MODELS FOR ABORIGINAL GOVERNMENT IN URBAN AREAS

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MODELS FOR

ABORIGINAL GOVERNMENT

IN URBAN AREAS

A report prepared for Policy and Strategic Direction
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by

Jill Wherrett and Douglas Brown
Institute of Intergovernmental Relations
Queen's University
Kingston, Ontario

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I. INTRODUCTION[1]

Over the past decade, the concept of Aboriginal self-government has become the focus of constitutional discussions on Aboriginal issues. Policy-makers, academics, and Aboriginal organizations have all developed models of what self-government might look like in practice. To date, much of the debate has centred on self-governing arrangements for Indian bands living on existing reserves and on the creation of territories governed by the Inuit population in the North. Thus, most models of self-government have been associated with a defined land base. A few analysts have looked at the possibilities of self-governing arrangements off a land base, and more specifically, in urban areas.[2] In general, however, the literature on self-government has tended to point out the obstacles to self-government off a land base. In a study of various proposals for self-government in 1985, David Hawkes noted:

> One common element in all of these proposals is an assumption that self-government exists on a land base. No form of self-government has been put forward without a land base, which could be designated as such in any conventional sense of that term.[3]

The focus on reserve-based or Northern communities has resulted in the exclusion of a large segment of the Aboriginal population from discussions of self-government. Many Aboriginal peoples in Canada do not live on reserves or in the North. Aboriginal families and communities can be found in large urban centres, small cities, rural areas and in many remote locations. This paper is designed to help expand the parameters of the debate. It examines issues of self-government for a particular segment of the off-reserve population, namely Aboriginal peoples living in urban centres.

If the needs and aspirations of all Aboriginal peoples are to be met, a broad understanding of the concept of self-government is required. It is necessary to step beyond the conventional meaning of self-government to embrace a wider vision of its possibilities. The focus on land-based models fails to respond to the reality of a growing urban Aboriginal population. It also fails to address how an inherent right of self-government will be implemented in urban settings. All Aboriginal peoples should share in the right of self-government. But in practice, its form and substance may vary according to the characteristics of the community.

The topic of Aboriginal self-government off a land base has received little attention, but it is not an abstract or theoretical concept. In many parts of Canada, Aboriginal peoples in urban centres have already begun to govern themselves. They are taking an active role in the administration and delivery of services, and have developed political institutions. These

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[1] This paper is an abridged and revised text of: J. Wherrett and D. Brown, Self-Government for Aboriginal Peoples Living in Urban Areas, Prepared by the Institute of Intergovernmental Relations for the Native Council of Canada, April 1992.

[2] M. Dunn, *Access to Survival: A Perspective on Aboriginal Self-Government for the Constituency of the Native Council of Canada*, (Kingston: Institute of Intergovernmental Relations, 1986); W. Reeves, "Native Societies: The Professions as a Model of Self-Determination for Urban Natives, in J.R. Ponting, ed. *Arduous Journey: Canadian Indians and Decolonization*, (Toronto: McClelland and Stewart, 1986); and J. Weinstein, *Self-Determination off a Land Base*, (Kingston: Institute of Intergovernmental Relations, 1986).

[3] D. Hawkes, *Aboriginal Self-Government: What Does it Mean*? (Kingston: Institute of Intergovernmental Relations, 1985), 25.

institutions can provide useful models for other urban Aboriginal communities, and may evolve into self-governing institutions within the context of the Canadian Constitution. They serve to demonstrate that it is not necessary for a government to have a land base *per se* to have a territorial jurisdiction. While urban Aboriginal governments will have some territorial boundaries for the exercise of their powers, the possession of land is not a prerequisite to governing.

While the following definition lacks symbolic appeal, self-government in functional terms can be described as:

> a defined level of jurisdiction or control to be exercised either exclusively, or on a shared basis, with either Aboriginal and/or Non-Aboriginal governments, with a broad or narrow range of 'government' or jurisdictional sectors.[4]

This definition of self-government can encompass a variety of arrangements. It could include communities on a defined land base that may take on a wide range of what are now local, provincial, and federal powers. It could also include urban and other Aboriginal communities whose self-governing institutions are more limited in scope than those of land-based communities at least with respect to land management. Urban governments or institutions will have different types of powers, levels of jurisdiction, and administrative and financing arrangements. For many matters -- indeed for most matters -- Aboriginal people in urban areas may participate fully in the rights and responsibilities of local, provincial, and federal citizenship. But in other matters, such as those central to cultural survival, Aboriginal peoples living in urban areas may develop their own services and institutions. These institutions will face difficulties common to land based Aboriginal governments, as well as those unique to the urban situation. However, these self-governing arrangements could provide a vehicle for Aboriginal peoples to maintain their languages and cultural traditions, and to improve their social and economic status.

This paper starts from the premise that an inherent right of self-government is part of the Constitution in terms of being an Aboriginal right as recognized in section 35 of the Constitution Act, 1982. It goes on to examine how self-government in urban areas might be put into practice. The purpose of the paper is not to propose any particular model of government or self-governing institution. It is intended to outline various options and possibilities, and to raise problems and questions that need to be addressed in developing workable arrangements. The remainder of this introduction sets the context for the development of urban self-government. It briefly reviews the different legal categories into which the Aboriginal peoples of Canada have been divided and outlines issues relating to current federal and provincial government responsibilities towards Aboriginal peoples.[5] The second section discusses the inherent right to self-government itself. It describes how the right might be exercised in different urban settings and in relation to other Aboriginal rights. The third section covers different models and elements of governing. It surveys different models of government, and options for membership, governing structures, the powers of Aboriginal governments, access to lands and resources, financing, and

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[4] I. Cowie, *Future Areas of Jurisdiction and Coordination Between Aboriginal and Non-Aboriginal Governments*, (Kingston: Institute of Intergovernmental Relations, 1987), 13.

[5] The context for self-government should also include a profile of the Aboriginal population and its socio-economic characteristics. This is provided in the paper prepared for this conference by Evelyn Peters.

intergovernmental relations. The final section of the paper draws some conclusions.

Before proceeding, it is important to clarify what is meant by urban in this context. In this paper, urban means large or small cities in which there is a significant Aboriginal population, but where Aboriginal peoples are a minority in relation to the rest of the local population. This would encompass large cities such as Vancouver, Toronto, Montreal, Calgary, and Halifax, as well as smaller centres. The paper does not directly address the situation of non-reserve self-government in rural, small town and remote locales, or in communities where Aboriginal peoples are a majority.

The Aboriginal Peoples of Canada

The Aboriginal peoples of Canada are commonly known as Indians, Inuit and Métis. They are characterized by diverse cultural, linguistic, and legal identities. Those who have been grouped under the label "Indians" since European contact are actually members of a variety of Aboriginal nations such as the Micmac, Cree, Ojibway and Gitksan nations. Indians also speak a variety of languages, and have traditional economies, political systems, and lifestyles that vary according to region. Overlaying these original cultural differences are legal distinctions. Federal legislation has divided the Indian population into legal categories with different rights and restrictions. Status Indians are those registered under the *Indian Act*. The *Act* sets out a complex system for registering Indians.[6] Definitions have shifted according to revisions of the *Indian Act*, and have been based on various criteria including blood quantum requirements, kinship, style of life, and membership in a charter group. The style of life criterion was removed in 1951 when a "charter group" element was added. Possession of Indian blood remains a factor in determining status, as does kinship. It has been argued that: "The net result is that the present *Indian Act* contains a hybrid status definition system that precludes any Indian control over the decision-making process."[7] With certain qualifications, Status Indians are entitled to band membership, residence on reserves, tax exemptions, treaty rights, and special federal programs. At present, there are approximately 600 Indian bands, and some 2,360 reserves in Canada. About half of all status Indians are also treaty Indians, descendants of a nation or registered members of a band that signed a treaty. Pre-Confederation treaties were signed between Indian nations and the Crown through representatives of the British government.[8] They were entered into in the Maritimes, Ontario, and Vancouver Island, between 1693 and 1862, and had provisions relating to peace, political and military alliances, trade and land. Some treaties relating to land paved the way for agricultural settlement, while the Robinson-Huron and Robinson-Superior treaties in Ontario allowed for mineral development. The Royal Proclamation of 1763 gives greater legitimacy to and sets the context for treaties. It shares the constitutional status of treaties and Aboriginal peoples today point to the Proclamation as an acknowledgement of their status as nations and of a special relationship with the Crown, as it recognized "several Nations or Tribes of

[6] The description of the registration system comes from B. Morse, "The Aboriginal Peoples of Canada," in B. Morse, ed. *Aboriginal Peoples and the Law: Indian, Métis and Inuit Rights in Canada*, (Ottawa: Carleton University Press, 1991), 3.

[7] Ibid., 4.

[8] B. Wildsmith, "Pre-Confederation Treaties," in B. Morse,ed., *Aboriginal Peoples and the Law.*

Indians" under the "protection " of the Crown.

Following Confederation the Canadian government assumed responsibility for treaties and treaty-making. The major post-Confederation treaties are the eleven numbered treaties which cover the Prairie provinces, and extend into the southern Northwest Territories, parts of the Yukon Territory, northeastern British Columbia, and northern Ontario. The Treaties of 1923 and 1929 also cover parts of Ontario. In general, post-Confederation treaties provided for the establishment of exclusive reserves, cash and annuity payments to band members and their descendants, and some hunting, fishing, trapping, and educational rights.[9] Modern treaties include the James Bay and Northern Quebec Agreement (1975), the Northeastern Quebec Agreement (1978), the Inuvialuit Final Agreement (1984) and the (potentially) land claims agreements currently being negotiated by the federal and provincial governments and Aboriginal peoples.

The interpretation of treaties continues to be an area of conflict between Aboriginal peoples and Canadian governments. These conflicts are related to different concepts of land use, disputes over the original meaning of treaties and the context into which they were entered, and the subsequent implementation of treaty provisions. In 1982, the Royal Proclamation was recognized in the *Constitution Act, 1982*. In the Simon case (1986), the Supreme Court recognized hunting rights said to be contained in the 1752 Treaty between the Micmac people and the Crown. The court also insisted that not only the written text, but the context in which treaties were made, should be considered in the identification and interpretation of treaties.[10]

Many Indians have Indian ancestry and cultural affiliation but are not registered as Indians under the *Indian Act*. Some people were never registered because they lived in remote areas or were absent from their communities during registration.[11] Others involuntarily or voluntarily lost their status through the process of enfranchisement. In exchange for surrendering their status, these individuals received voting and other rights of Canadian citizenship. Until 1985, women who married non-registered men also lost their status, and could not pass it on to their children. In 1985, Bill C-31 amended the *Indian Act* to eliminate some of the discriminatory provisions relating to status. It allowed for the reinstatement of many people who had lost or had been denied status, and provided that all individuals currently registered as a status Indian would remain so. Bill C-31 also enabled bands to establish their own membership codes. By 1991 about 90,000 or 18 percent of all status Indians were Bill C-31 registrants or their children. They are often referred to as "new-status" or "Bill C-31" Indians.

Non-status Indians can also be "treaty Indians" if their ancestors were members of

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[9] See N. Zlotkin, "Post-Confederation Treaties," in B. Morse, ed. *Aboriginal Peoples and the Law.*

[10] N. Lyon, *Aboriginal Peoples and Constitutional Reform in the 90s*, background study #7 of the York University Constitutional Reform Project, (North York: Centre for Public Law and Public Policy, York University, 1991), 5.

[11] Further information on the many reasons why Indians became disenfranchised or were not included as status Indians is provided in Native Council of Canada, *Bill C-31 and The New Indian Act*; Guidebook No. 1 Applying for Status (Ottawa: Native Council of Canada, 1985) and Guidebook No. 2 Protecting Your Rights (Ottawa, Native Council of Canada, 1986).

communities that signed treaties. However, their access to treaty rights has been limited. Some of these individuals are simply not recognized as part of a treaty, even though their ancestors lived in treaty areas. Others were deleted from treaty lists when they gave up or lost their Indian status. Some Indians whose status was reinstated under Bill C-31 have not yet been entered on treaty lists.

The question of Métis origins is also complex. Métis are often identified as the descendants of the mixed French and Indian population settled near the Red River. However,

> Métis cultures have developed a variety of historical and regional forms which makes it difficult to characterize them. Populations of Métis existed both before and after the 1880-1885 Red River/Batoche period. These groups include the Métis of the Atlantic Region, the communities of Hudson's Bay halfbreeds spread throughout the country and the Métis populations of the Territories and Quebec.[12]

A broad definition includes all people of mixed Indian and non-Indian ancestry who identify themselves as Métis and are accepted by the Métis community. In the 1800s, some Métis received land grants or money scrip rather than treaty payments and the right to reserves. With the passage of the first *Indian Act* in 1876, Métis entitled to scrip were excluded from registration as Indians. However, under Bill C-31 some people who identify themselves as Métis have received federal recognition as status Indians. The Métis population continues to be concentrated in the prairies, but there are also Métis living in the Northwest Territories, British Columbia, Quebec, Ontario, and the Atlantic provinces.

The Inuit traditionally inhabited Canada's Arctic regions in the present Northwest Territories, northern Quebec, and Labrador. They comprise the majority of the northern population and have remained culturally and geographically distinct. The Inuit have no reserves or significant historical treaties, but are signatories to the James Bay and Northeast Quebec Agreements.

Thus, the Aboriginal population is distinguished by different national, cultural, and regional identities. Placed on top of these differences have been the legal categories established by the Canadian government. Legal definitions have fragmented the Indian population into the often confusing categories of status, non-status, treaty, non-treaty and Bill C-31 Indians. These divisions are reflected in the structures and goals of the national Aboriginal political organizations. The Inuit are represented by the Inuit Tapirisat of Canada. The Assembly of First Nations (AFN) represents status Indian bands across the country. Thus, it is oriented toward the interests of these land-based communities. The Métis National Council (MNC) represents primarily the Métis of the prairies and British Columbia who trace their roots to the Red River settlement. The Native Council of Canada (NCC) -- recently re-named the Congress of Aboriginal Peoples -- identifies as its constituency all Indian peoples living outside of reserves and Métis outside of the prairies. Thus it includes status off-reserve, Bill C-31, and non-status Indians, and Métis, many of whom have treaty rights and others who have Aboriginal title.

Among the major cultural and legal distinctions are yet again a great variety of political,

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[12] Native Council of Canada Constitutional Review Commission, *Métis: Peoples and Nations*, working paper #3, (Ottawa: Native Council of Canada, February, 1992).

social, and economic differences. These relate to the development of individual Aboriginal communities since contact with Europeans and other settlers. If self-government is to contribute to Aboriginal peoples' well-being, these differences need to be recognized. The purpose here is not to legitimize or perpetuate the differences, but to acknowledge that they must be addressed. While the legal categories may be altered or dissolved in the future, the historical divisions created by them will remain, and must, over time, be healed.

Federal and Provincial Responsibility

Conflicting views about governmental responsibilities have long complicated policy for Aboriginal Peoples.[13] The issue of responsibility affects matters of jurisdiction, access to services and programs, and financing.[14] Section 91(24) of the *Constitution Act, 1867* confers jurisdiction over "Indians, and Lands reserved for the Indians" on the federal government. This has given the federal government exclusive legislative jurisdiction over treaties and reserves, and wide authority over the lives of Aboriginal peoples. However, the federal government has chosen to limit its responsibility. The application of special federal laws and programs are limited to those defined as status Indians in the *Indian Act*. Since the 1960s, the federal government has also generally restricted its responsibility for the provision of services and funding to the status Indian off-reserve population. While the situation varies from province to province, the federal government pays all or some of the costs for on-reserve services, while the provinces or the bands act as delivery agents. The federal government may pay for services to status Indians who leave reserves for short periods. The Department of Indian Affairs also funds post-secondary education and health services for status Indians, on or off reserve. As well, programs for all Aboriginal peoples in areas such as housing and employment are scattered throughout a number of federal departments. Otherwise, expenditures and responsibility for off-reserve status Indians are generally left to the provinces.

Provinces have argued that they have no special responsibility for Aboriginal people. Aside from some special programs aimed at all Aboriginal peoples, provincial governments have generally treated status Indians and non-status Indians as part of the general provincial population for the funding and provision of services. No government, with the exception of Alberta, has taken any special responsibility for the Métis. The Alberta government has accepted responsibility for Métis living on eight settlements in the province that were set aside for the Métis in 1938.[15]

The Inuit come under the authority of Section 91 (24) as the result of a 1939 Supreme Court decision. However, they do not fall under the *Indian Act*. Inuit in the Northwest Territories,

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[13] For a discussion of issues of jurisdiction and responsibility, see B. Morse, "Government Obligations, Aboriginal Peoples and Section 91(24)," and A. Pratt, "Federalism in the Era of Aboriginal Self-Government," in D. Hawkes, ed., *Aboriginal Peoples and Government Responsibility*, (Ottawa: Carleton University Press, 1989).

[14] D. Hawkes, *The Search for Accommodation*, (Kingston: Institute of Intergovernmental Relations, 1987), 9.

[15] Recently Alberta has joined all other provinces in accepting Métis as covered by section 91(24), but in such a way to avoid disruption of Métis settlements established by the province in 1938, and re-confirmed in provincial legislation proclaimed in 1990, with the support of the Alberta Federation of Métis Settlements.

Quebec, and Labrador receive social and economic programs supported by the federal Department of Indian Affairs and Northern Development. Most Inuit continue to live in traditional territories that are now exclusively set aside as settlement lands, or are being determined as a result of land claims negotiations.

While the federal government has chosen to exercise only limited responsibility for Aboriginal peoples, the legal situation remains unclear. One unresolved issue is the scope of Section 91(24). Non-status Indian and Métis organizations have argued that this section should be interpreted to include all Aboriginal peoples. Section 35(1) of the *Constitution Act, 1982* recognizes and affirms the existing Aboriginal and treaty rights of Indians, Inuit and Métis. However, through exclusion from Section 91(24), many non-status Indians and Métis have been restricted from exercising treaty rights and participating in most land claims settlements. The Native Council of Canada has argued for "equity of access":

> Equity of access means that each Aboriginal person in Canada, whether Métis, Inuit, status or non-status Indian living on or off-reserve, has an equal ability to benefit from the Aboriginal or Treaty rights (including rights established under a land claims agreement) if they have a demonstrable beneficiary relationship to that right.[16]

The NCC has suggested that the principle of equity of access be incorporated into a constitutional agreement on self-government.

A second issue involves the relationship of the Crown to Aboriginal peoples. Aboriginal peoples have asserted that the Crown has a special relationship to all Aboriginal peoples, a relationship embodied in the treaty process and the Royal Proclamation of 1763. This is known as a fiduciary or trust responsibility. It obligates the Crown to protect the interests of Aboriginal peoples. Recent Supreme Court decisions have furthered the concept of the Crown's fiduciary or trust duty. In 1984 the decision in the Guerin case began to move the Court away from the tradition of allowing the Crown to exercise its jurisdiction over Aboriginal peoples to their detriment. In the Sparrow case (1990) the Supreme Court "revitalized the Crown's special duty to protect First Nations."[17] Lyon argues that the main trust responsibility lies with the federal government, but it is also shared by provincial governments, as they have the legislative capacity to affect Aboriginal interests.

The resulting uncertainty over responsibility has created problems for all Aboriginal peoples, and particularly those living off-reserve. Disputes over jurisdiction have led to the inadequate provision of services and funding. As well, federal-provincial differences have interfered with Aboriginal peoples' efforts to assume responsibility for the provision of their own programs and services.[18] As Aboriginal peoples move toward self-government, a clarification of these issues is essential. These Aboriginal governments will need financial support, and this issue, in turn,

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[16] Native Council of Canada Constitutional Review Commission, *Equity of Access: The Forgotten Majority Speaks*, working paper #4 (Ottawa: Native Council of Canada, February, 1992).

[17] Lyon, *Aboriginal Peoples and Constitutional Reform in the 90s*, 9.

[18] J. Ryan, *Wall of Words: The Betrayal of the Urban Indian*, (Toronto: Peter Martin Associates Limited, 1978).

depends on the scope of Aboriginal jurisdiction and responsibility.

Two further aspects of the context for urban Aboriginal self-government need to be emphasized. The first is the socio-economic conditions of urban Aboriginals. The second is the nature of urban Aboriginal institutions already in place or that are just now emerging.

The urban Aboriginal population is growing rapidly, indeed has doubled in the past decade.[19] About 40 per cent of status Indians live off-reserve in urban areas, and the majority of non-status Indians and Métis live in towns and cities. Through a combination of social, economic and political factors, migration to cities has increased and can be expected to continue with population growth on reserves. The urban Aboriginal population on a whole is younger, more female, more transient and more dependent on transfer income, than the urban population in general. Indeed an overall picture of poverty, unemployment, and poor health, education and housing standards prevails -- although it is evident that not all Aboriginal persons living in cities fit this profile. On the whole, however, the Aboriginal population in urban areas may be said to be economically and socially marginalized.

The problems -- economic, social and cultural -- faced by Aboriginal peoples in Canadian urban centres has led them to develop services and institutions to suit their particular needs, and to redress their severe problems. A paper prepared for this conference outlines the nature of such Aboriginal organizations in three Canadian cities.[20] The range of such institutions is much broader even than in these three cities, and draws strength from such long-standing organizations as the network of Native Friendship Centres. The forms of organization and scope of services provided by existing institutions reveal some of the possibilities of Aboriginal self-government without a land base, but they also show the weaknesses of the current political and institutional framework. The institutions have been limited by a lack of autonomy and inadequate and inconsistent funding. These Aboriginal organizations also have to comply with municipal, provincial and federal directives and program standards that are not directed to the needs of Aboriginal communities. At least to a very large degree, therefore, Aboriginal self-government in urban areas can be seen as a means to gain more autonomy (including financial independence) over these existing and developing institutions and the functions they perform.

[19] See Peters.

[20] Stewart Clatworthy, Jeremy Hull and Neil Loughton, "Urban Aboriginal Organizations: Edmonton, Toronto and Winnipeg".

II. EXERCISING SELF-GOVERNMENT AND IMPLICATIONS FOR URBAN ABORIGINAL PEOPLES

Introduction

Section 35 (1) of the *Constitution Act, 1982* recognizes and affirms "the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada." Aboriginal organizations argue that the right of self-government flows from the inherent sovereignty of Aboriginal peoples. Therefore, as an inherent, existing right, it can be argued that the right of self-government is already included in Section 35(1). And even though Aboriginal organizations worked during the recent round of constitutional negotiations to have the explicit recognition of the inherent right of self-government in the constitution (by amending section 35), they now maintain that such explicit recognition is not strictly required for self-government to proceed.[21]

The actual exercise of the right of self-government may vary according to its relationship to other Aboriginal rights. Some communities are located within their own traditional lands. Other communities consist primarily of members of a particular treaty nation. Other, "mixed" communities may either be based within the traditional lands of a particular nation or have links to a variety of Aboriginal nations. These situations all involve different applications of Aboriginal and treaty rights, including the right of self-government.

Four Ways of Exercising Self-Government

To the extent to which the inherent right of self-government is associated with other Aboriginal rights, there are then, a number of potential ways in which these rights could be exercised. However, the path chosen for pursuing the right of self-government will have implications for how it is applied by Aboriginal people living in the city.

There are essentially four general ways in which the inherent right of self-government could be exercised, each of which has different implications for Aboriginal people residing in urban areas:

1. *Governing the Traditional Territory*

Most of what is now Canada was governed by one Aboriginal nation or another with more or less clearly defined territorial boundaries, prior to European settlement. Aboriginal people contend that their rights to governance over their traditional territories have never been lost, and that the exercise of an inherent right may well involve some exercise of jurisdiction by individual Aboriginal nations over their Aboriginal territory.

Aboriginal families and communities in urban centres reside within the boundaries of at least one original territory, as traditionally defined and settled among Aboriginal peoples. Examples

[21] This is also the view of the Royal Commission on Aboriginal Peoples. See *Partners in Confederation: Aboriginal Peoples, Self-Government and the Constitution* (Ottawa: Minister of Supply and Services, 1993) especially pp. 31-36.

of urban Aboriginal peoples living within their own traditional territory are Micmacs in Halifax or Algonquians in Ottawa-Hull. These people may therefore have certain rights and authority that derive from their original occupation of that territory, and that extend beyond the urban area. These could include rights to natural resource management or access to hunting, fishing, trapping and other harvesting rights. Such rights would not apply however, to Aboriginal peoples who do not inhabit their original territory or, of course, to non-Aboriginals.

2. *Governing a More Limited Land Base*

As a result of their settlement on reserves, and of subsequent land settlements and related treaty entitlements, the Aboriginal rights of many Aboriginal peoples are defined chiefly in terms of a land base. The practice of an inherent right of self-government in these situations therefore may be broader than the self-government that can be exercised over the traditional territory (outside reserves), given that there has been limits to the continuing Aboriginal jurisdiction over traditional territory, including the suppression and usurping of that jurisdiction by non-Aboriginal jurisdictions. However this form of self-government is also narrower than traditional government in that its governing powers relate to a specific and in some cases very limited land base, as compared to the traditional territory of the Aboriginal nations. Nonetheless, in the modern Canadian context, Aboriginal self-government has been most easily visualized as occurring on a land base, if only because there exists a territory separate and distinct from non-Aboriginal communities. The territorial format accords with the European model of territorial governance imported to Canada.

Most large urban populations of Aboriginal peoples include among their community at least some people (or in cases such as Calgary, a majority of the Aboriginal population) who have specific Aboriginal rights related to a land base and certain treaty rights. As land claim and other settlements are reached, even more Aboriginal peoples in urban areas will be potential beneficiaries of "modern" treaty rights.

3. *Governing Members of an Aboriginal Nation Off the Land Base*

If self-government of Aboriginal nations is to have full meaning, it will have to extend over members of that nation wherever they live, at least for some matters. Extra-territorial application of self-government by land-based Aboriginal governments may thus be an important part of any arrangements. The right to govern child welfare for example, would not be fully exercised if the jurisdiction stopped the moment a family member left a reserve to live in the city.

How such governing rights are implemented in practice may depend on a variety of circumstances. Power could be delegated to urban Aboriginal institutions from Aboriginal governments established under the two previous sources of inherent rights, (i.e. government over traditional territories and governments with a more limited land-base). Extra-territorial benefits are also important to consider. In particular, access to land and other resources, and the financial resources derived from them, is a key issue for urban native people seeking the benefits of their Aboriginal rights.

4. *Governing Members of a General Aboriginal Population*

The fourth way in which an inherent right of Aboriginal self-government may be exercised is the right of Aboriginal communities in general, wherever they exist in Canada, to govern themselves. Without explicit constitutional recognition, this right may remain vaguely defined, although it could become specifically mandated by a National Treaty (i.e., an agreement to be protected under Section 35 of the *Constitution Act, 1982*) to govern the rights of all Aboriginal peoples regardless of status, origin or place of residence.

This form of self-government may best serve those mixed urban communities of Aboriginal peoples who are outside their traditional territory, or where there exists a mixture of peoples, some of whom have treaty rights and some who do not. The general Aboriginal communities of Vancouver or Toronto would appear to fall into this category.

To make a distinction between these ways of exercising the inherent right of self-government may seem an overly academic point to many, and could be perceived as a perpetuation of the legal legacy of "dividing" and "conquering" the Aboriginal peoples of Canada. It is not an issue that can be ignored, however. The practical implementation of self-government, and the power structures that go with it, will depend on the perceived source of self-government rights and thus the political legitimacy of Aboriginal government. The basis on which self-government is built is for the Aboriginal peoples themselves to determine. However, from the perspective of this paper Aboriginal self-government must deal fully with the situation and problems of city dwellers if it is to meet challenges facing Aboriginal peoples in Canada today.

Given the variety of urban situations, Aboriginal peoples have an obvious interest in ensuring that their fundamental rights are not tied to residence in a particularly territory. While some Aboriginal communities in urban areas are located within traditional lands and have rights tied to that territory, many urban residents live outside their original territories, or move between communities. Thus it may be necessary to provide for the mobility of Aboriginal rights, to ensure that Aboriginal peoples living in mixed communities or outside of traditional lands will be able to protect their cultures, languages and traditions. The Native Council of Canada argues that "Aboriginal people must come to know that regardless of where they live the exercise of their fundamental rights will be accepted and promoted as equally as others."[22] Legal measures to provide for mobility would ensure that rights would not necessarily be attached to a land base, thus allowing for a variety of forms of urban self-government.

The next section of this paper deals with specific forms for the application of Aboriginal self-government in urban areas, and deals with six key issues related to governing. In developing these forms it is important to bear in mind the different paths for self-government outlined here. The chief problems for fully realizing the inherent right of self-government in cities is to ensure that this right is recognized as adhering to Aboriginal peoples generally and not solely dependent on where they happen to live.

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[22] Native Council of Canada Constitutional Review Commission, *Aboriginal Directions for Coexistence in Canada*, working paper #1, (Ottawa: Native Council of Canada, August 1991).

The intent is not to deny or reduce the rights of self-government associated with other inherent or treaty rights. However, the practical implementation of urban-based self-government will have to deal directly with the overlapping of self-governing powers. We already see in several urban centres a conflict among Aboriginal organizations with differing political and membership bases, reflecting the distinctions drawn in the legal bases of their right of self-government. Ways must be found to reduce such conflict where it only serves to hinder the progress of Aboriginal self-government, and to provide for coordination and cooperative relations where different Aboriginal organizations are to co-exist. To do less would be to perpetuate current situations where many individual Aboriginal persons fall between the cracks of political division.

Among these latter issues, the "extra-territorial" aspect of land-based Aboriginal governments will need to be coordinated and accommodated with urban self-governing institutions. Urban natives will also want to have access to the broader aspects of Aboriginal rights -- such as land and resources not in the urban area -- if they too are to promote their cultural and economic development.

III. URBAN ABORIGINAL SELF-GOVERNMENT IN PRACTICE

Forms of Urban Self-Government

Different forms of urban self-government relate to the distribution of urban populations. Three models are presented here: first, *a community of interest model* best adapted to a dispersed population; second, a *neighbourhood model* for a concentrated population; and third, an *extra-territorial model* to deal with citizens of Aboriginal nations not based in the city.

In a *community of interest*[23] situation the Aboriginal population is dispersed throughout the city. Martin Dunn has argued that "their `territory' would be cultural rather than geographic, and their `jurisdiction' would be defined accordingly."[24] The concept of having different institutions for various segments of the population is not hypothetical. The separate school system in Ontario provides an example. In Ontario cities, as many as four individual and distinct school boards coexist within the same or similar territory: an English public school board; a French public school board; an English Roman Catholic school board; and a French Roman Catholic school board. Municipal taxpayers contribute to part of the cost of one or another or these school boards, choosing which board their taxes will support. The rest of the funding comes from the province. Certain aspects of curricular and teacher training are standardized for all school boards in the province, but individual school boards still have significant room to design and implement an education program that meets community needs. Many Aboriginal institutions -- including school boards -- could provide similar levels of community autonomy without adversely affecting the public provision of services to the community as a whole.

Another possibility is the concentration of the Aboriginal population in a particular area, such as a *neighbourhood*. These communities might be able to take on a larger governing role than dispersed communities. At various times the development of Aboriginal neighbourhoods have been proposed. In the early 1970s, Dosman recommended the creation of an Indian enclave in the urban environment.[25] He suggested that a carefully designed self-governing native residential community could provide support for urban Indians and Métis in adapting to the urban setting, and help to meet their economic, political, and psychological needs. The community could assist with economic development and opportunities, and provide child care, education and other services.

In the early 1970s, a federally funded feasibility study looked into the creation of an Indian urban village in downtown Winnipeg, complete with schools, art and cultural facilities, health and social services, shopping facilities, and headquarters for political and cultural organizations.[26] While the plan received some attention it never went beyond the proposal stage.

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[23] Dunn, *Access to Survival,* 11.

[24] Ibid., 20.

[25] E. Dosman, *Indians: The Urban Dilemma,* (Toronto: McClelland and Stewart, 1972), 183-188.

[26] See L. Krotz, *Urban Indians: The Strangers in Canada's Cities,* (Edmonton: Hurtig,1980), 58-61.

These neighbourhoods could provide cultural havens and allow for a greater scope of self-government in the urban setting. However, there are potentially negative consequences, including the creation of a ghetto-like atmosphere. The acquisition of an urban land base does not appear to be a priority of urban Aboriginal organizations at the present time. However, the concept of an Aboriginal neighbourhood merits some consideration.[27]

Overlaying both of these models could be an *extra-territorial* model. Certain laws of land based Aboriginal nations might apply to the citizens of those nations regardless of where they currently live.[28] They would extend the powers of land based governments into urban areas. Extra-territorial powers are usually proposed in relation to areas such as justice, family law, and the provisions of child and family services, welfare, and education. This model has some precedents. The Canada-Manitoba-Indian Child Welfare Agreement allows regional Indian child welfare agencies to exercise jurisdiction over children of band members living in urban centres, at the request of the band members.[29] Under the proposed Yukon First Nations self-government agreement, Yukon First Nations have responsibility for all Aboriginal citizens residing in the Yukon, within or outside of Yukon Indian Lands, in areas including health, welfare, and adoption.

A number of problems with this model can be identified. It would create different services and regulations both between the non-Aboriginal and Aboriginal communities, and within the urban Aboriginal community. Without coordination between governments, it could lead to a confusing array of different standards and services. As well, urban residents would have to ensure that their interests were adequately represented in the land based governments whose laws applied to them. The success of an extra-territorial model depends on agreements and continuing effective relations with land based Aboriginal governments and on self-identification by urban Aboriginal residents of their association with the land based communities.

The Elements of Self-Government

Using the basic forms reviewed above, six areas relating to self-government are examined below: membership issues; the jurisdiction and powers of Aboriginal governments; urban governing structures; access to lands and resources for urban populations; the financing of urban Aboriginal governments; and the relationships of urban Aboriginal governments to other Aboriginal and non-Aboriginal governments.

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[27] This idea of urban reserve is not the same as land in an urban area being purchased and attached to reserve lands for purposes of business development, etc., (and not for residential use) as is now being proposed and tried in some towns and cities.

[28] For further discussion see Robert Groves, "Territoriality and Aboriginal Self-Determination: Options For Legal Pluralism in Canada," paper presented to the 6th International Symposium of the Commission on Folk Law and Legal Pluralism, Ottawa, August, 1990.

[29] This agreement does not deal with the needs of permanent off-reserve residents. A new organization called Mamawi has been established to deal with the child welfare services of this group in Winnipeg.

1. *Membership*

Membership is a fundamental issue for self-government, as it determines who is entitled to the rights, benefits, and corresponding responsibilities of governments. Membership in Aboriginal governments also has implications for provincial and national citizenship, and for relationships with local governments and other Aboriginal governments.

Most urban Aboriginal governments or institutions will necessarily be confined to the Aboriginal community (i.e., the ethnic or racial minority) rather than be classed as public government.[30] Rights and responsibilities will be based on ethnic criteria or acceptance into the Aboriginal community rather than the standard model of public government in which all residents of a particular territory come under the jurisdiction of the government. One exception to this rule would be public governments where Aboriginals are the majority such as Nunavut (although this may never apply in urban areas as defined in this paper). Another exception might be an Aboriginal neighbourhood, in which regulation and access to certain services would be based on ethnicity *and* residence.

Membership in these governments or institutions can be determined in several ways. Self-identification is a common means of establishing membership in an urban Aboriginal government. Many urban organizations currently provide services on this basis. All people who identify themselves as Aboriginal would have access to Aboriginal services and be entitled to participate in governing institutions. However, a "free rider" problem could emerge if Aboriginal status carries with it sufficiently differential rights and access to improved benefits.[31] There may be a need for some community control over membership. Thus, membership could be determined by a combination of self-identification and community acceptance. In this case, an adjudicative body would be required if membership rules or decisions were challenged. One form for this to take could be "recognition panels" established jointly by the interested parties. In the transition to self-government, self-identification might be the best means to determine the initial community of interest. Then, if necessary, standards for community acceptance could be developed.

In terms of an Aboriginal neighbourhood, community standards might determine who could reside in the area, as well as who could have access to services and rights. Again, an adjudicative body would be necessary. Residents of the neighbourhood might be subject to special regulations that applied only in that area.

The extra-territorial powers of land based governments also raise some membership issues.[32] They raise questions as to the type and method of representation which urban residents would

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[30] See D. Hawkes, *Aboriginal Self-Government: What Does it Mean?*," 27-28, for a distinction between "ethnic" and "public" government.

[31] R. Gibbins and J.R. Ponting, "An Assessment of the Probable Impact of Aboriginal Self-Government", in A. Cairns and C. Williams, research coordinators, *The Politics of Gender, Ethnicity and Language in Canada*, (Toronto: University of Toronto Press, 1986), 203.

[32] Falconer provides an overview of some of the advantages and disadvantages of this model. See "Urban Indian Needs," 35.

have in land based governments, and what priority those governments would give to their interests. The model could serve to fragment the urban community, given the different rights and access to services for urban residents. While some individuals would not have citizenship in any land based nation, among the rest of the population there could be a diversity of citizenships. However, land-based and urban governments may be able to develop reciprocal arrangements to overcome some of these problems.

A significant concern in the urban setting is the potential for individuals to opt out of services or institutions. In land-based Aboriginal nations, residents must follow government regulations and use the existing services as no others will be available. But in cities, individuals may choose to opt out of Aboriginal governing structures and make use of municipal, provincial or federal programs. This is an important consideration for Aboriginal governments, as community support and certain threshold numbers of people are necessary to ensure the funding support and therefore the viability of self-governing arrangements. Urban communities may need to determine rules for opting out of certain institutions, or whether urban self-government will come as a "package," requiring participation in all areas of Aboriginal governance, or none at all.

While the general issue of the application of the Charter to Aboriginal governments is beyond the scope of this paper, the urban situation does raise a number of issues related to individual rights. A requirement to participate in Aboriginal governing structures could infringe upon individual rights to equality with non-Aboriginal people in the same areas. A related issue is whether non-Aboriginal people will have a right to the services provided by Aboriginal organizations. For example, could a non-Aboriginal child attend an Aboriginal school?

Membership in Aboriginal governments also leads to broader questions about the provincial and national citizenship of Aboriginal peoples. Gibbins and Ponting question the extent to which self-government might add to or alter Canadian citizenship -- if it is to be maintained at all by those under the jurisdiction of Aboriginal governments.[33] They suggest that self-government could have high costs for individual Aboriginal citizens, including reduced access to federal and provincial programs and restricted mobility.[34] These concerns need to be addressed. If self-government is to benefit Aboriginal peoples, they must be assured that it will not jeopardize their access to such important individual citizen entitlements as Old Age Security, welfare, unemployment insurance, and provincial health plans. Cassidy and Bish argue that Aboriginal self-government need not involve the loss of rights of provincial residence and Canadian citizenship:

> There is no reason why Indian people should not continue to enjoy the full rights of Canadian citizenship and even special Aboriginal rights in Canada, if their governments gain a full measure of recognition. Different governments do different things for different people. Governments often overlap with other governments in their responsibilities to and relationship with their citizens, especially in a federal system.[35]

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[33] Gibbins and Ponting, "An Assessment of the Probable Impact", 175.

[34] Ibid., 223.

[35] F. Cassidy and R. Bish, *Indian Self-Government: Its Meaning in Practice*, (Halifax: Institute for Research on Public Policy, 1989), 58.

The relationship between Aboriginal, provincial, and Canadian citizenship remains a central issue to be resolved for self-government to work effectively. Fortunately, federal systems of government provide an effective model and the means by which multiple layers of citizenship can coexist. The Canadian federation should be able to adapt to embrace Aboriginal citizenship in addition to existing federal, provincial, and municipal citizenship.

2. *Governing Structures*

Governing structures will vary according to the different powers exercised and services to be provided in the urban community. A number of different models have been proposed. The corporate or Aboriginal society model is based on the example of associations in professions such as law or medicine.[36] Aboriginal societies would regulate membership and govern in limited spheres, such as religion, language, and culture. They might also develop administrative arrangements to deliver services to members of their society. Individuals would become members by virtue of their Aboriginal identity and acceptance by other members of the Aboriginal society.

This model has several limitations. Membership in an Aboriginal community is very different from membership in a profession. As well, the current aspirations of Aboriginal peoples go well beyond the normal connotations of self-governing societies. However, the model does provide a conceptually simple way of looking at urban self-government. It shows how institutions can regulate individuals and provide services according to specific needs, without exercising an entire range of governing powers.

A broader model is Aboriginal self-administration.[37] Self-administration can take the forms of institutional or political autonomy. Institutional autonomy involves the creation of specialized single purpose services, institutions, and agencies, in areas such as child welfare and education. All Aboriginal peoples in the urban centre would be eligible to participate in these institutions. They could be run by a board elected or otherwise chosen by Aboriginal peoples which would set policy, administer services, and hire and supervise staff.

The political autonomy model involves the creation of central policy-making bodies to administer service delivery as part of their larger function of political representation. Representatives would be elected to councils at the local, regional, and provincial levels. The political organization would be responsible for the design and delivery of services, and the management of institutions. These forms of institutional and political autonomy seem better suited to the aspirations of Aboriginal peoples than the Aboriginal society model.

At the urban level, various forms of Aboriginal government could coexist, depending on the size and resources of the community. As Bish has emphasized in his work, it is useful to think of different models of government for different functions.[38] General governments, such as

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[36] W. Reeves, "Native Societies: The Professions as a Model of Self-Determination for Urban Natives", in J. Ponting (ed.) *Arduous Journey*.

[37] Weinstein, *Aboriginal Self-Determination Off a Land Base*.

[38] R. Bish, *Community Models of Government*, (Victoria: University of Victoria, 1990).

existing federal and provincial governments, correspond to the political autonomy model. Some Aboriginal communities may wish to have a general government to coordinate activities and to carry on relations with other Aboriginal and non-Aboriginal governments. General governments could also receive revenues and channel funding to specific services.

Another option is an institution such as URBAN (currently existing in Vancouver). It presents an alternative between the political and institutional autonomy models. While it draws a number of agencies together and distributes funding, it does not perform the political representation role of a general government. In a purely institutional model, agencies in individual areas such as economic development, housing, and social services could be administered by separate boards or commissions, not linked by an agency or related to a general government.

Some urban communities may find they are too small to perform certain functions on their own. In this case, they may join with other Aboriginal or non-Aboriginal communities to form special purpose governments in some areas. This would allow a sharing of resources and provide economies of scale for the more effective exercise of their jurisdiction. Possible examples are joint school or police boards.

There are also options apart from the creation of new Aboriginal institutions, boards, and political bodies. Where numbers are small and cooperation with other Aboriginal communities is impractical, representation on existing local school boards, child welfare agencies, and other such bodies is an alternative approach to governing. In this way, institutions could develop cultural sensitivity, and specific programs could be directed towards the needs of the Aboriginal community. This model might be applicable to smaller urban areas or large cities with only very small Aboriginal populations.

Related to governing structures are questions of leadership selection and the role of traditional forms of government. Here, the characteristics of the community must be taken into consideration. Communities that are relatively homogenous in terms of tribal affiliation may be able to combine some traditional forms of governing and leadership selection. Elders may play a special role in a general government or advisory body. In heterogeneous Aboriginal communities, tribal affiliations could be taken into consideration in forming a representative body.

As new forms of government develop, accountability becomes an important issue. Communities will have to determine the means by which administrators and leaders are held accountable for financial and other decisions. They will have to decide what kind of input the Aboriginal community at large will have into governing. This demonstrates a need for internal communication, through such means as community meetings, newsletters, and television and radio broadcasts.

3. *Jurisdiction and Powers of Aboriginal Governments*

The right to self-government will be circumscribed at least to some degree, either by the courts or by negotiation with other governments. This will delimit a range of areas in which Aboriginal governments have the potential to exercise power. Within this range of powers, urban communities may be unable to exercise jurisdiction in some areas. In others, they may find it

unnecessary to have powers. For example, with the possible exception of an Aboriginal neighbourhood, Aboriginal communities will have no need for powers over services such as street paving or lighting. In urban settings, government activity needs to be directed toward areas that are culturally sensitive and of particular concern to the needs of the community. This will require knowledge of the demographic and socio-economic characteristics of the community.

It is important to conceive of powers as evolving over time. During the transitional and early stages of self-government, urban communities may lack the capacity to govern in certain areas. As institutions, skills, and resources develop, a wider range of powers may be possible. Communities will have to first identify the sectors that are considered to be a priority. Then, they can determine what level of jurisdiction they want to exercise in those areas.[39] Powers may involve both the regulation of citizens and the provision of services. As a base case, urban communities may want to exercise some level of jurisdiction in some or all of the following areas:

- membership
- education
- economic development
- cultural development, including language, religion and other traditions
- local administration of justice, e.g., policing, probation, sentencing, etc.
- social services, including child welfare
- local health services
- a form of local taxation
- recreation

Depending on the characteristics of the community, other options can be added to this base list. Aboriginal communities based in a neighbourhood could take on some authority over special zoning and land use, buildings, and the administration and management of property. Communities located on traditional lands in urban areas may have special or additional rights and jurisdiction over natural resources and land use. Communities with interests in lands outside the urban area may have input into natural resource management, the environment, hunting, fishing, trapping, and wildlife protection on those lands.

All Aboriginal peoples may wish to have input in areas that extend beyond their communities. These include matters such as communications (as it relates to Aboriginal culture), the justice system including the Criminal Code, and Aboriginal institutions of higher education. Along with other Aboriginal communities, they may want to have some direct authority in these areas, or shared jurisdiction. These issues relate to the possible development of Aboriginal political institutions that are larger in scope than urban governments, or Aboriginal representation in federal and provincial political bodies. For example, while urban Aboriginal communities may have a role in local policing, it may not be feasible for them to develop their own court systems. If an Aboriginal justice system (or systems) is developed, it could serve both land and urban

[39] While it is meant to address land based situations, Robert Bish's work for the Gitksan-Wet'suwet'en Tribal Council provides a useful general framework for approaching issues of jurisdiction and government structures. See R. Bish, *Community Models of Indian Government*, and *A Practical Guide to Issues in Gitksan-Wet'suwet'en Self-Government*, (Victoria: University of Victoria, 1986).

based communities.

A second issue to consider is the level of jurisdiction. As a separate order of government, Aboriginal governments would be sovereign within their areas of jurisdiction. However, these powers can be exercised in various ways. Some may be exclusive to the Aboriginal governments, which will exercise legislative and administrative powers. In other areas, jurisdiction would be shared with non-Aboriginal governments. While Aboriginal governments would not have their overall power delegated, there could be cases in which the delegation of individual powers is used. For example, until they chose to exercise powers in some areas, Aboriginal governments could delegate them to other bodies. Or, if governments cannot come to agreement over the entrenchment of some powers in the Constitution, it may in the interests of federal, provincial, or municipal governments to delegate powers to Aboriginal governments until agreement is reached. A third possibility is the delegation of powers from one Aboriginal government to another.

4. *Access to Lands and Resources*

While this study examines self-governing arrangements for urban populations, access to lands and natural resources is still a relevant issue. While these populations do not have an exclusive land base, access to the *benefits* of lands and resources could help to finance their governments and may be important to the maintenance of Aboriginal cultural values. As well, if the legal divisions between Aboriginal peoples are resolved, some members of the urban Aboriginal population may have access to treaty rights and land claims settlements. Aboriginal populations residing on their original territory may have access to particular rights in that area. Under claims settlements they may be entitled to forms of financial compensation, which could help to support self-governing institutions. Those who do not reside on original lands, but who have treaty rights may also have access to benefits of land and resources.

For communities in which there is no possibility of access to original lands, there is a variety of possible options.[40] Specific lands could be set aside for the urban community through Crown land grants. Rent or royalty payments would help to develop economic self-sufficiency. Morse notes that this approach is limited by the lack of available Crown land in parts of southern Canada, particularly near urban areas. However, land could be set aside in more remote locations. An alternative would be to obtain privately owned land through expropriation or purchase by the Crown. This is probably the most realistic option if land is to be provided to Aboriginal peoples living in urban areas.[41] Crown trusteeship of designated lands for the benefit of urban populations is a third option. However this alternative does not really fit the model of self-government, as Aboriginal peoples would receive the benefits of the land, but have no jurisdiction over it. A final option would be direct purchase of land by Aboriginal governments. Obviously, this would be limited by the financial capacity of the community or by financial transfers to the community. As well, it would require special legislation to meet Aboriginal desires for communal land holding.

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[40] These are detailed in B. Morse, *Providing Land and Resources for Aboriginal Peoples,* (Kingston: Institute of Intergovernmental Relations, 1987).

[41] Ibid., 14.

This is not to suggest that the acquisition of a land base or even access to the benefits of lands and resources is a precondition to self-government. For Aboriginal peoples in urban areas, it is important that the right of self-government not be linked to a land base. However, equality of access to the full benefits of Aboriginal rights, including land and resources with or without treaties, is an important issue for some urban Aboriginal communities.

5. *Financing*

Secure and sufficient financing is perhaps the key element in ensuring the viability of Aboriginal self-governing arrangements. Studies of the implementation of existing self-government agreements have repeatedly observed the serious impediments to self-government created by a lack of adequate funding.[42] These experiences have demonstrated the need for secure long term financing to allow both independence and an adequate level of service provision. By and large, the sums required for urban governments may be very small in relation to existing municipal, provincial, or federal budgets. However, given the socio-economic conditions of most Aboriginal communities, only limited resources are available to them to finance their governments by themselves. Thus, funding from other levels of government is essential.

Sources of funds can be divided into three categories: the tax base, revenue raising, and fiscal arrangements. Urban Aboriginal governments would have only a limited tax base. Local taxation authority might include Aboriginal school taxes applied in a similar manner as separate school taxes. A portion of local property taxes might be allocated to Aboriginal government according to the functions of local government they assume. Those who qualify for land claims may receive taxable resources as part of agreement package. Dunn also suggests that communities without access to claims might be assigned a designated portion of existing non-renewable resource taxes to help finance their governing activities.[43]

Revenues could come from economic development corporations and various special ventures and enterprises. Communities with access to resources could also receive revenues from resource development. Land claim settlements could potentially provide significant revenues for urban communities residing on traditional lands.

Given the limited tax base of Aboriginal governments, and the need to develop revenue raising capacity, fiscal arrangements will likely be the greatest source of funding. Most proposals for financing land based governments have been based on the existing framework of fiscal federalism, a model that can also be applied to urban governments. The financing of Aboriginal governments could be based on the equalization principle in section 36 of the *Constitution Act, 1982*. This section commits the federal government to provide equalization payments to provinces to ensure that they have enough revenues to provide a comparable level of public services across the country. As a separate order of government within the Canadian federation, Aboriginal governments would be entitled to equalization. Some authors have also linked this

[42] D. Hawkes and E. Peters, eds. *Implementing Aboriginal Self-Government: Problems and Prospects,* (Kingston: Institute of Intergovernmental Relations, 1986).

[43] Dunn, *Access to Survival*, 50.

entitlement to the fiduciary responsibility of the Crown, or as a "rent" for the territory of Canada.[44] Equalization payments would provide Aboriginal governments with predictable revenues and wide discretion in spending. Additional funding could come from program conditional transfers, such as Established Programs Financing (EPF), or spending conditional transfers. Agreements or contracts between governments could specify other funding arrangements.

Hawkes and Maslove have elaborated a set of principles that can be used to establish a policy framework for fiscal arrangements:

1. Financing must suit the model of self-government arrangements or institutions. Essentially, the fiscal transfer system must "incorporate a sufficient degree of non-conditionality to reflect and support the degree of autonomy in the self-government arrangements."[45]

2. Fiscal arrangements should fit the economic characteristics of the community. This refers to the ability of the community to generate its own funds through taxation, resource revenues, and economic ventures.

3. Fiscal arrangements should encourage Aboriginal governments to move toward their own revenue raising by creating incentives for economic development. This would create a greater capacity for the community to fund services itself.

4. Fiscal arrangements should incorporate means to ensure equity among Aboriginal communities, and between Aboriginal and non-Aboriginal communities. This relates to both a concern for adequate levels of services for community members, and to the viability of the government. Without adequate funding to provide public services, Aboriginal individuals in urban areas might turn to services provided by other governments.

5. The overall design of the components of a fiscal transfer should reflect the characteristics of the public services in question. In areas of national concern, funding by conditional grants would be appropriate. In areas that have national standards, program conditional grants like EPF might be suitable. In areas of purely local interest, unconditional grants could apply.[46]

Hawkes and Maslove describe how Aboriginal primary and secondary schools might be financed.[47] Taxes could be applied to users, and/or the schools could receive a portion of the public and separate school taxes. There could also be arrangements with federal and provincial governments to aid in the development of curricular materials and to provide Aboriginal teacher training.

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[44] Lyon, *Rights of Citizenship and Access to Governmental Services*, 12.

[45] Ibid, 111.

[46] These principles come from D. Hawkes and A. Maslove, "Fiscal Arrangements for Aboriginal Self-Government," in D. Hawkes, ed. *Aboriginal Peoples and Government Responsibility*, 110-119.

[47] Ibid, 121.

Fiscal arrangements can evolve with the growth of urban governments. As communities develop both politically and economically, they can also develop more fiscal autonomy and less dependence. As a basic principle, though, self-government will require adequate levels of funding to ensure the viability of institutions, and enough unconditional funding to escape from the problems that have plagued existing self-governing arrangements.

6. *Intergovernmental Relations*

Self-governing arrangements will also have to address the relationship between urban governing institutions and other Aboriginal and non-Aboriginal governments. Effective relationships are particularly important for urban governments which will simply not be able to function without frequent interaction with surrounding non-Aboriginal and Aboriginal governments.

Intergovernmental relations will play a role in both the implementation and evolution of Aboriginal self-government. The entrenchment of broad constitutional principles would have required Canadian governments to work with Aboriginal peoples to come to agreements on power sharing. Aboriginal governments will still have to untangle themselves from federal and provincial jurisdiction in some areas. In other areas, existing governing institutions will have to make room for Aboriginal peoples. Negotiations will have to cover all of the areas discussed above. In the absence of an explicit constitutional text, a broad intergovernmental agreement could provide the forum in which negotiations take place and how they are to be expressed in the final form, whether it be through treaties, agreements or other means.

As Aboriginal self-government develops, there will be a need for continuing flexibility. Initial agreements are unlikely to be the last word, as Aboriginal governments will have to continue to work out their relationships with neighbouring governments. Various mechanisms can be used for intergovernmental relations, including agreements, joint councils, and protocols.

Urban Aboriginal governments may deal regularly with other Aboriginal governments, especially those located in close proximity to the urban centre. They may pool resources and share services in some areas. Urban governments might also work out agreements with land based governments to deal with the exercise of extra-territorial powers. These agreements could provide for overlapping powers or could delegate powers to urban governments over citizens from the land based communities who are now living in urban areas.

Urban Aboriginal governments may also want to participate in regional or provincial Aboriginal councils. These councils could coordinate some of their activities and policies. While local autonomy is important, there will be a need for some standards to ensure that Aboriginal peoples receive similar levels of services when they move from one place to another. At the national level, Aboriginal governments may want to form a confederacy or have regular meetings similar to First Ministers Conferences.

Relationships with non-Aboriginal governments can vary from representation in existing institutions to the development of new bodies and institutions. In the case of separate local institutions, regular meetings could ensure some level of consistency of services and deal with areas of overlap. At the provincial level, these relations could be carried out by provincial

councils. A national confederacy could play a similar role at the federal level. For issues of national importance to all Aboriginal peoples, the Aboriginal confederacy could appoint delegates to meet with federal and provincial officials.

For conflicts over jurisdiction, separate dispute resolution bodies may be necessary. This could avoid a recourse to the court system. Cowie suggests that an alternative dispute resolution mechanism be established which could defuse conflicts, discuss proposed legislation, and make non-binding recommendations. He suggests that it could encompass all legislation and actions of participant governments and deal with issues as access to Indian lands, environmental control and land use or planning issues. It could also be used for the planning and implementation of programs, definition of standards and broader policy coordination in areas such as education, social services, administration of justice, economic development and taxation. Dispute resolution bodies could serve as "clearing houses and mechanisms of cooperative study and action on issues that cut across regulatory and service jurisdictions of Indian, municipal, provincial, and federal governments."[48]

Another alternative is a special court to decide jurisdictional issues between Aboriginal and non-Aboriginal governments, and indeed, all issues relating to Aboriginal rights. Given Aboriginal peoples' concerns over the treatment of their rights by Canada law and legal institutions, this alternative should be given serious consideration.

The integration of a separate order of government, consisting of many small governments, into the Canadian federal system will be complex and will take time. The development of effective intergovernmental relations will be essential to ensuring that Aboriginal self-government is workable, and effort spent in the early stages to develop good intergovernmental relationships will pay off in all of the subsequent stages of development.

[48] Cowie, *Future Areas of Jurisdiction*, 65. Roland Penner has also provided some more recent thought to the idea of an aboriginal constitutional commission to deal with such transitional problems, in his paper "Bridging the Constitutional Gap: An Appropriate Process, An Appropriate Content," delivered at the Canadian Legal Education Symposium of the Canadian Bar Association, April 1991, Winnipeg.

IV. CONCLUSION

Developing self-governing arrangements for Aboriginal peoples living in urban areas will not be easy. The preceding pages illustrate the many distinctions between Aboriginal peoples in terms of culture and legal status. There are also differences between communities in terms of political traditions and economic development. If self-government is to succeed, there will clearly be a need to develop the resources, skills, and coherence of urban Aboriginal communities.

In developing self-governing arrangements, urban communities will have to address all the elements of governing. Some of this is best done wholly within the community itself while other matters will involve negotiation with other Aboriginal and non-Aboriginal governments. Urban communities will have to establish membership criteria, and determine what types of governing structures they want to put into place. They will also have to decide what kinds of powers they want to exercise, and whether they will be exclusive or shared. Urban governing institutions will regulate citizens and provide services within a more limited scope, in particular over those matters related to culture and the social and economic needs of the urban Aboriginal community. While some direct taxing power may be feasible, the development and maintenance of these institutions will require the continuing financial support of other levels of governments. Urban governing institutions will not be viable without secure and adequate funding. As well, Aboriginal and non-Aboriginal governments will need to develop a variety of intergovernmental links to deal with shared areas of jurisdiction, issues of local, provincial and national concern, and disputes over jurisdiction.

Self-government can be viewed as an on-going process. The constitutional recognition of the inherent right does not mean that self-governing institutions will appear all at once. Institutions already in place provide useful models and may develop into fully self-governing bodies. Urban Aboriginal governments' powers, governing structures, fiscal arrangements, and relationships with other governments will develop and change as self-government progresses.

Self-government for Aboriginal peoples living in urban areas challenges common assumptions about the roles and powers of governments. It also alters standard conceptions about the practice of Aboriginal self-government. While it is unrealistic to think that these arrangements will be developed easily and without conflict, it is important to begin now to develop workable models for urban self-government. This will ensure that the right of self-government can be exercised by all Aboriginal peoples, not just those individuals residing on a land base. Only in this way can self-government work toward meeting the special cultural, social, political, and economic needs of all Aboriginal peoples.