This decade is an especially appropriate time for Canada to address the unacceptable socio-economic status of aboriginal people and the many outstanding issues respecting their political and legal rights. Canada has an obligation to achieve some substantial progress on aboriginal affairs matters as part of the global struggle to ensure a universal respect for human rights and self-determination.

Further, the Committee has been made aware that aboriginal people in Canada are looking at preparations in the non-indigenous community to "celebrate" or commemorate in 1992 the 500th anniversary of the arrival of Columbus in the Americas, with some apprehension.

Clearly from an aboriginal perspective, there is little to celebrate. The calendar date of 1492 is significant to aboriginal people for completely different reasons than it is for non-aboriginal people. While some Canadians may recall that the so-called New World provided an opportunity to develop and foster democratic

government, aboriginal people know that they have had an unqualified right to vote in federal elections for a mere thirty years and that self-government has, more often than not, been denied them. While Canadians like to remember that the opportunity to settle in North America has allowed people from all over the world to escape religious and other forms of persecution, aboriginal people remember the legislative prohibitions against practising traditional spiritual ceremonies and other significant cultural practises. While many Canadians recall the opportunity to acquire free homestead lands, indigenous people recall that until the 1950's, statutory provisions barred them from doing so and from collecting funds for the purposes of aboriginal rights litigation.

While discrimination against aboriginal people today less frequently takes such obvious forms, it still exists and the socio-economic consequences of discrimination, past and present, are clearly evident. It is significant that after 500 years, some of the indigenous people of this country are still referred to as "Indians", a term many find inappropriate, in part because it has led many Canadians to believe that all "Indians" share the same culture and language. Many aboriginal people insist on the use of the term "First Nations" as a generic reference to the many distinct aboriginal cultures of this country. Others prefer the term "aboriginal" and still others, the word "indigenous". The lack of knowledge Canadians generally have concerning the culture, history and aspirations of aboriginal people is an indication of the extent of the work that remains to be done. The circle of Confederation will not be complete until the social, economic and political marginalization of Canada's aboriginal people is reversed.

APPENDIX A

WITNESSES AND SUBMISSIONS

Issue 13

On Wednesday, November 1, 1989:

*From the Department of Indian Affairs and Northern
Development:*

Harry Swain, Deputy Minister;
Richard Van Loon, Senior Assistant Deputy Minister.

On Wednesday, November 8, 1989:

*From the Department of Indian Affairs and Northern
Development:*

Harry Swain, Deputy Minister;
Ian Potter, Director General, Comprehensive Claims;
Manfred Klein, Acting Director, Specific Claims.

Issue 14

On Wednesday, November 22, 1989:

From the Prairie Treaty Nations Alliance:

Vernon Bellegarde, Chief.

From the Federation of Saskatchewan Indians;

E. (Dutch) Lerat, Vice-Chief.

From the Dakota Ojibway Tribal Council:

Ernie Daniels, Chief Executive Assistant;
Sol Sanderson, Treaty Protection Office Planner.

From the Inuit Tapirisat of Canada:

John Amagoalik, President.

Issue 15

On Wednesday, November 29, 1989:

From the Native Council of Canada:

Christopher McCormick, National Spokesperson;
Robert Groves, Special Adviser.

Issue 16

On Monday, December 4, 1989:

From the Dene/Metis Secretariat:

Gary Bohnet, President of Metis Association of North
West Territories;
Bill Erasmus, President of Dene Nation.

Issue 17

On Wednesday, December 6, 1989:

From the Indigenous Bar Association:

Roger Jones, President;
Darlene Johnston, Member.

From the Canadian Bar Association:

Samuel D. Stevens, Chairperson, Native Justice
Section;
Kenneth B. Young, Vice-Chairperson, Native Justice
Section;
Peter Hutchins, Treasurer, Native Justice Section;
Brad Morse, Director, Native Justice Section.

Issue 18

On Wednesday, December 13, 1989:

From the Canadian Human Rights Commission:

Maxwell Yalden, Chief Commissioner.

Issue 19

On Wednesday, December 20, 1989:

The Assembly of First Nations:

Ovide Mercredi, Regional Vice-Chief, Manitoba
Region;
Gordon Peters, Regional Vice-Chief, Ontario Region.

BRIEF

Native Women's Association of Canada:

Linda Jordan, Chairperson.

APPENDIX B

ABORIGINAL PEOPLE AND NATIONAL ABORIGINAL ORGANIZATIONS

**Wendy Moss
Law and Government Division
Research Branch
Library of Parliament**

Aboriginal People and National Aboriginal Organizations

INTRODUCTION

The different legal entitlements that apply to indigenous people in Canada are reflected in the different political organizations that exist at the national level to represent their various interests. Apart from a racial distinction between Inuit and so-called “Indian” peoples, a number of other classifications exist—most of them applying to the indigenous people referred to as “Indians”.

Status Indians are indigenous people with legal status under the *Indian Act*. The Inuit are expressly excluded from the application of the *Indian Act*, although they are “Indians” within the meaning of the word as used in s. 91(24) of the *Constitution Act, 1982*. Status Indians may be further subdivided into:

- treaty and non-treaty Indians
- band members with Indian status and band members without
- status Indians with band membership and those without
- “C-31” Indians (registered as a result of the 1985 amendments to the *Indian Act* aimed at eliminating sex discrimination in the entitlement provisions) and “regular” Indians (registered otherwise than under the 1985 amendments)
- Indians registered under s. 6(1) of the Act and therefore able to pass on status to their children even where the other parent is a non-Indian and s. 6(2) Indians who cannot pass on status to their children in the same circumstances.

The term “non-status Indians” refers to persons who in ethnic terms can be identified as indigenous people but who for various reasons are not entitled to be registered under the *Indian Act*. It is not clear whether federal jurisdiction under s. 91(24) of the *Constitution Act, 1867* extends to these people despite their exclusion from the *Indian Act*.

A 1981 decision of the U.N. Human Rights Committee, (*Lovelace v. Canada*) held that a woman without status under the *Indian Act* was nevertheless an Indian in the ethnic sense because of her ties to the reserve on which she was raised. Provisions of the *Indian Act* barring her from the reserve because of her loss of status were held to be in contravention of her rights as a minority under Article 27 of the International Covenant on Civil and Political Rights. This suggests a new category of persons who despite their lack of status under the *Indian Act*, may have rights under international law in respect to their indigenous culture and identify.

The term “Metis” is sometimes used interchangeably with “non-status Indian” to denote an indigenous person without status under the *Indian Act*. Historically it refers to persons of mixed indigenous and non-indigenous ancestry in the prairie provinces, who developed a cultural identity distinct from “Indians” and Europeans but which was still indigenous. Metis living in what are now the prairie provinces were regarded as possessing Indian title under federal legislation and were given land and money grants in place of treaty rights. Some people identifying as Metis today, are descendants of the people who were entitled to receive these grants; others are simply persons of mixed indigenous and non-indigenous ancestry who prefer this designation.

THE ASSEMBLY OF FIRST NATIONS

The AFN represents the 450,000 people with status under the *Indian Act*. Approximately 270,000 status Indians reside on reserve. At its broadest, the AFN’s constituency would include treaty Indians, newly registered and reinstated Indians, status Indians living off-reserve as well as those on reserve.

THE PRAIRIE TREATY NATIONS ALLIANCE

The Prairie Treaty Nations Alliance (PTNA) is regarded as the national voice of prairie treaty Indians on treaty issues, a mandate it seems to share with the AFN. It represents 120,000 people in 120 bands.

The PTNA is concerned with the proper implementation of the major numbered treaties that cover most of the territory of the prairie provinces. There are many outstanding issues regarding treaty entitlements, chief among them being land entitlements, and the relationship between Treaty Nations and the Government of Canada.

THE NATIVE COUNCIL OF CANADA

The NCC is regarded as the primary voice of non-status Indians, although it also addresses Metis issues. Since the enactment of the 1985 amendments to *Indian Act* provided many of the non-status Indian people in the NCC's constituency an opportunity to become registered, the organization has acted as a spokesperson for these ("C-31") people as well. (The AFN primarily represent the views of the reserve based peoples faced with absorbing C-31 registrants into their communities.)

The NCC considers all non-status Indians and Metis people to fall within the legislative jurisdiction of the federal government under s. 91(24) of the *Constitution Act, 1867* (a position the federal government generally refutes) and maintains that all descendants of treaty people have treaty rights regardless of whether or not they are registered under the *Indian Act*. The federal government rejects this position as well. Since 1985, the NCC has been quite active representing the interests of reinstated and newly registered persons under the 1985 amendments to the *Indian Act* (C-31). There are no reliable estimates of the non-status and Metis population but some estimates range from 500,000 to 1,000,000.

THE INUIT TAPIRISAT OF CANADA

The Inuit Tapirisat represents 27,000 Inuit living in 65 communities in the NWT, Northern Quebec and Labrador. A major concern of the organization is constitutional development in the North which involves a number of complex issues such as the settlement of land claims (negotiations are ongoing with the Tungavik Federation of Nunavut), division of the Northwest Territories and the overall process of devolution in the territories, and the Meech Lake Accord. Other key areas of concern are resource development, economic development, environment, health and social services and the anti-trapping movement.

THE NATIVE WOMEN'S ASSOCIATION OF CANADA

The Native Women's Association of Canada represents indigenous women regardless of their status under the *Indian Act* and is concerned with a wide range of national issues of concern to aboriginal people. The organization has been a leading force in the struggle to remove sex discrimination from the *Indian Act* and in assisting persons applying for registration under "C-31" and trying to access services at the national and local level such as health care and housing.

THE INDIGENOUS BAR ASSOCIATION

The Indigenous Bar Association was founded in 1988 and is made up of indigenous lawyers from across Canada. The objectives of the association include the respect of the spiritual basis of traditional indigenous laws and customs; the advancement of social and legal justice for indigenous peoples in Canada; the reform of policies and laws affecting indigenous people in Canada; and the fostering of awareness within the legal community and the general public of legal and social issues of concern to indigenous people of Canada.

THE METIS NATIONAL COUNCIL

In 1983, some of the western Metis organizations affiliated with the Native Council of Canada broke away and formed a new organization, the Metis National Council. The MNC has stated that

the word "Metis" should include the descendants of the "historic Metis" (people who identified as Metis in the 19th century) and other people of aboriginal ancestry who have been accepted by the historic Metis as Metis.

APPENDIX C

SOCIOECONOMIC CONDITIONS OF NATIVE PEOPLE IN CANADA

Patricia Begin
Political and Social Affairs Division
Research Branch
Library of Parliament

SOCIOECONOMIC CONDITIONS OF NATIVE PEOPLE IN CANADA

The statistics herein describe selected demographic and socio-economic characteristics of status Indians, Metis and the Inuit in Canada. The completeness or comprehensiveness of the socio-economic data on native people in Canada is uneven (i.e. data on status Indians are more comprehensive than are the data related to the Metis population).

The statistics are, in the main, based on 1981 and 1986 Census data that are tabulated in Statistics Canada and Indian and Northern Affairs Canada sources.

DEMOGRAPHIC DATA

A. Native Population (1986)

Status Indian (on reserve)	264,187 ⁽¹⁾ (65% of all status Indians)
Status Indian (off reserve)	123,642 ⁽²⁾ (35% of all status Indians)
Inuit	27,290 ⁽³⁾
Metis	59,745 ⁽⁴⁾

B. Total Fertility Rate (average number of births per woman) 1981

Status Indian Rate	3.15 ⁽⁵⁾
Inuit	2.7 ⁽⁶⁾
Canadian Rate	1.7 ⁽⁷⁾

C. Age Structure of Population

<u>Ages</u>	Status Indians⁽⁸⁾		Canada	
	<u>1981</u>	<u>2001*</u>	<u>1981</u>	<u>2001</u>
0-14	39%	31%	23%	19%
15-64	56%	64%	68%	68%
65+	4%	5%	9%	14%

<u>Ages</u>	Inuit⁽⁹⁾		Canada	
	<u>1981</u>	<u>2001</u>	<u>1981</u>	<u>2001</u>
0-14	43%	34%	23%	19%
15-64	54%	62%	68%	68%
65+	3%	4%	9%	14%

<u>Ages</u>	Metis⁽¹⁰⁾	Canada
	<u>1986</u>	<u>1986</u>
0-14	33%	22%
15-64	63%	68%
65+	4%	10%

* Projected.

D. Life Expectancy at Birth

Status Indian male ⁽¹¹⁾	62 years (1981)
Canadian male	72 years "
Status Indian female ⁽¹²⁾	69 years "
Canadian female	79 years "

Inuit⁽¹³⁾

Labrador	60 years (1971-1980)
Northern Quebec	62 years (1971-1981)
Northwest Territories	66 years (1978-1982)

E. Infant Mortality Rate (per 1,000 births)⁽¹⁴⁾

Status Indian	22 (1981)	17 (1986)
Inuit	38 "	28 "
All Canadians	10 "	8 "

F. Standardized Death Rate (per 1,000 population) 1981⁽¹⁵⁾

Status Indians	9.5
All Canadians	6.1

G. Selected Causes of Death (per 100,000 population)⁽¹⁶⁾

Accidents, poisoning and violence:

Status Indians	248 (1976)	174 (1983)
All Canadians	67 "	58 "

Respiratory Diseases:

Status Indians	75 (1976)	52 (1983)
All Canadians	51 "	50 "

Infections and parasitic diseases:

Status Indians	18 (1976)	7 (1983)
All Canadians	4 "	4 "

Suicide⁽¹⁷⁾:

Status Indian	43 (1981)	34 (1986)
Inuit (NWT)	38 "	54 "
All Canadians	14 "	15 "

Violent Deaths⁽¹⁸⁾:

Status Indian	157 (1986)
Inuit (NWT)	173 "
All Canadians	54 "

SOCIAL AND ECONOMIC STATISTICS

A. Housing

Overcrowded Housing (% of total dwellings) 1986⁽¹⁹⁾:

Status Indians (on reserve)	29%
Status Indians (off reserve)	11%
Inuit	31%
Canada	2%

Dwellings Without Central Heating (% of total dwellings) 1986⁽²⁰⁾:

Status Indians (on reserve)	38%
Status Indians (off reserve)	9%
Inuit	17%
Canada	5%

B. Education

Did Not Attend High School (% of population 15 years and over) 1986⁽²¹⁾:

Status Indians (on-reserve)	45%
Status Indians (off-reserve)	24%
Inuit	53%
Metis ⁽²²⁾	35%
Canada	17%

At Least High School Education (% of population 15 years and over) 1986⁽²³⁾:

Status Indians (on-reserve)	22%
Status Indians (off-reserve)	38%
Inuit (with a certificate) ⁽²⁴⁾	3%
(without a certificate) ⁽²⁵⁾	23%
Metis (with a certificate) ⁽²⁶⁾	6%
(without a certificate) ⁽²⁷⁾	39%
Canada	56%

University (% of population 15 years and over) 1986⁽²⁸⁾:

Metis (with a degree)	1%
(without a degree)	3%
Inuit (with a degree)	0.2%
(without a degree)	2%
Canada (with a degree)	10%
(without a degree)	9%

C. Employment Rates

Employed (1986)⁽²⁹⁾:

Status Indians (on-reserve)	28%
Status Indians (off-reserve)	37%
Inuit	40%
Metis ⁽³⁰⁾	39%
Canada	60%

Unemployed (1986)⁽³¹⁾:

Status Indians (on-reserve)	15%
Status Indians (off-reserve)	17%
Inuit	14%
Metis ⁽³²⁾	16%
Canada	7%

Not in the Labour Force (1986)⁽³³⁾:

Status Indians (on-reserve)	57%
Status Indians (off-reserve)	46%
Inuit	46%
Metis ⁽³⁴⁾	45%
Canada	34%

D. Income⁽³⁵⁾

Income From Employment (1985):

Status Indians (on-reserve)	48%
Status Indians (off-reserve)	56%
Inuit	72%
Canada	71%

Average Family Income (1985)⁽³⁶⁾:

Status Indians (on-reserve)	\$20,900
Status Indians (off-reserve)	\$22,900
Inuit	\$27,800
Canada	\$38,700

Income From Government Transfer Payments* (1985)⁽³⁷⁾:

Status Indians (on-reserve)	48% up from 39% in 1980
Status Indians (off-reserve)	41% up from 25% in 1980
Inuit	26% up from 22% in 1980
Canada	20% up from 16% in 1980

* Includes income from federal, provincial or municipal programs such as family allowance, unemployment and cash welfare.

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- (1) Indian and Northern Affairs Canada, *Basic Departmental Data*, December 1988, p. 13.
 - (2) *Ibid.*
 - (3) Statistics Canada, *Census Canada 1986 Aboriginal Peoples Output Program*, March 1989, p. 2.
 - (4) *Ibid.*
 - (5) Siggner, Andrew, "The Socio Demographic Condition of Registered Indians", *Canadian Social Trends*, Statistics Canada, Winter 1986, p.5.
 - (6) Indian and Northern Affairs Canada, *An Overview of Demographic and Socio-economic Conditions of the Inuit in Canada*, 1985, p. 17.
 - (7) Siggner (1986).
 - (8) Indian and Northern Affairs, *Highlights of Aboriginal Conditions 1981-2001, Part I Demographic Trends* (1989), p. 9.
 - (9) *Ibid.*, p. 15.

- (10) Statistics Canada, *Census Canada 1986 Aboriginal Peoples Output Program* (1989), p. 2.
- (11) Indian and Northern Affairs Canada, *Highlights of Aboriginal Conditions 1981-2001, Part II Social Conditions*, December 1989, p. 23.
- (12) *Ibid.*
- (13) Indian and Northern Affairs (1985), p. 23.
- (14) Indian and Northern Affairs Canada, *Highlights of Aboriginal Conditions 1981-2001, Part II Social Conditions* (1989), p. 24.
- (15) Siggner (1986), p. 5.
- (16) *Ibid.*, p. 6.
- (17) Indian and Northern Affairs Canada, *Highlights of Aboriginal Conditions 1981-2001, Part II Social Conditions* (1989), p. 25.
- (18) *Ibid.*, p. 26.
- (19) *Ibid.*, p. 31.
- (20) *Ibid.*, p. 32.
- (21) Indian and Northern Affairs Canada, *Highlights of Aboriginal Conditions 1981-2001, Part III Economic Conditions*, December 1989, p. 27.
- (22) Statistics Canada (1989), p. 14.
- (23) Indian and Northern Affairs Canada, *Highlights of Aboriginal Conditions 1981-2001, Part III Economic Conditions* (1989), p. 28.
- (24) Statistics Canada (1989), p. 14.
- (25) *Ibid.*
- (26) *Ibid.*
- (27) *Ibid.*
- (28) *Ibid.*
- (29) Indian and Northern Affairs, *Highlights of Aboriginal Conditions 1981-2001, Part III Economic Conditions* (1989) p. 32.
- (30) Statistics Canada (1989), p. 16.
- (31) Indian and Northern Affairs, *Highlights of Aboriginal Conditions 1981-2001, Part III Economic Conditions* (1989) p. 32.
- (32) Statistics Canada (1989), p. 16.
- (33) Indian and Northern Affairs, *Highlights of Aboriginal Conditions 1981-2001, Part III Economic Conditions* (1989) p. 32.

- (34) Statistics Canada (1989), p. 16.
- (35) Indian and Northern Affairs Canada, *Highlights of Aboriginal Conditions 1981-2001, Part III Economic Conditions* (1989), p. 36.
- (36) *Ibid*, p. 38.
- (37) Indian and Northern Affairs Canada, *Highlights of Aboriginal Conditions 1981-2001, Part II Social Conditions* (1989), p. 33.

A copy of the relevant Minutes of Proceedings and Evidence of the Standing Committee on Aboriginal Affairs (*Issues Nos. 13, 14, 15, 16, 17, 18, 19, and 20 which includes this Report*) is tabled.

Respectfully submitted,

**Ken Hughes,
Chair.**

MINUTES OF PROCEEDINGS

WEDNESDAY, JANUARY 31, 1990

(29)

[*Translation*]

The Standing Committee on Aboriginal Affairs met *in camera* at 4:13 o'clock p.m. this day, in Room 208, West Block, the Chairman, Ken Hughes, presiding.

Members of the Committee present: Ken Hughes, Robert Nault, Robert E. Skelly, Stanley Wilbee.

Other Members present: Nicole Roy-Arcelin, David Kilgour.

In attendance: From the Research Branch of the Library of Parliament: Wendy Moss, Research Officer.

The Committee resumed consideration of its future business and draft report.

At 5:08 o'clock p.m., the Committee adjourned to the call of the Chair.

MONDAY, FEBRUARY 5, 1990

(30)

The Standing Committee on Aboriginal Affairs met *in camera* at 6:45 o'clock p.m. this day, in Room 208, West Block, the Chairman, Ken Hughes, presiding.

Members of the Committee present: Ethel Blondin, Ken Hughes, Allan Koury, Robert Nault, Robert E. Skelly, Stanley Wilbee.

Acting Member present: Greg Thompson for Wilton Littlechild.

In attendance: From the Research Branch of the Library of Parliament: Wendy Moss, Research Officer.

The Committee resumed consideration of its future business.

At 9:30 o'clock p.m., the Committee adjourned to the call of the Chair.

WEDNESDAY, FEBRUARY 7, 1990

(31)

The Standing Committee on Aboriginal Affairs met *in camera* at 4:45 o'clock p.m. this day, in Room 208, West Block, the Chairman, Ken Hughes, presiding.

Members of the Committee present: Ken Hughes, Allan Koury, Wilton Littlechild, Robert Nault, Robert E. Skelly.

In attendance: From the Research Branch of the Library of Parliament: Wendy Moss, Research Officer.

The Committee resumed consideration of its future business.

At 5:30 o'clock p.m., the Committee adjourned to the call of the Chair.

MONDAY, FEBRUARY 12, 1990

(32)

The Standing Committee on Aboriginal Affairs met *in camera* at 6:20 o'clock p.m. this day, in Room 208, West Block, the Chairman, Ken Hughes, presiding.

Members of the Committee present: Ethel Blondin, Ken Hughes, Allan Koury, Stanley Wilbee.

Acting Member present: Jack Shields for Wilton Littlechild.

In attendance: From the Research Branch of the Library of Parliament: Wendy Moss, Research Officer.

In accordance with its mandate under Standing Order 108(2), the Committee resumed consideration of current draft report.

At 6:45 o'clock p.m., the Committee adjourned to the call of the Chair.

WEDNESDAY, FEBRUARY 14, 1990

(33)

The Standing Committee on Aboriginal Affairs met *in camera* at 3:35 o'clock p.m. this day, in Room 208, West Block, the Chairman, Ken Hughes, presiding.

Members of the Committee present: Ethel Blondin, Ken Hughes, Allan Koury, Wilton Littlechild, Robert Nault, Robert E. Skelly, Stanley Wilbee.

Acting Member present: Al Johnson for Gabriel Desjardins.

In attendance: From the Research Branch of the Library of Parliament: Wendy Moss, Research Officer.

In accordance with its mandate under Standing Order 108(2), the Committee resumed consideration of current draft report on the 1990's.

At 6:25 o'clock p.m., the Committee adjourned to the call of the Chair.

WEDNESDAY, FEBRUARY 21, 1990

(34)

The Standing Committee on Aboriginal Affairs met *in camera* at 3:47 o'clock p.m. this day, in Room 208, West Block, the Chairman, Ken Hughes, presiding.

Members of the Committee present: Ethel Blondin, Ken Hughes, Wilton Littlechild, Robert Nault, Robert E. Skelly, Stanley Wilbee.

Acting Members present: David Bjornson for Gabriel Desjardins; Bob Hicks for Wilton Littlechild.

In attendance: From the Research Branch of the Library of Parliament: Wendy Moss, Research Officer.

In accordance with its mandate under Standing Order 108(2), the Committee resumed consideration of its current draft report on the 1990's.

Ordered,—That, as this is considered to be the Report of the Committee, the Chairman be authorized to make typographical and editorial changes as may be required.

Ordered,—That the Committee print 5,000 copies of the Report entitled “UNFINISHED BUSINESS: An agenda for all Canadians in the 1990’s” in English and 1,000 copies of the same report in French.

Ordered,—That the Chairman table the report to the House.

At 6:00 o’clock p.m., the Committee adjourned to the call of the Chair.

Martine Bresson

Clerk of the Committee

