

ASSEMBLY OF FIRST NATIONS

First Nations Educational Jurisdiction

National Background Paper

**Paulette C. Tremblay, Ph.D.
Education Sector
Ottawa, Ontario**

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INTRODUCTION

Background

Under the direction of the Chiefs in Assembly, resolutions #25/98 and #89/99 mandated the Assembly of First Nations to develop a national educational strategy to move the issue of educational jurisdiction forward. Therefore members of the Chiefs Committee on Education (CCOE), National Indian Education Council (NIEC), and the Education Sector planned to conduct regional and national discussions regarding educational jurisdiction from January through May 2001.

Purpose

A literature review was conducted to portray a picture of the status of First Nations educational jurisdiction within Canada. The purpose of the National Background Paper is to provide a summary of this information to enable readers to gain an understanding of what First Nations educational jurisdiction is all about and how far First Nations have evolved in exercising jurisdiction over education. The Paper is also intended to provide background information to stimulate further discussion to determine how First Nations would like to proceed on a national level, regional level and local level to advance First Nations educational jurisdiction.

It is anticipated that this document will be expanded to include the findings of all the discussion forums that were held regionally and nationally. The production of a final report that provides a more detailed and updated picture of First Nations educational jurisdiction at the regional and local levels.

Questions

The key questions that were developed for consideration at the regional and national levels are listed below.

Meaning of Educational Jurisdiction

What does First Nations jurisdiction over education mean?

Existing Arrangements for Educational Jurisdiction & Fiscal Resources

- a. *Describe how educational jurisdiction is practiced in the region. (Indian Act administrative control of education; modern land claim agreement; legislation in the form of an Education Act; or an agreement through the treaty process)*
- b. *What types of fiscal resources and arrangements are in place?*

Future Direction for Educational Jurisdiction.

a. *What major changes are needed to move First Nations jurisdiction over education forward for future generations?*

- (1) Amend the Indian Act?
- (2) Develop new national legislation—a Modern Governance Act or Treaty Implementation Act?
- (3) Amend the Constitution?
- (4) Pursue a Judicial Decision?
- (5) What bodies/structures at the national, regional, and local levels?
- (6) What roles & responsibilities?
- (7) How will educational funds be allocated and distributed nationally, regionally and locally?

b. *What can be changed immediately...over the long term?*

Strategy and Plan to Move Educational Jurisdiction Forward

What initiatives, activities, timeframes and resources must be considered to move educational jurisdiction forward?

The Background Paper provides a review of the evolution of First Nations education policy in Canada and the movement of First Nations towards educational jurisdiction, self determination and self governance in relation to Aboriginal inherent and treaty rights. It is essential to gain a clear understanding of these concepts since the status of First Nations education is directly linked to the political relationships, types of governance and financial arrangements that First Nations currently have with the federal government. **It should be noted that the four questions posed will be examined from a national perspective based on information provided in the literature reviewed.**

HISTORICAL OVERVIEW OF FIRST NATIONS EDUCATION IN CANADA

Missionaries and Religious Instruction

With the arrival of the Europeans, the traditional, holistic, community based and experiential form of education provided by First Nations family members and relatives was permanently altered. From the point of contact up to the mid 1800's, schools were operated by **missionaries** and teaching focused on **religious matters**. Educational decisions were made by authorities in Europe and the policy objective that would become deeply rooted in the "New World" for centuries was one of assimilation. Throughout the colonizing years, missionaries worked to socialize First Nations peoples in European thought, values and practices. Education policies and practices were steeped in ethnocentrism, prejudice, and racism.

Segregation and Residential Schools

In 1867, the British North American Act was passed and the education system changed from religious domination by missionaries to a **policy of segregation**. The federal government and the church jointly operated boarding or **residential schools**. For nearly a century, up to the mid 1900's, First Nations families were legally compelled to turn their children over to the custody of residential school authorities. For the entire school year, children lived away from the influence of their families in sterile institutions where many of them were physically, emotionally, sexually, and psychologically abused. Many died. Since the last residential school was closed in 1981, in British Columbia, the negative impact of this regime is still being experienced by those who attended these schools, their families and their communities.

Integration and Provincial/Territorial Schools

In the early 1950's, the federal government moved away from a policy of segregation to one of **integration**. The federal government made arrangements with provincial and territorial governments to provide facilities and teachers for First Nations students who were placed in existing **provincially/territorially run schools**. School boards were fully reimbursed for the delivery of educational services by means of tuition agreements with the federal government. This action increased the role that provincial and territorial governments played in the education of First Nations students. By 1970, over half of the First Nations students in Canada attended provincial and territorial schools. Integration meant that First Nations students were expected to adapt to their new learning environment and fit into the existing educational systems.

Devolution and Local Control

In June, 1969, the federal government presented the *White Paper*. The federal government proposed the complete integration of First Nations education into provincial/territorial systems. This meant the virtual abdication of responsibility for First Nations education by the federal government. First Nations across Canada united to make the Canadian public aware of the appalling conditions faced by First Nations. Under the leadership of the National Indian Brotherhood, now the Assembly of First Nations, a response to the *White Paper* was drafted in the policy statement entitled, *Indian Control of Indian Education*, 1972.

Since 1973, when the federal government adopted *Indian Control of Indian Education* “in principle”, the federal policy for First Nations education has been one of “local control” and “parental involvement”. In practice, the federal government has taken local control to mean First Nations administration of federal education programs and policies. Thus, the federal government has devolved a “limited” amount of local control to First Nations political bodies and their respective education authorities.

Over the years, there has been progress in terms of increased numbers of students

attending and completing school. For the 1997-1998 school year, there were approximately 115,796 First Nations students enrolled in elementary and secondary schools. Of these students, 1.6% attended 8 federal schools on reserve; 61.8% attended 448 band operated schools on the reserve; and 36.5% attended 1,732 provincial/territorial and private schools off the reserve. Twenty-nine per cent of the students were in secondary schools, 57.1% were in elementary schools and 13.9% were in kindergarten. Approximately 27,000 First Nations students were funded to attend post secondary education institutes; of these, 58.7% of the students were below the age of 30 and 41.2% were 30 years of age and older. (DIAND, 2000, *Overview of DIAND Program Data*, February, pp.14-16).

Minor progress is not good enough. First Nations continue to seek complete jurisdiction over their education systems. There is an urgent requirement to do more immediately to address the educational needs of First Nations students and First Nations education systems. Statistics show that there is a significant educational gap between the First Nations population and the Canadian population. For the First Nations population in Canada: lower literacy levels are two times greater than the Canadian population; high school graduation is two times lower than the Canadian population; and university completion is four times lower than the Canadian population. Educational changes are urgently needed so that this educational gap can be appropriately addressed as soon as possible.

TREATIES, SELF DETERMINATION, AND SELF-GOVERNANCE

Treaties

In the document, *Reclaiming Our Nationhood, Strengthening Our Heritage: Report to the Royal Commission on Aboriginal Peoples*, 1993, the Assembly of First Nations clearly outlined the importance of the treaties and the nation to nation relationship that they represented. The following key ideas regarding treaties were made in the Report.

Treaties stand as a covenant between nations that are sovereign...Nations make treaties... therefore the treaties stand for a relationship with the Crown which is based on consent, free will and the sanctity of a promise (p.7).

Treaties were not a one-sided relationship dictated by governments...they have always been and will always be a relationship based upon basic principles of trust, partnership and mutual respect...they must remain the basis of any new policy direction for the future (p.7).

Any contemporary policy on treaties between the Crown and First Nations must be placed within the historic context of treaty making. Key principles from the treaty making process must be used as the basis for any new policy on First Nations relations in Canada

... They include respect for First Nations culture and spirituality, respect for the mutuality of the relationship, respect for the equality of peoples and a fundamental commitment to the principles of honouring obligations flowing from specific treaties (p.9).

The treaty represents the agreement of two independent parties – the Crown and First Nations...Treaties did not...eliminate or reduce the independence or autonomy and integrity of our nations. We are distinct nations – distinct peoples with distinct languages, cultures, traditions and governments. We are also nations in the sense that each First Nation has a political responsibility for its peoples...In the treaty process, First Nations never relinquished the inherent right to govern themselves (p.9).

First Nations treaties must be implemented in accordance with the spirit and intent as understood by First peoples, especially our Elders, whose knowledge of the treaties is strong. Spirit and intent means more than the English or French text – it requires an examination of the written and oral history of the treaty negotiations (p.10).

A critical part of the restructuring of First Nations policy, is to ensure that the Crown maintains its fiduciary obligation towards First Nations. These obligations flow from the nature of the relationship between First Nations and the Crown and from treaty promises (p.11)...The federal government must stop the trend toward offloading obligations either to provincial governments or First Nations (p.14).

Treaty rights are fully portable and First Nations citizens must not be restricted to the enjoyment of their treaty rights on the basis of residence on reserve land...A treaty promise is binding. No restrictions must be placed on treaty rights without the consent of First Nations (p.14).

The Crown in the *Royal Proclamation of 1763* recognized the sovereignty of First Nations peoples. The treaties that were negotiated with the Crown, now the Government of Canada, constitute binding international agreements between nations. Treaty rights are recognized under international law and have international status. The United Nations has declared that Canada's policy of extinguishment and conversion of Aboriginal and Treaty rights is a violation of Canada's International Treaty obligations.

In relation to education, the Assembly of First Nations has clearly stated that, "Education for First Nations people is a matter of inherent Aboriginal right". The federal government has a legal obligation through each of the eleven treaties, made between 1871 and 1921, to provide adequate resources and services for education (Assembly of First Nations, 1988, *A Declaration of First Nations Jurisdiction Over Education*, p.2).

Self Determination

The Assembly of First Nations has consistently advocated the recognition of the inherent right to self determination for First Nations peoples. First Nations have the inherent right to determine their future – this is the right of peoples who have always been here. Self determination is a simple concept in terms of First Nations relations with Canada. It means that First Nations will take control over their lives to ensure that their rights, languages, cultures, traditions and peoples are sustained and flourish in the future. First Nations view this as fulfilling their responsibility for future generations. It is a desire to ensure that First Nations survive in light of the great tide of assimilation that they have experienced in Canada. Self determination is about self preservation and does not in any way resemble the *Indian Act*. First Nations seek new relations and partnerships with Canada as a means to exercise the right to self determination. This is being done in friendship. First Nations realize that their history connects them to other peoples and governments and an independent course is not one that First Nations are seeking (Assembly of First Nations, 1993, pp.17-19).

National Chief Matthew Coon Come has stated that “all peoples have the right of self-determination” as stated in the International Bill of Rights of the United Nations. Self-determination refers to the right of a people to freely determine their political status and freely pursue their economic, social, and cultural development and to dispose of and benefit from their wealth and natural resources. Under international treaty law, Canada is obligated to respect the First Nations right of self-determination.

Article 15 of the *Draft United Nations Declaration on the Rights of Indigenous Peoples* (1994) states that, “All Indigenous peoples...have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning. Indigenous children living outside their communities have the right to be provided access to education in their own culture and language”. Furthermore, Article 19 indicates that “Indigenous peoples have the right to participate fully, if they so choose, at all levels of decision making in matters which may affect their rights, lives and destinies...as well as to maintain and develop their own indigenous decision making institutions.”

Self-Governance

Education, as a force in human development, lies at the base of achieving effective self-government. Self-knowledge, self-confidence, self-respect, and self-sufficiency must be developed in order for any people to attain a healthy society, a stable culture and self-government... The powers of self-government for a people within a given geographic boundary include capacities to: determine their own distinct form of government; define and administer conditions of membership; tax; regulate and enforce laws and justice codes; maintain jurisdiction over education; define and administer land use; and regulate policy (Assembly of First Nations, 1988, Volume 1, p.45).

With respect to self-governance, the Assembly of First Nations clearly specified its position in *Tradition and Education: Towards a Vision of Our Future*, 1988.

First Nations have an inherent Aboriginal right to self-government. They have existed as sovereign, self-governing nations since long before the establishment of the Government of Canada, First Nations have never relinquished the right of self- government.

The sovereignty of First Nations was recognized by the Crown in *Royal Proclamation of 1763*...First Nations' inherent Aboriginal rights of self-government and treaties are the basis for government to government relationships between First Nations and the Government of Canada. Within Canada, First Nations are an order of government apart from the federal government and the governments of the provinces and territories.

Although the Government of Canada has enacted legislation, such as the *Indian Act*, that hinders the exercise of First Nations self-government, it cannot extinguish the Aboriginal rights of First Nations through legislation. Through enactment of legislation, the Government of Canada can recognize the status of First Nations as self-governing Aboriginal entities with whom pre-existing treaty relationships were established.

Recognition of First Nations' rights to self-government must be entrenched in the Constitution. Constitutional recognition will help to curtail the assaults on First Nations sovereignty by industries, politicians, and bureaucrats (Assembly of First Nations, 1988, *A Declaration of First Nations Jurisdiction Over Education*, p.1).

In the document, *Reclaiming Our Nationhood, Strengthening Our Heritage: Report to the Royal Commission on Aboriginal Peoples*, 1993, the following recommendations were made.

All levels of government must recognize the full jurisdiction of First Nations governments over all areas promoting the development of First Nations as peoples, especially with respect to lands, resources, culture, traditions and citizenship.

The Crown owes a fiduciary responsibility to First Nations. This flows from its position as protector of our lands from non-Indian interference which can be traced to the *Royal Proclamation of 1793*...The Crown is to ensure that Aboriginal and treaty rights are fully recognized and respected. This has been clearly embraced by the Supreme Court of Canada...enshrined in Section 35 of the *Constitution Act* of 1982. ..The Crown should be a zealous advocate and protector of the rights of First Nations and...disclose to First Nations all information regarding the specific impact of policies and legislation. It further requires that the Crown not place itself in a conflict of interest situation with First Nations.

The fulfillment of fiduciary obligations to First Nations, flowing from relations between

First Nations and Canada, is essential. It will require fundamental change in government attitude toward First Nations and their rights in political and legal fora and the genuine fostering of an honourable approach to new relationships.

It is crucial that negotiations on the transition to self-government, when desired by First Nations, proceed 'in good faith'. A Negotiation Secretariat must be established to handle the progress of negotiations and must be independent from the Department of Indian Affairs... First Nations and all levels of government must establish a special tribunal to deal with conflicts arising from the transition to self-government.

First Nations must jointly determine and recommend changes in Canadian legislation, policy, financing and other Non-Aboriginal government institutions, necessary to conform with the inherent right to self-government (pp.22-24).

LEGISLATIVE AUTHORITIES

Primary legislation is enacted by eleven legislative bodies in Canada: the Parliament of Canada and the ten provincial legislatures. The Constitution grants authority to each of these bodies to enact statutes on certain classes of matters. **Subordinate legislation** is enacted by a person, body, or tribunal which is subordinate to a Constitutionally empowered legislative body. Several types of subordinate legislation include by-laws, Orders-in-Council, ordinances, statutory instruments, and rules and regulations.

Case law is a second source of law in Canada. Judges provide reasons for a decision in writing and these are used by courts as legal precedents in the event that a case involving similar facts appears before a court. Courts are bound to follow precedent cases. Case law serves as a guide for judges in the adjudication of cases.

1867 - Constitution Act

The *Constitution Act*, 1867, united the provinces into a single dominion and established two levels of government: a federal level and a provincial level. **Section 91 (24)**, gave Parliament jurisdiction to make laws over Indians and lands reserved for Indians and **Section 93** gave provinces jurisdiction over education.

1868 - Indian Act

The major piece of legislation enacted by the Parliament of Canada pursuant to its Constitutional authority is the *Indian Act*. **Sections 114-123** deal with Indian education. These provisions are minimal when compared to provincial government provisions for education. Responsibility for Indian education was delegated to the federal government – more specifically, the Department of Indian Affairs and Northern Development (DIAND). These provisions enable the Minister of DIAND to provide regulations

concerning school buildings and equipment, teaching staff, inspection of schools and discipline in schools. They provide for transportation of First Nations to and from school and provide the rules for funds spent on the maintenance of children in residential schools. The provisions require children aged six to sixteen to attend school; excuse children from school if they have proper home instruction; designate the schools to be attended; appoint truant officers; and approve and regulate the establishment of separate schools (Assembly of First Nations, 1988, Volume 2, p.122).

Subsection 4(3) provides that the education provisions do not apply to Indians who do not reside on reserve or on lands that belong to either the provincial or federal crown.

Section 88 states that “ all laws of general application.. in any province are applicable to and in respect of Indians in the province”.

Section 114 authorizes the Government of Canada to enter into agreements with the government of a province for the education of First Nations children. Arrangements are made with the provincial and territorial education authorities to place First Nations students in these schools. Tuition is paid for these services on a per capita basis for elementary and secondary education. No provision is made for First Nations to enter agreements with the provinces or territories or the federal government.

To date, the federal government has not dealt comprehensively with First Nations education through primary legislation; it has relied on the development of subordinate legislation authorized by **Section 115** of the *Indian Act*. This has taken the form of Orders-in Council; Treasury Board Minutes and directives, regulations and policy statements; and First Nations by-laws and resolutions. **Section 69** states that the Governor-in-Council may issue Orders-in-Council which impact on the provision of education services; furthermore, these must be made within the parameters of the *Indian Act* and the *Financial Administration Act*.

Under the general authority of **Section 115 of the Indian Act**, Post Secondary Education Programs are provided to First Nations people over the age of 18. Programs cover adult education; vocational, college and university education; and employment and relocation training.

Treasury Board Minutes have been developed to provide: kindergarten programs by local education authorities and First Nations councils under service contracts with the Minister (November 25, 1971); First Nations Councils the authority to administer post secondary education services to First Nations adults (March 22, 1972); and the authority for First Nations to manage elementary and secondary education programs (November 23, 1972) . Treasury board minutes authorize the Indian administration of tuition payments to provincial school boards, the employment of teachers, the provision of education allowances to students, the provision of seasonal transportation to students, the

operation of student residences and the provision of counseling to students.

1982 - Constitution Act

The *Constitution Act*, 1982, ended the legal link between Canada and Great Britain and it contained the *Charter of Rights and Freedoms*.

Section 35 recognizes and affirms existing Aboriginal and treaty rights. Thus these rights are protected from being extinguished by federal legislation. Constitutional amendment or consent of a First Nation through voluntary surrender would be required to extinguish Aboriginal or treaty rights. In addition, treaties and land claims agreements are constitutionally protected. Jurisdiction for education is an existing Aboriginal self-government right provided under section 35 (1).

The Canadian Charter of Rights and Freedoms, Part I of the Act, apply to both the federal and provincial legislatures. **Section 2** states that everyone has the fundamental freedoms that include: freedom of conscience and religion; freedom of thought, belief, opinion and expression; freedom of peaceful assembly; and freedom of association.

Section 15 guarantees equality before the law. “First Nations sovereignty and jurisdiction stem from Aboriginal nationhood... It is the prior presence of First Nations on this continent that gives rise to the concept of original use and occupancy of the land, a concept which has come to be known as *Aboriginal title*. ... First Nations people view title to the land in a communal sense as opposed to an individual sense. Certain rights flow from Aboriginal title. These rights have come to be known as *Aboriginal rights* and include rights relating to lands, hunting, fishing and trapping... To date, a Constitutional amendment recognizing, affirming and guaranteeing the inherent right to self-government, lands and resources has not been secured” (Assembly of First Nations, 1988, Volume 2, pp.119 & 120).

MEANING OF JURISDICTION

Jurisdiction is a concept that has a broad scope and a variety of meanings. Jurisdiction conveys the idea of a right – usually given or described by law or custom – to exercise full or a measure of authority or power over a certain subject-matter, in this case, education. Jurisdiction is described as “the sphere of authority exercised by a State”. Hence, in international law, the right of a sovereign state to determine rights and duties of persons by legislation and to enforce those rights and duties.

In *Tradition and Education*, jurisdiction is defined as the inherent right of each sovereign First Nation to exercise its authority, develop its policies and laws, and control financial and other resources for its citizens (Assembly of First Nations, 1988, Volume 2, p.82). It is defined as total self-government by each First Nation over resources, management over

programs and other associated services.

Defining jurisdiction is important because it is a major component of a First Nations self-government structure. It ensures the survival and the vigour of a particular way of life, of a distinct culture and a unique set of traditions. First Nations take different approaches to exercise jurisdiction that range from exclusive authority to shared authorities with other governments.

According to Morgan, jurisdiction is a concept which refers to legal power or authority and includes the right to make laws. Jurisdiction can be inherent, constitutionally-based or delegated.

Inherent jurisdiction is an original source of authority derived from the First Nation's existence as a self-governing entity at the time of contact. It cannot be withdrawn. To exercise inherent jurisdiction a First Nation can enter into an agreement with the federal/provincial government which recognizes and facilitates the exercise of First Nations inherent jurisdiction. A First Nation may also unilaterally assume jurisdiction by enacting laws, implementing unwritten customary law or by taking control (Morgan, 1998, p. 15).

Constitutionally based jurisdiction is authority derived from a constitutional document. The federal and provincial governments have constitutionally-based jurisdiction set out in sections 91 and 92 of the *Constitution Act, 1867*. Provincial jurisdiction over education is set out in section 93. This type of jurisdiction cannot be withdrawn or altered except through constitutional amendment (Morgan, 1998, pp. 15 & 16).

Delegated jurisdiction is authority granted by another level of government. For example, the two territorial governments fall under the authority of the federal government and can only exercise delegated jurisdiction. The by-law making power of First Nations under the *Indian Act* is characterized as delegated jurisdiction (Morgan, 1988, p.16).

Under a delegated model, the delegating government has a greater ability to influence a First Nation... if it does not agree with the way the First Nation is exercising its jurisdiction, it may limit the First Nation's authority. The reason to move from a model of delegated authority to inherent jurisdiction is to prevent the delegating government from restricting, withdrawing or interfering with the jurisdiction it has granted (Morgan, 1998, pp. 16 & 17).

Jurisdiction is the parameter within which a government body may exercise its administrative, executive, legislative, or judicial authority. It may or may not be an exercise of sovereignty. Most First Nations governments operate under the *Indian Act*. Band Councils are elected in accordance with *Indian Act* rules; their membership is generally determined under *Indian Act* rules or rules established pursuant to the *Indian*

Act. Many First Nations have operated under this system for generations, and some see the *Indian Act* as the instrument that embodies their Aboriginal and treaty rights. Most regard the *Act* as substandard, but many also see it as a form of protection – the legislative instrument that defines or preserves their special relationship with the federal government. It is, to some, the document that holds the Department legally responsible – the instrument that maintains the fiduciary relationship. The Assembly of First Nations Lands, Trusts, and Services Unit respects the variety of opinions that First Nations have about the *Act*. We seek to assist First Nations people and band councils in enhancing their understanding of the *Indian Act* as well as the federal government’s policies in relation to the administration of the *Act* in order to empower First Nations in formulating long term visions and making policy decisions. Our Unit is committed to assisting First Nations in developing the institutional, technological, financial and human capacity to move in a direction that is conducive to their survival and growth (Carol Anne Brewer, 2000, Lands Trusts and Services Unit, Assembly of First Nations).

RELEVANT LITERATURE

Overview

To provide a national perspective regarding First Nations educational jurisdiction, a number of relevant documents have been reviewed and summarized; they are listed below.

1972 – *Indian Control of Indian Education*

1988 – *Tradition and Education: Towards a Vision of Our Future*

1990 – *Jurisdiction and Management: A Research Project*

1991 – *Macpherson Report on Tradition and Education: Towards a Vision of our Future*

1995 – *Aboriginal Self-Government – Federal Policy Guide*

1996 – *Report of the Royal Commission on Aboriginal Peoples*

2000 – *Forging New Relationships: Aboriginal Governance in Canada*

1972 - Indian Control of Indian Education

The movement away from the *Indian Act* and federal control of Indian education towards Indian control of Indian education formally began in the early seventies with the National Indian Brotherhood’s (Assembly of First Nations) policy statement called, *Indian Control of Indian Education*. At that time, twenty-nine years ago, First Nations called for a radical change in First Nations education - a change that would make education relevant to the philosophy and needs of First Nations.

The statement regarding Indian philosophy of education indicated that each adult was personally responsible for each child and to see that children learned all they needed to

know to live a good life. Children were to learn that happiness came from pride in themselves, understanding other human beings and living in harmony with nature.

Education Principles

The vision for education focused on two key education principles: parental responsibility and local control of education. With respect to **parental responsibility**, it was stated that Indian parents were to be responsible for setting educational goals that would reinforce First Nations children's Indian identity and provide the training needed to make a good living. Parents sought participation and partnership with the federal government to direct the education of their children. Education was a means to prepare children for total living, to provide children the choice of where to live and work and to enable First Nations to participate fully in their own social, economic, political and educational advancement.

In the document, it was clearly stated that "any transfer of jurisdiction for Indian education can only be from the federal government to Indian bands". With respect to **local control of education**, the federal government was called upon to take the necessary steps to transfer the authority and funds for Indian education to local bands. The band would determine how to set up an Education Authority at the local level to make educational laws, make educational decisions and to exercise full responsibility over education. Training in educational administration was to be made available to bands designing local control of education.

Recommendations

It was suggested that provinces/territories pass legislation to ensure adequate Indian representation on school boards in proportion to the number of children attending provincial/territorial schools. It was also indicated that there was an urgent need for laws that would enable responsible representation and full participation of parents whose children attended provincial/territorial schools.

It was recommended that funds be made available for the development of culturally relevant curriculum, materials and textbooks and that measures be taken to improve the quality of instruction for all students. The importance of restoring languages, developing cultural education centres, and training future generations of First Nations teachers, counselors, and paraprofessionals was also stressed. The need for modern school facilities and investment in community classrooms, equipment, gyms and staff quarters were highlighted.

Canada was called upon to recognize the value of another way of life. Integration could no longer be viewed as a one way process where First Nations were asked to give up their identities, to adopt new values and a new way of life. First Nations did not want to be assimilated, they did not want to remain invisible. They wanted to be in their own canoe

and in control of their own destinies.

Adoption of Policy Statement

In 1973, the federal government adopted *Indian Control of Indian Education* and devolved limited control to First Nations bands in the form of educational administration of existing federal/provincial programs and services. This was as much as Canada was willing and ready to do at the time. This was a change. It enabled First Nations to set up educational authorities at local levels – it enabled First Nations to begin to work collectively in tribal councils where “united efforts” had greater impact to influence Canada than single First Nation band councils.

1988 - *Tradition and Education: Towards a Vision of our Future*

Introduction

Sixteen years later, the Assembly of First Nations conducted a comprehensive national review of the status of First Nations education in Canada. The goals of the review were: to examine the impact of the *Indian Control of Indian Education* policy; to synthesize the research conducted at the local, provincial and territorial levels since 1972; to examine First Nations jurisdiction of education in light of current Constitutional amendments; and to recommend improved education policy and appropriate legislation that would establish a government to government relationship between First Nations and the Government of Canada (Assembly of First Nations, 1988, Volume 1, p.157) .

A four volume report, *Tradition and Education: Towards a Vision of Our Future*, was produced in 1988. Volume 1 provided a summary of the community based research addressing the four major issues of jurisdiction, quality, management, and resourcing of First Nations education. Volume 2 summarized the findings of the First Nations Schools Review that highlighted the components of eleven educational programs operated by First Nations. Volume 3 consisted of an executive summary of the findings of the national review. The final document produced was, *A Declaration of First Nations Jurisdiction Over Education*; it was developed as a revised policy paper for First Nations education (Assembly of First Nations, 1988, Volume 1, pp. 8 & 9).

As specified in the study, Canada was called upon to recognize the inherent right of First Nations to be and to remain distinct First Nations and to exercise local self determination over local education programs through self-governance. Canada was called upon to make changes in the practices of First Nations and their governments.

AFN resolution #40/88, passed by the Chiefs at the 9th Annual General Assembly, provided unanimous support for the findings highlighted in the four volumes of *Tradition*

and Education: Towards a Vision of our Future. The study made 54 recommendations to improve First Nations education and outlined an implementation strategy to move further along the path towards total educational jurisdiction.

Educational Jurisdiction and Self-Governance

Jurisdiction over education is a major component of First Nations self-governance structures. The purpose of **local jurisdiction** is to provide the authority for each First Nation community to exercise local self determination and make decisions regarding education policies, management methods and approaches, curriculum standards and program quality, delivery of services, and the amount of funding needed for education. Furthermore, each First Nation has the right to determine when and how jurisdiction will be exercised over the education of its citizens. Community jurisdiction and autonomy in decision making are key factors in creating school programs. Only First Nations communities have jurisdiction over the education of their people.

The following statements regarding First Nations educational jurisdiction and self governance were made in the study.

What degree of jurisdiction? First Nations cannot exercise jurisdiction over education or any other program without full fiscal and operational control. First Nations will determine the extent of the need for resources and the allocation of resources to the various programs and services required in their communities. First Nations will negotiate directly with the Government of Canada...under the bilateral process for resources required to meet their needs (Assembly of First Nations, 1988, *A Declaration of First Nations Jurisdiction Over Education*, p.5).

First Nations councils or their delegated education authorities have jurisdiction over education policies, management methods and approaches, curriculum standards and program quality, delivery of services, and... determining the actual total education resource requirements, including capital and operational requirements. Every First Nation will decide when and how it will exercise jurisdiction over the education of its people (Ibid, p.7).

What national legislative changes? Simple revisions to sections 114-123 of the *Indian Act* are unacceptable to First Nations as a means of addressing the issue of federal government recognition of the inherent Aboriginal rights of self-government and jurisdiction over education... The *Indian Act* is no longer a proper instrument for the conduct of First Nations affairs. A new mechanism has to be developed with the input and co-operation of First Nations at all stages. That mechanism must enable the federal government to fulfill its treaty obligations to First Nations and...enhance the ability of First Nations to govern their own affairs in co-existence with Canada (Ibid, pp. 4&5).

Tribal School Division **National Institutions**
Education Commission
Clearinghouse

Community Education Delivery Bodies

Schools (Pre-school, elementary and secondary)
Post Secondary Institutes
Training Bodies **Regional Education Delivery Bodies**
Post Secondary Institutes
Training Organizations

Local Level. At the local level, three specific kinds of structures were involved in exercising First Nations educational jurisdiction and providing educational services: political governance bodies; educational authorities; and community education delivery bodies.

First Nations Political Governance Structure. At the local level, the majority of First Nations governments have delegated authority from DIAND to administer First Nations education. For the most part, funds for First Nations education are included in the First Nations funding agreements with DIAND. First Nations governments undertake contractual obligations with local or regional educational authorities for the provision of educational programs and services. The levels of educational authority to be exercised by the First Nations political body (Chief and Council) and the local education authority must be determined at the local level and clearly specified.

Local Education Authorities. Local education authorities must be more than advisory bodies. The legal status of First Nations education authorities is still unresolved. New legislation must be drafted to give First Nations a legal base to exercise meaningful control over local First Nations education. Resources are required: to develop and support First Nations educational management structures; to plan for educational jurisdiction; to train program personnel in management and administration; and to implement jurisdiction.

Depending on the local circumstances of communities, the **local education authority** might consist of the following:

Chief and Council – i.e. Mi'kmawey School of Chapel Island, Nova Scotia;

sub-committee within the First Nations government structure – i.e. Lakeview School of West Bay, Ontario;

school committee – i.e. Kahnawake Survival School of Kahnawake, Quebec; James Bay Cree communities under the James Bay Cree School Board of Quebec; communities under the Southeast Tribal School Division of Manitoba;

school board – i.e. in 1982, the Alexander Chief and Council passed a resolution making the education committee a school board – Kipohtakaw Education Centre of Alberta;

shared responsibility of the Chief and Council and school committee/board – i.e. Lac La Ronge of Saskatchewan; Seabird Island Community School of British Columbia.

The local education authority is responsible for the following functions.

Management of financial, administrative and operational costs for all levels of community education

Establishment of local education philosophy, goals, and objectives

Development of policy concerning management structure, administrative procedures, program and curriculum standards, school administration, capital requirements, staffing procedures and resourcing requirements

Development of viable plans to assume control of education programs

Research

Conducting staff and program evaluations

Addressing union issues

Management and Training – exercise jurisdiction in recruitment, selection and termination of staff in community schools

Parental involvement and involvement of Elders, community organizations, and community members in educational matters

Tuition Agreements with provinces and territories – ensure equitable First Nations representation on provincial/territorial boards

Data Banks for current operations to track status of First Nations education

(Assembly of First Nations, 1988, Volume 2, pp. 83-86.)

Community Education Delivery Bodies. Community schools deliver education programs and services to First Nations students in pre-school, elementary, and secondary schools. Some communities have post secondary institutes and colleges to deliver post secondary education, adult education, and training. There may also be a variety of local training organizations within the community.

Regional Level. At the regional level, three different kinds of structural bodies were involved in First Nations educational jurisdiction: First Nations political bodies; First Nations education authorities; and First Nations regional education delivery bodies.

First Nations Regional Political Bodies. At the regional level, **tribal councils** and **federations** have formed to provide a stronger, united political voice to influence the governments of Canada. Within the study, it was indicated that the **Southeast Tribal Council of Manitoba** consisted of the Chiefs from nine member local communities. This body established the Southeast Tribal School Division in 1981. The Tribal School Division was given the mandate to provide a uniform structure of education for communities; to provide education and advisory services to communities; and to facilitate local jurisdiction over education.

The Cree Nation of Quebec engaged in negotiations with the Canadian federal

government and the provincial government of Quebec and in 1975 they signed a self-governing initiative called the **James Bay and Northern Quebec Agreement**. This provided the Cree Nation with a legal framework to exercise sovereign rights and the opportunity to exercise exclusive jurisdiction over education.

First Nations Regional Education Authorities. Regional education authorities may be established at a tribal, district or regional level. These bodies may take the form of a school board, an education centre or a tribal school division. These bodies were granted authority to: manage First Nations education systems; support local First Nations schools and programs; provide educational and budgetary expertise; coordinate administration, curriculum, and staff training; student services; special services; provide services to First Nations students outside of community; and assist in transfer of local jurisdiction over education.

Section 16 of the James Bay and Northern Quebec Agreement gave the **Cree School Board** the exclusive jurisdiction over elementary, secondary and adult education. Since 1978, when the Quebec government passed an Order-In-Council modifying the province's Education Act, the James Bay Cree have been exercising educational jurisdiction. This is a centralized education authority that provides exclusive education services to eight member communities. The Cree School Board manages the education system and consists of 9 commissioners: 8 members representing each of the communities and one member from the Cree Regional Authority, known as the Grand Council of the Crees. There are three offices within the school board: finance and administration; adult education; and educational services. Annual budgets are approved by the governments of Quebec and Canada: the Government of Quebec contributes 25% of the funding; and the Government of Canada contributes 75% of the funding.

By using a centralized education authority, the following success factors emerged. The quality of teachers has improved significantly. More Crees were being employed in the education system and the First Nation government. Standardization of the curricula used in the Cree schools has contributed to the success of the schools. In-service training, workshops and teacher conferences has helped the teachers remain enthusiastic. The use of external resource people has been an important factor which contributed to the success of the education program (Assembly of First Nations, 1988, Volume 2, pp. 24-28).

First Nations Regional Educational Delivery Bodies. Different types of regional bodies have been established to provide post secondary education and training to First Nations communities. These may include First Nations community colleges and institutes and small training organizations.

National Level. As indicated in *Tradition and Education*, there was a national requirement for a Ministry of State for First Nations Relations to deal with First Nations on a government-to-government basis and to conduct negotiations with First Nations for

fiscal arrangements for funding self-government operations, economic development, and the correction of infrastructure deficiencies. It was indicated that there was a need for continued efforts of national First Nations organizations such as the Assembly of First Nations to provide collective and mutual support in addressing major issues and concerns. There was also the need to establish national First Nations institutions such as a national Education Commission and a national clearinghouse.

According to the study, three issues required immediate attention at the national level: a formal national guarantee of First Nations jurisdiction over education; stable and adequate levels of resourcing for First Nations education on a government-to-government basis; and the need for culturally relevant curriculum materials.

Common Trends in Exercising Local Educational Jurisdiction

As outlined in Volume 2 of *Tradition and Education*, the following ideas regarding what was needed to effectively exercise jurisdiction at the local level were shared by First Nations that had assumed some degree of jurisdiction over education.

Resources. Adequate human and financial resources were required in the implementation of local educational jurisdiction and for training school board members and other relevant staff. DIAND's funding policies were found restrictive.

Federal Policies and Laws. Federal policies were found to be major obstacles to local program development. First Nations were not involved in the development and implementation of DIAND's policies and programs and this hindered local jurisdiction over education.

Local Education Authority. The local education authority accommodated the values and philosophy of the community and was accountable to the community. The local education authority participated in the negotiation of contracts and evaluation processes.

Local Planning Committee. A planning committee was found essential to direct the process and clarify the philosophy, goals and objectives of the education program. Committee members were dedicated to the implementation of local jurisdiction.

Communication. Community members were engaged in on-going discussions on the future of education for the community. Consulting community members on all major education issues was found to be extremely important.

Strong Networks. Strong networks between the school board and community were developed to enhance parental involvement and community involvement in the education process.

Local Policies. Education, human resources and management policies were developed to clarify roles and responsibilities of those participating in the education.

Barriers in Exercising Educational Jurisdiction

As noted in *Tradition and Education*, the following barriers were commonly identified by First Nations exercising some degree of educational jurisdiction.

Process. DIAND's devolution process was not well defined and failed to provide the opportunity for First Nations input. First Nations governments negotiated and signed education agreements with DIAND and undertook contractual obligations to provide education services. It was found that political decisions and attitudes presented major obstacles to local program development. The lack of involvement of First Nations in the development and implementation of DIAND programs and policies hindered local jurisdiction over education.

Funding. Adequate funding has not been provided for First Nations education or the transfer of educational jurisdiction to First Nations. Few First Nations have access to the negotiations and payment processes of the federal government. First Nations have little to no input to resourcing decisions, budget negotiations and cost sharing formulae.

Provinces-Territories. Existing relations between the provinces/territories and First Nations were characterized as follows.

The federal government purchased educational services from provincial/territorial education departments for First Nations attending those schools. DIAND has not limited the cost of student tuition and services paid to provincial and territorial schools but has severely limited the financial support to First Nations schools.

There were discrepancies between the tuition paid to provinces/territories and First Nations with First Nations receiving less.

Provincial/territorial education failed to be relevant to the development needs and interests of First Nations communities. There was the problem of integration where First Nations students were required to change to fit into existing systems.

First Nations were required to conform to provincial/territorial standards so that First Nations students could transfer to provincial systems of education.

Provincial/territorial and federal governments failed to live up to the terms and spirit of their agreements.

Provinces/territories and the federal government were responsible for First Nations students who attended educational institutions outside First Nations communities rather

than First Nations.

Capacity of First Nations. There was a lack of trained First Nations administrators and personnel. The lack of trained personnel made it difficult for them to develop culturally relevant programs at the local level. Training and skill development were required before assuming jurisdiction.

Factors Contributing to the Success of Local Educational Jurisdiction

In reviewing the features of selected education systems, several factors emerged which appeared to contribute to the success of institutions in implementing local jurisdiction over education. These are listed below.

The foundation of success in First Nations schools at all levels is tied to a community-based philosophy that is harmonious with the cultural values, beliefs, and practices of First Nations... The **identification and clarification of community-held attitudes**, values, and traditional knowledge are important elements for the success of local jurisdiction over education (Assembly of First Nations, 1988, Volume 2, p.74).

The **transitional steps** taken by a community as it begins to exercise jurisdiction form the roots that nurture the growth of a school system. The planning stages associated with the move to exercising jurisdiction over education require that community desires and attitudes be ascertained... Exposure to different educational models and access to a wide range of information on educational options are methods by which parents and community members can gain awareness and provide meaningful input into the type of education that they want for their children... The willingness of education authority members and staff to pursue training and to enhance and acquire new skills was identified as a significant factor that increased the quality of administrative direction and professional service provided to a school (Ibid, p.75).

Several aspects of the **management and administration** of First Nations schools played a major role in the successful operation of the school systems... The teaching staff and education authorities must be committed to incorporating the local cultural values and traditions in the schools... The school administration must promote teacher interaction with community members... The organizational structure of the education system must be supportive of the goals and philosophy of the system... Communities decided if their representatives on the local educational authority will be elected or appointed... Communities must establish how the organization will operate with respect to interaction with the local First Nations governments and other institutions... Clearly written personnel policies are critical to the operation of the school (Ibid, pp. 75 & 76).

The success of the school depends on the quality of the **curriculum**. The curriculum should promote the contributions that First Nations have made within their own territories

... The curriculum should be value-based, contain a spiritual dimension, develop the cultural identity of the student, and promote parental participation... In First Nations education systems that have more than one school, the curriculum should be standardized ... The learning styles of students is an important element... A commitment to language retention among the teaching staff in the school was crucial... Long term planning and ongoing evaluation of programs and materials in the schools are critical in curriculum development (Ibid, pp. 76 & 77).

The **achievement of students** contributes to the development of successful education systems... First Nations youth are establishing a positive cultural identity. This builds confidence and improves academic achievement (Ibid, p.77).

A major problem that confronts all First Nations schools is **inadequate resourcing...** First Nations schools receive inadequate resources for curriculum development, student services, language development and long range planning (Ibid).

The establishment of a solid educational infrastructure depends on institutions and **activities that are external to the community**. Three activities were identified as necessary in order to build a solid foundation for an education system. Links with different types of institutions assist in development of programs at First Nations schools ... A willingness for each community to work together and share resources within their First Nations reduces the expensive costs associated with establishing an educational framework... Increased interchange between education systems also allows for the establishment of standards for First Nations schools (Ibid, p.78).

Recommendations

Nine of the 54 recommendations in *Tradition and Education* related to jurisdiction. They are listed below.

It was recommended that:

First Nations assume full jurisdiction over education with the federal government held responsible for funding only.

First Nations convey their own definition of jurisdiction.

The federal government entrench the right to self-government in the Canadian Constitution and ensure that any new legislation on First Nations education be flexible enough to meet various needs of First Nations.

First Nations develop education policies which reflect their own philosophy, beliefs, and practices.

First Nations develop relevant policies for services to First Nations members living off reserve.

The federal government provide sufficient funding for each First Nation community to:

- do a research needs assessment;
- prepare a long term plan;
- establish an empowered education authority; and
- obtain training on jurisdiction over education.

The federal government provide funding to new national and regional First Nations operated institutions.

All levels of government recognize the right of First Nations to participate in any negotiations involving First Nations education.

All school systems have in-services for teachers on contemporary First Nations issues (Assembly of First Nations, 1988, Volume 3, pp.31-33).

Basic Framework to Implement First Nations Educational Jurisdiction

It was indicated that the implementation of First Nations jurisdiction over education would involve many changes in the current practices of First Nations, federal, provincial and territorial governments. The basic framework to implement First Nations jurisdiction over education would require consideration of the following areas.

Recognition of Status of First Nations and Their Inherent Right to Self-Government. First Nations demanded explicit Constitutional recognition of First Nations inherent Aboriginal right to exercise self-government. Delegated authority was not acceptable as a substitute for First Nations jurisdiction recognized and affirmed in the Constitution.

Reform of Federal Policy and Legislation. First Nations called for a new mechanism since the *Indian Act* was no longer a proper instrument to conduct First Nations affairs. It was demanded that all sections of the *Indian Act* that were not consistent with First Nations self-government be repealed.

At the national level, the government was called upon to establish a Ministry of State for First Nations Relations. This body would be responsible for fiscal arrangements for funding governance operations, economic development, and correction of serious infrastructure deficiencies.

First Nations Forms of Government. At the local level, each First Nation was to

determine the structure and form of government that was appropriate for their people. The Band Council established under the *Indian Act* was described as an artificial and unacceptable form of government that was imposed on First Nations.

It was indicated that government policies may not limit access to First Nations services off reserve. The government was called upon to acknowledge the transferability of rights and to establish alternative urban schools.

Negotiation Support. First Nations supported the appointment of a national independent body to provide a neutral forum to conduct negotiations between governments. There was also a need for continued efforts of the various regional and national First Nations organizations that provided collective and mutual support in addressing major issues and concerns.

Adequate Resources at the Local Level. The federal government was asked to provide adequate resources for First Nations to: conduct local community needs assessments; formulate long term education plans, establish education authorities, and obtain management training.

Consultation and Assistance. The federal government was obligated to provide assistance to ensure that First Nations management and jurisdiction over education was a success.

Unified Demands. First Nations were required to join together in demanding that the government respond positively to local First Nations jurisdiction over education. First Nations were to meet at regional and national conferences to discuss and formulate positions on First Nations jurisdiction over education.

Local Planning. It was essential for First Nations to develop a systematic framework and timetable to ensure effective jurisdiction over education. Formalized planning mechanisms, consultative support, and networking were required.

Local Needs Assessment. Restructuring and reorganizing local education systems were to be based on the local philosophy of each First Nation. They would assess local needs related to implementing local jurisdiction over education. This was to be resourced by the government.

Local Education Program Development. Five critical elements were to be considered for local level education program development: language, curriculum, personnel, facilities, and funding. The government was required to assist First Nations schools in achieving parity with provincial and territorial programs and facilities.

Training. Adequate training was needed for local human resources in First Nations

schools.

In-Service Training. School systems were to establish or enforce directives to implement in-service teacher training sessions and school curricula that addressed contemporary First Nations issues

1990 - Jurisdiction and Management: A Research Project

To move educational jurisdiction forward, the Assembly of First Nations funded the development of a Discussion Paper that outlined the basic work plan upon which the research on jurisdiction and management would be conducted using a community participation approach. It was suggested that in the initial stages of developing education systems, communities and researchers needed to work towards sharing a common understanding of the concepts of jurisdiction and management (Mousseau-Tremblay, B. & Chisan, S.L., 1990, p.5).

The following questions were provided as a starting point for planned community discussions.

What is each community's definition and scope of jurisdiction?

How is culture reflected in jurisdiction and management?

How is jurisdiction exercised?

What is involved in designing and implementing a management system?

What will it take to maintain these systems?

Legal Issues

Legal issues to be explored included:

the formulation of a constitutional amendment to guarantee the exercise of jurisdiction over education by First Nations;

the formulation of a federal Indian Education Act to address questions relating to the transfer of jurisdiction over education and the funding of education;

the exploration of possible amendments to the *Indian Act*;

the examination of treaties to determine the extent of federal obligations in matters of education; and

the examination of provincial and territorial legislation to determine how the legislation applies to First Nations (Ibid, pp.11 & 12).

Meaning of Management

Management was described as an administrative function that defined the structures and procedures that would be used to practice jurisdiction. It would clearly specify the following.

Structure – relationships between participants (roles and responsibilities of the people involved in education) and the rules by which business would be conducted.

Processes – ways the work would be accomplished.

Goals – of the organization – mission statement.

Function & Scope of management systems – monitoring, accountability.

Process to Design a System

When beginning the work of designing systems, the process was an on-going one that involved the following tasks.

Identify task – mission statement and goals.

Gather information – identify resources, examine alternatives.

Design system – define structure, policy, procedures.

Implement decision – hire human resources.

Maintain system – operations.

Analyze performance – feedback and evaluation.

General Framework for Community Process

The following suggestions were provided as a guide for community dialogue and deliberations to develop local management structures and plans for education.

Community philosophy of education - world view, role education plays in community, vision (direction) for future of community, principles used to establish and exercise educational jurisdiction

Community understanding of the recommendations in *Tradition and Education*

Formulation of a plan of action – short term goals and process to achieve goals

Criteria and evaluation mechanisms

1991 - Macpherson Report on Tradition and Education

Introduction

DIAND and the Department of Justice provided the mandate for James Macpherson to review *Tradition and Education: Towards a Vision of Our Future*. The purpose of the review was to: identify the jurisdictional options in the area of Indian education, with special attention to those options which would result in substantially enhanced Indian jurisdiction over their own education; and to make recommendations about the preferred direction of reforms in this area (Macpherson, 1991, p.1).

In the Report, Macpherson included: a brief history of First Nations education in Canada; a description of the existing First Nations education systems; a description of the systems for indigenous education in New Zealand, Australia and the United States; a discussion of the constitutional framework for indigenous education; identification of reform options; and recommendations.

Key Comments

In the Report, Mapherson made the following key comments regarding First Nations education.

The major problem with DIAND's policy of devolution is that the exercise of authority over education by Indians has no independent constitutional foundation. For participation and control to be meaningful, it should flow from jurisdiction or power. It was indicated that the existing constitutional framework failed to provide a role for First Nations, thus changes were urgently needed. Federal policy regarding Indian education was found to be exceptionally skeletal and vague; it lacked organizing principles, substantive policies and processes (Ibid, pp. 11 & 12).

Section 91(24) of the *Constitution Act-1867*, would permit a comprehensive national law dealing with the subject matter of Indian education, this law could cover any and all aspects of Indian education (Ibid, p.24).

Treaties create rights for the Indians and their successors... Treaty rights are in effect the result of formal promises made to the Indians in exchange for the relinquishment of something which the government wanted. Aboriginal rights are different from treaty rights in that they are not contained in a formal document... Treaty rights flow from negotiations and promises, Aboriginal rights are grounded in the fact that the Aboriginal peoples were in possession of the land before the arrival of the European settlers (Ibid, p.28).

Court decisions have affirmed the treaty and Aboriginal rights of First Nations.

⇒ The court regards **Section 35** of the *Constitution Act*, 1982, as a significant and new source of protection for Aboriginal rights (Ibid, p.30).

⇒ Both treaty and Aboriginal rights will be interpreted liberally in favour of natives - Simon v. The Queen, (1985); Regina v. Sioui, (1990); Regina v. Sparrow (1990) (Ibid, p32).

⇒ **Section 88** of the *Indian Act* is to exempt Indians from provincial laws which restrict or contravene the terms of any treaty (Ibid, p.29).

⇒ Chief Justice Dickson said, at pp.408-413: The government has the responsibility to act in a fiduciary capacity with respect to Aboriginal peoples. The relationship between the government and Aboriginals is trust-like, rather than adversarial, and contemporary recognition and affirmation of Aboriginal rights must be defined in light of this historic relationship. The guiding interpretive principle derived from Guerin is that the honour of the Crown is at stake in dealings with Aboriginal peoples. The special trust relationship and the responsibility of the government vis-à-vis Aboriginals must be the first consideration in determining whether the legislation or action in question can be justified. Regina v. Sparrow (1990) - (Ibid, p.32).

The modern formulation of equality in Section 15 of the Canadian Charter of Rights and Freedoms and its subsequent interpretation in Andrews and Turpin (1989) make it clear that any law in the field of Indian education must not hurt or disadvantage or negatively affect, even slightly, Indians. Any such law would violate section 15 of the Charter. This conclusion applies...to all federal, provincial and territorial laws...All of the subordinate regulations and all the bureaucratic implementation of laws and regulations are also subject to review (Ibid, p.34).

Recommendations

Macpherson made 8 recommendations regarding Indian education. These are listed below.

Quality of Tradition and Education – The Assembly of First Nations should be complimented for the quality of the study. Many of the organizing principles – including self-government and Indian jurisdiction over education – are sensible and attainable and are worthy of serious consideration by the Government of Canada.

Role of DIAND Regarding Tradition and Education – DIAND should be complimented for funding and publishing the study and for indicating that it wants to give serious attention to the study.

Continuation of Process – The Assembly of First Nations was encouraged to continue the process that was set in motion and to engage in a consultative process to identify and implement substantive education reforms. The government should be willing to enter serious discussion regarding the future process and major reforms in the field of Indian education.

Indian Direction of Process – Joint processes of government-Indian consultation in the field of education must be directed by the needs and views of Canadian Indians.

Self-Government – Indian jurisdiction over Indian education should form the centrepiece

of negotiations about reforms in Indian education. The Canadian government should accept and implement First Nations self-government in Canada.

Constitutional Amendment – The preferred mechanism for moving forward in Indian education would be a constitutional amendment dealing with the fundamental nature of the relationship between First Nations and Canadian governments. The constitution is the most important public document in a nation and it should deal with fundamental questions such as government structure, operation and the relationship between governments.

National Indian Education Law - The development of a national education statute was recommended. This would provide a real opportunity to improve the structure of education delivery systems and the quality of education for Indians students throughout Canada.

Contents of National Indian Education Law - It was recommended that the national Indian education law include the following.

- (a) Specify the **formal role for Indians** in the creation and administration of Indian education policy. The jurisdiction and control of Indians in this domain must be articulated as a central theme.
- (b) **Structure of Law** – The new law should be developed as a framework that creates basic structures, outlines philosophical principles and delineates major policy standards to serve as guides for the development and implementation of detailed education policy.
- (c) **Curriculum** – Emphasize Indian education curriculum.
- (d) **Native languages** – Emphasize the preservation of native languages.
- (e) **National advisory committee** – Include the establishment of a national advisory committee on Indian education.
- (f) **National Indian Education Institute** – Include the establishment of a national Indian education institute.

- (g) **Resourcing** – Deal with the question of resourcing the structures and programs established by law.

Reform Options

Macpherson outlined four options for reform in the field of Indian education. These are highlighted in table 2.

Table 2: The Legal Basis and Structural Formats for Reform Options

	REFORM	
OPTIONS	LEGAL BASIS – Is the option constitutionally permissible?	
	STRUCTURAL FORMATS	
	TO EXERCISE JURISDICTION	Model 1

Expanded
Provincial/
Territorial

Jurisdiction & Responsibility

Contains the most jurisdictional pitfalls in terms of “singling out” doctrine and would be a violation of S91(24) of the *Constitution Act* – 1867 **Three Sub-Models**

An organizational structure for Indian education at the Ministry level of the provincial/territorial governments

A specific regional organizational structure within a province/ territory

Specific local organizational structures throughout the province/ territory

Model 2

Expanded Federal Jurisdiction & Responsibility

No constitutional constraints.

The federal government has wide authority in this domain.

Sub-Models

Expand DIAND involvement in Indian education.

Create a new Ministry for Indian education.

Create a Crown corporation with a mandate over Indian education.

Federal government to assume jurisdiction over and responsibility for the education of Indians off reserve.

Expand involvement in provincial education policies and programs as they affect Indians.

Model 3

Expanded Indian Jurisdiction & Responsibility The legal basis could take 3 forms.

Constitutional Amendment – constitutional recognition for Aboriginal self-government with one negotiated subject matter being Aboriginal education

Federal Legislation – new legislation

Judicial Decision – the court might decide that there is a judicial basis for the concept of inherent Aboriginal sovereignty that might include an educational component **Sub-Models**

Expand jurisdiction at the national level through an existing national organization like the Assembly of First Nations or a new national Indian education authority.

Expand jurisdiction at the regional level through existing tribal councils or separate education authorities.

Expand jurisdiction at the local level through existing band councils or separate local education authorities/ boards.

Model 4

Co-operative

Options No constitutional constraints to combine two of more of the models.

(Macpherson, 1991, pp.39 & 40.)

1995 - Aboriginal Self Government – Federal Policy Guide

Overview

The federal government developed an approach that would enable Aboriginal peoples in Canada to make self-government a reality. The policy stated that one single form of government would not work for all Aboriginal communities; that self-government arrangements would recognize that Aboriginal peoples have the right to make decisions about matters internal to their communities, integral to their unique cultures, traditions and languages, and would respect their special relationship to the land and resources.

Self-government arrangements had to be affordable and consistent with the overall social

and economic policies of governments, while still taking into account the specific needs of Aboriginal peoples. They would be the subject of negotiations in the years ahead among Aboriginal peoples and federal, provincial and territorial governments; and they would proceed at a pace determined by Aboriginal peoples.

The policy included the following statements.

The inherent right of self-government does not include a right of sovereignty in the international law sense, and will not result in sovereign independent Aboriginal nation states.

Self-government agreements, including treaties, will have to provide that the *Canadian Charter of Rights and Freedoms* applies to Aboriginal governments and institutions in relation to all matters within their respective jurisdictions and authorities (DIAND, 1995, p.4).

Elements of Policy Framework

The key elements of the federal approach to self-government includes the following.

The inherent right of self-government is a Section 35 right.

Aboriginal governments and institutions will operate within the framework of the *Canadian Constitution*.

The Government proposes to negotiate self-government arrangements that are tailored to meet the unique needs of Aboriginal groups and are responsive to their particular political, economic, legal, historical, cultural and social circumstances.

The central objective of negotiations will be to reach agreements on self-government as opposed to legal definitions of the inherent right. The Government realizes that Aboriginal governments and institutions will require the jurisdiction or authority to act in a number of areas in order to give practical effect to the inherent right of self-government.

Subjects for negotiation could include: establishment of governing structures, internal constitutions, elections, leadership selection process; membership; marriage; adoption and child welfare; Aboriginal language, culture and religion; education; health; social services; administration and enforcement of Aboriginal laws; policing; property rights; land management; natural resources management; hunting, fishing and trapping; taxation; transfer and management of monies and group assets; management of public works and infrastructure; housing; local transportation; and licensing, regulation and operation of businesses.

Primary law-making authority would remain with the federal or provincial governments and include the following subject matters: divorce; labour/training; administration of justice issues; penitentiaries and parole; environmental protection; fisheries co-management; migratory birds co-management; gaming; and emergency preparedness.

Matters relating to powers of Canadian sovereignty, defence and external relations; and other national interest powers would remain under the authority of the federal government (Ibid, pp. 5-7).

Mechanisms for Implementation

It was indicated that agreements on self-government would be given effect through a variety of mechanisms including treaties, legislation, contracts and non-binding memoranda of understanding.

Treaties. Self-government rights could be protected under section 35 of the *Constitution Act, 1982*, in new treaties, as part of comprehensive land claim agreements, or as additions to existing treaties. Treaties created mutually binding obligations and commitments that were constitutionally protected. Suitable matters for constitutional protection include:

- a listing of jurisdictions/authorities by subject matter;
- the relationship of Aboriginal laws to federal and provincial laws;
- the geographic area within which the Aboriginal government would exercise jurisdiction and the people affected; and
- matters relating to the accountability of the Aboriginal government (Ibid, p.8)

Legislation could be used to:

- ratify and give effect to agreements – including treaties;
- implement particular provisions of agreements; and
- act as a stand alone mechanism when the parties wished to implement self-government arrangements, but not through a treaty (Ibid, p.9).

Contracts could be used for setting out detailed technical or time-limited agreements.

Memoranda of Understanding were not legally enforceable and could be used to set out political commitments on self-government.

Accountability

To ensure the accountability of Aboriginal governments and institutions, it was indicated that mechanisms of political and financial accountability should be comparable to those in place for other governments and institutions of similar size. There was the requirement

to establish mechanisms to ensure political, administrative and financial accountability and public accounts had to be prepared and made available for annual public audits of expenditures.

Aboriginal governments exercising law-making authority were required to establish:
clear and open processes of law-making;
transparent processes for proclaiming a law in effect;
procedures for the notification and publication of laws; and
procedures for the appeal of laws or other decisions (Ibid, p.13).

Aboriginal institutions exercising authorities were required to:
ensure that the decision-making processes regarding core functions were open and transparent;
ensure that information on administrative policies and standards was readily obtainable;
establish procedures for administrative review and appeal mechanisms (Ibid).

Financial Arrangements

In financing self-government, it was indicated that there was a shared responsibility among federal, provincial, territorial and Aboriginal governments and institutions. An agreement on cost-sharing between the federal government and the provincial/territorial government had to be obtained before self-government negotiations could begin.

In making financial arrangements, all participants in self-government negotiations were required to consider the following.

Comparability of basic public services for Aboriginal peoples to those available to other Canadians

The need for stable, predictable and flexible funding arrangements

Existing levels of support provided by governments

The jurisdiction, authorities, programs and services to be assumed

The ability of the Aboriginal government/institution to raise its own-source revenues

The efficiency and cost-effectiveness of the proposed arrangements (Ibid, p.15).

1996 - Report of the Royal Commission on Aboriginal Peoples (RCAP)

Overview

With respect to First Nations education, Chapter 5 of Volume 3 of the RCAP Report provides a thorough review that covers the following topics: background; the framework: lifelong, holistic education; the child; youth; teacher education programs; the adult; Elders; First Nations institutions; education for self-government; and new partnerships in First Nations education. For the purposes of this paper, the following areas are summarized: nation building; education for self-government; model of a First Nations

education system; and educational recommendations.

Aboriginal people should expect equity of results from education in Canada. This will not happen if the education system continues unchanged. For significant change to occur, First Nations people must have the authority to organize their education and to influence how their children are educated... Education is a core element of jurisdiction in First Nation self-government. In exercising self-governance, First Nations peoples would resume control of their education in its entirety, passing their own legislation and regulating all aspects of education. First Nations, public governments and community of interest governments could all establish their own education institutions under their own jurisdiction... With the recognition of self-government, First Nations controlled school authorities would operate under a First Nation's law making authority (Minister of Supply and Services, 1996, p.442).

Nation Building

In RCAP, it was advocated that First Nations peoples be recognized as peoples that form collectivities of unique character and that have a right of governmental autonomy. First Nations were entitled to control matters important to their nations without intrusive interference. This authority was not something bestowed by other governments – it was an inherent right in First Nations identity as peoples.

To rebalance the political and economic power between First Nations and other Canadian governments, the following principles were central to the implementation of recommendations made to assure the rebuilding of First Nations life in Canada.

First Nations have to be reconstituted. Bands, under the *Indian Act*, were usually too small for effective self-government. A process was proposed through which First Nations communities could join together in new institutions to seek recognition of their status as modern nations (Minister of Supply and Service, 1996, Volume 5, p.2).

A process must be established for the assumption of powers by First Nations. It was recommended that a definition of powers and mechanism of transfer from other orders of government be put in place. Phase one would involve a recognition period and First Nations governments would exercise core power on their present territory. Phase two would involve a treaty process in which full First Nations jurisdiction on an expanded land base would be negotiated with other Canadian governments. First Nations would have the right to exercise powers and control the pace of their own political development (Ibid).

There must be a fundamental reallocation of lands and resources. The spirit and intent of historical treaties with respect to sharing lands and resources has to be honoured... First Nations expect to be dealt with fairly, in a manner that recognizes their relationship to the

land and their right to share in its resources, and in a way that respects the solemn agreements enshrined in the treaties (Ibid, pp. 2 & 3).

First Nations peoples need education and crucial skills for governance and economic self-reliance... Educational reforms are not a prerequisite for self-government, the two go hand in hand. Measures must be taken immediately to bridge the gap between current educational attainment and community needs (Ibid, p. 3).

Economic development must be addressed if the poverty and despondency of lives defined by unemployment and welfare are to change.

In RCAP, it was recommended that Canada take the necessary action to establish a new relationship with First Nations for the future. The following recommendations were made.

The government was to issue a Royal Proclamation to signal the beginning of the new relationship. The Proclamation would: affirm the recognition of Aboriginal title and governance; confirm the principles of the *Royal Proclamation of 1763*; and make a rededication to mutual respect and trust (Ibid, pp. 4 & 5).

The first component of the renewed relationship would be nation rebuilding and nation recognition. Once First Nations have been reconstituted, they could exercise self-government in core areas of jurisdiction and seek formal recognition. Recognition would be the responsibility of the governor in council through a procedure set out in the proposed First Nations Recognition and Government Act (Ibid, pp. 5 & 6).

Recognized First Nations would request the desire to achieve full implementation of an existing treaty or the nation's wish to resolve a land claim. Formal consultations between First Nations representatives and federal, provincial and territorial governments through the development of a Canada-wide framework agreement were proposed. The proclamation would be complemented by legislation establishing the framework for the treaty process. A First Nations Treaty Implementation Act would provide the legislative framework under which regional treaty commissions would be established. It would lay out the general guidelines for negotiating the reallocation of lands and resources. An Aboriginal Lands and Treaties Tribunal Act would create a tribunal to deal with specific claims and assist treaty processes. Legislation would establish a new Department of First Nations Relations within which a Crown Treaty Office would have principal responsibility for the federal government's participation in treaty renewal and treaty making (Ibid, pp. 7 & 8).

In relation to nation building, the RCAP Report made the following recommendations.

Recommendation 2.3.3 The federal government put in place a neutral and transparent

process for identifying Aboriginal groups entitled to exercise the right of self-determination as nations, a process that uses the following specific attributes of nationhood.

The nation has a collective sense of national identity that is evinced in a common history, language, culture, traditions, political consciousness, laws, governmental structures, spirituality, ancestry and homeland.

The nation is of sufficient size and capacity to enable it to assume and exercise powers and responsibilities flowing from the right of self-determination in an effective manner.

The nation constitutes a majority of the permanent population of a certain territory or collection of territories (Minister of Supply and Service, 1996, Volume 5, p.156).

Recommendation 2.3.7 All governments in Canada recognize that the right of self-government is vested in Aboriginal nations rather than small local communities (Ibid, p. 159).

Education for Self-Government

The RCAP Report stressed the importance of preparing First Nations peoples to assume a wide range of responsibilities associated with self-governance. In building the capacity of First Nations, it was indicated that First Nations peoples, governments, educational institutions and professional organizations would have crucial roles to play. To increase educational success, the following recommendations were made.

Strengthen the contribution of Canada's post secondary institutions to the education of First Nations peoples.

Increase the number, capacity and stability of First Nations institutions.

Increase access for students through financial and other supports.

Create culturally based, relevant learning opportunities (Minister of Supply and Services, 1996, Volume 3, p.540).

It was indicated that First Nations communities, tribal councils and other organizations have been inventive in providing training and education for self-government. Design principles that contributed to program success included the following.

First Nations people are central decision makers.

Programs address the needs and priorities of First Nations peoples.

Programs include First Nations perspectives and methodologies.

Doors are opened to ensure participation of First Nations peoples.

Partnerships and mutual understanding are emphasized.

Creative ways are found to overcome obstacles (Ibid, p.543).

Model of a First Nations Education System

To shift educational authority from the federal government to the control of First Nations peoples, it was recommended that federal, provincial and territorial governments take the following actions.

Phase 1 – RECOGNITION - Acknowledge that education is a core area of self-government jurisdiction – one in which the nations and their communities can take initiatives.

Phase 2 – Under the proposed First Nations Recognition and Government Act, First Nations will reconstitute themselves, gain recognition, and exercise jurisdiction in core areas. Education will be one of the areas in which First Nations will wish to assume jurisdiction (RCAP, 1996, pp. 560 & 561).

In the transition period following recognition, nations would receive federal funding according to the responsibility that they assume in core areas of self-government. When established as a third order of government, they would receive revenue from sources within the nations and intergovernmental transfers. They would allocate resources for government services, including education systems and community schools. Nations would participate in negotiating province-wide or territory-wide policy frameworks with provincial or territorial governments, normally through representation in multi-nation organizations (Ibid, p.562).

A model of a First Nations Education System was provided in RCAP - the levels of organization and the way authority and responsibility might be distributed are outlined in Table 3.

Table 3: Organizational Levels and Characteristics of a First Nations Education System

ORGANIZATIONAL LEVELS

RCAP, 1996, P.564

CHARACTERISTICS

1st Level

Local Community

- representation on First Nations governing bodies
- local decisions on instruction of local students
- implements nation policy in local First Nations institutions
- negotiates tuition agreements
- participates in decision making in provincial/territorial institutions

2nd Level

Nation

- enacts or adopts education laws
- establishes education authority to make policy on goals, administration of schools/colleges within the nation
- tuition agreements
- purchase provincial/territorial services

- receives revenues and distributes funds for government services
- representation in multi-nation organizations

3rd Level

Multi-Nation Organizations

- negotiates policy framework with province/territory for tuition agreements, access to services, transfer between academic programs
- develops curriculum
- monitors academic standards
- may coordinate support of First Nations Post Secondary institutions
- advises provincial ministers of education, colleges, universities and training
- provides umbrella for representation of community of interest governments administering education

4th Level

Canada – Wide

Networks

- federated organizations reflecting nation interests
- Indigenous International University
- electronic clearinghouse
- statistical clearinghouse
- documentation centre
- associations for standard setting and accrediting post secondary programs and institutions

RCAP Educational Recommendations

RCAP includes 44 recommendations regarding First Nations education. These are listed in Table 4 in seven categories: funding; meeting First Nations educational needs; provincial and territorial education systems; First Nations educational jurisdiction; First Nations institutions; post secondary education; and joint initiatives.

Table 4: RCAP Education Recommendations

Number	RCAP EDUCATION RECOMMENDATIONS	
FUNDING	3.5.3	Early Childhood Education funding support 3.5.12
		Fund programs for First Nations youth who left secondary school before graduation to enable them to resume studies with appropriate curriculum, scheduling, academic and social support.
	3.5.21	Federal support of costs of Post Secondary Education students 3.5.22
		Metis & Non-status Indians scholarship fund 3.5.26
		Secondary Education institutions 3.5.37
		Government establish funding programs to support education for self-government 3.5.39
		Federal government fund First Nations and Inuit governments and organizations to provide student incentives to encourage students to complete BA and MA level studies and professional training in the areas of priority to self-government. 3.5.43
		Governments, media corporations and private donors provide funding to support distance education models for First Nations people who wish to pursue Post Secondary Education from their communities. 3.5.44
		Federal government fund national Aboriginal organizations to coordinate the establishment of a Canada-wide First Nations human resources inventory.
		MEETING FIRST NATIONS EDUCATIONAL NEEDS
	3.5.4	Governments act to reach agreements for mutual recognition of programs provided by their educational institutions to facilitate the transfer of students between educational

systems. 3.5.5 Governments collaborate with First Nations governments, organizations and educators to develop innovative curricula that reflect First Nations cultures and community realities. 3.5.6 First Nations language education be assigned priority in education systems. 3.5.11 Extend high school programs to communities. 3.5.13 Governments to encourage co-op initiatives – offer inducements to high schools that develop active co-op education programs. 3.5.10 Schools develop and implement comprehensive First Nations youth empowerment strategies. 3.5.28 Elders to play an active role in the education of First Nations children and youth in educational systems 3.5.29 Elder’s compensation for their education contribution 3.5.30 Education Ministries, boards, and educators recognize value of First Nations Elders knowledge 3.5.38 Launch a Canada wide youth campaign to make youth aware of opportunities to serve their nations – self-government – public service.

Table 4: RCAP Education Recommendations

PROVINCIAL & TERRITORIAL EDUCATION

3.5.7 Involve First Nations people in the decision making processes that affect the education of their children in provincial and territorial schools. 3.5.8 Schools serving First Nations children adopt policies that involve First Nations parents, Elders and families in the life of the school. 3.5.9 Provincial and territorial ministries require school boards serving First Nations students to implement comprehensive First Nations education strategy, developed with First Nations parents, Elders and educators.

EDUCATIONAL JURISDICTION

3.5.1 Federal, provincial and territorial governments acknowledge that education is a core area for the exercise of First Nations self-government. 3.5.2 Governments collaborate with First Nations governments, organizations or education authorities to support the development of First Nations controlled education systems. 1-flexible legislation; 2-mandate educational organizations in urban/non-reserve areas to act in field of education; 3-provide funding commensurate with assumed responsibilities 3.5.20 Government fulfil obligation to treaty nations by supporting full range of education services

INSTITUTIONS

3.5.25 Universities establish First Nations colleges to serve as focal point for academic, residential, social and cultural lives of First Nations students and to promote First Nations scholarship. 3.5.27 First Nations post secondary institutions create regional and national First Nations boards to: 1-establish standards for accrediting programs; 2-negotiate mutual recognition of course credits and credentials and facilitate student transfer between institutions; 3-establish cooperative working relationships with mainstream accreditation bodies and professional associations. 3.5.32 Establish Indigenous Peoples International University under First Nations control – capacity to function in all provinces/territories – to promote traditional knowledge, pursue applied research and disseminate information to achieve broad First Nations development goals. 3.5.33 Establish a Steering group to plan First Nations Peoples International University. 3.5.34 Establish an electronic clearinghouse to facilitate the free flow of information among First Nations communities, education and self-government workers. 3.5.35 Establish a working group to plan statistical clearinghouse funded by federal government with a two year mandate. 3.5.36 Establish a national documentation centre to research, collect, preserve and disseminate information related to residential schools – establish a working group with a two year mandate – funded by government.

Table 4: RCAP Education Recommendations

POST SECONDARY EDUCATION

3.5.14 Expand teacher education programs. secondary school teachers
 3.5.15 First Nations
 3.5.16 Teacher education accessible in communities
 3.5.17 Teacher education programs adopt a comprehensive approach to educator training, developing career paths from para-professional training to professional certification in education careers
 3.5.18 First Nations component in all teacher education programs
 3.5.19 Facilitate integrated delivery of adult literacy, basic education, academic upgrading and job training under the control of First Nations people 1- delegate training delivery responsibility to First Nations; 2-support adaptation of program design, admission criteria, language instruction and internal allocation of funds; 3-conclude multi-year block funding agreements
 3.5.23 Post secondary education institutes recognize First Nations languages equivalent to modern languages.
 3.5.24 Mainstream post secondary institutions undertake new initiatives to increase participation, retention, and graduation of First Nations students.
 1-welcoming environment 2-First Nations content and perspective across disciplines 3-First Nations studies/programs part of regular program 4-First Nations appointment to boards of governors 5- First Nations councils to advise institutions presidents 6-Active recruitment of First Nations 7-Admission policies that encourage access 8-Meeting spaces for First Nations students 9-First Nations student unions 10-recruitment of First Nations faculty members 11-support services with First Nations counselors 12-cross cultural sensitivity training for faculty and staff
 3.5.31 Facilitate exchanges among Elders and with academics.
 3.5.42 Professional associations and self governing bodies support professional training of First Nations people.

JOINT INITIATIVES

3.5.40 Corporations, businesses and governments identify co-op placement and internship opportunities in their organizations.
 3.5.41 Corporations and governments establish executive interchange opportunities in partnership with First Nations governments.

2000 - Forging New Relationships: Aboriginal Governance in Canada

Overview

The Standing Senate Committee on Aboriginal Peoples undertook a study to follow up on key issues in the RCAP Report related to First Nations governance and relations between First Nations and other governments in Canada. The objective of the study was to provide an opportunity for public discussion and to make recommendations to assist the federal government, First Nations organizations and First Nations communities in implementing their relationships with regard to processes for self-government.

The Committee was concerned that unresolved jurisdictional issues seriously hindered the full realization of self-government for many Aboriginal peoples (Standing Senate Committee on Aboriginal Peoples, 2000, p.19).

The Standing Committee on Aboriginal Affairs was strongly convinced that the development of new and renewed relationships, based on partnerships with Aboriginal peoples, required legislative and institutional reforms. They noted that the single most important factor for new and renewed relationships was the political will of the government. The Government of Canada must take action – both to implement the recommendations of this Committee and others like it, and to truly live up to its

commitments to forge new relationships based on principles of partnership and respect (Ibid, p.54).

Recommendations

The following recommendations were outlined in the report.

The Committee recommended that flowing from Section 35 of the *Constitutional Act*, 1982, federal approaches engaging Aboriginal peoples in self-government negotiations, be flexible, inclusive and demonstrate sensitivity to the diverse historical and contemporary circumstances of Aboriginal peoples and their aspirations for self-government. The Committee stipulated that Aboriginal self-government was an entitlement of First Nations, Inuit and Metis peoples and recommended that negotiation and implementation processes be made available on a basis which takes their respective interests and claims into account (Ibid, p.21).

The Committee recommended that a new Office of Aboriginal Relations be established through legislation by the federal government to assume responsibilities for negotiating and implementing relationships with all Aboriginal peoples. This office should be located outside DIAND. The Committee further recommended that this Office be organized with two distinct and separate units: a Treaty and Agreements Negotiation Division and a Treaty and Agreements Implementation Secretariat (Ibid, p.22).

It was envisioned that DIAND would retain its traditional roles and responsibilities, including program and service delivery arrangements, and the administration and management of relationships with First Nations that choose to remain under the *Indian Act*. However, in the long run, it was anticipated that DIAND could be fully dismantled and replaced by a single, more streamlined agency of the Government of Canada having responsibility for discharging the legal, fiduciary, constitutional and other obligations of the Crown arising from treaties and agreements with all Aboriginal peoples in Canada (Ibid, pp.23 & 24).

The Committee recommended that new legislation be introduced by the federal government for the purposes of providing a broad statutory framework to guide the Government of Canada in the negotiation and implementation of relationships by way of treaties and other agreements with Aboriginal peoples. The Minister responsible for the new Office of Aboriginal Relations should have responsibility for administering this legislation (Ibid, p.25).

The Committee recommended that with the agreement of Aboriginal peoples and their representative organizations, the Government of Canada establish through legislation a Treaty and Aboriginal Rights Implementation Review Commission. The Commission should serve as an independent oversight body for relationships involving Aboriginal

peoples and the Government of Canada and should report to Parliament. The Committee further recommended that the mandate of the Commission comprise three primary roles:

- i) A public reporting and education role;
- ii) An investigative role, encompassing ombudsman and compliance monitoring functions; and
- iii) A facilitation role (Ibid, p.31).

The Committee recommended that judges, senior officials and lawyers, working at all levels of the judiciary in Canada, be given opportunities for cross-cultural training and education to enhance their awareness of Aboriginal and treaty rights, developments in Aboriginal and treaty law, as well as Aboriginal perspectives, cultures and traditions, and legal issues facing Aboriginal peoples (Ibid, p.32).

FIRST NATIONS EXERCISING EDUCATIONAL JURISDICTION

Overview

Different legal mechanisms have been used to provide jurisdiction in First Nations education. They include the following:
educational provisions in the settlement of modern land claims agreement;
agreements through the treaty process;
self-government agreements; and
enactment of legislation – education act.

Some examples of these types of mechanisms are listed below. It is anticipated that these examples will be described in greater detail in the regional reports regarding educational jurisdiction.

1975 - James Bay and Northern Quebec Agreement

Education has been a priority in the settlement of some **modern land claims**. In this Agreement a **Cree School Board** was established under the provincial Education Act. The Cree School Board was given jurisdiction and responsibility for elementary education, secondary education and adult education for Crees and other persons residing within the territorial limits of the municipality.

2001 - *James Bay and Northern Quebec Agreement (JBNQA) Negotiations and Experience of Eeyou of Eeyou Istchee.* At a National Think Tank on Self-Government Negotiations held in Winnipeg, Manitoba, March 29 & 30, 2001, **Philip Awashish** made a presentation on the experience of the Eeyou of Eeyou Istchee (Cree Nation and People of the Cree Homeland) in the implementation of the JBNQA. Important information was shared regarding the experience of the Eeyou of Eeyou Istchee over the past 26 years. The following comments were made.

The history of our relations with other governments and nations can be summarized as a legacy of conflicts over land, natural resources and the exercise of power. It is a legacy of exclusion of Eeyou in the exercise of power and the consequent denial of Eeyou rights (Awashish, 2001, p.2).

Federal legislation – the *Cree-Naskapi of Quebec Act* replaced the *Indian Act* for the Cree and Naskapi local government. It was enacted for an orderly and efficient system of local government and for the administration, management and control of Category 1A lands and Category 1A-N lands.

This Act failed to recognize the inherent right of Eeyou self-government. This legislation reflected a local government regime with delegated authority from the federal government. Therefore, it derogates from the inherent nature of the Aboriginal right of self-government. This special federal legislation remains rigid and unchanging as it fails to take into account the evolving dynamics of Eeyou self-government. Because the Act flows from a treaty obligation, the treaty itself or the JBNQA fails to explicitly recognize and affirm the inherent right of Eeyou self-government (Ibid, pp. 6 & 7).

In order to enhance Eeyou self-government and to translate the concept of a new partnership and a new relationship...into reality, the following institutions and regimes were established according to the terms and provisions of the JBNQA.

⇒Cree School Board – under the control of the Eeyou of Eeyou Istchee – it has jurisdiction and responsibility for elementary, secondary education, post secondary and adult education for residents within the Eeyou communities (Ibid, p.6).

⇒Cree Board of Health and Social Services of James Bay – under control of the Eeyou of Eeyou Istchee – it has jurisdiction and responsibility for the administration of appropriate health and social services for all persons normally resident... in Eeyou communities (Ibid).

⇒Lands of the entire territory were classified and set aside and allocated to the Cree for their exclusive use and benefit. These lands were under the control and administration of the Cree local governments. **This categorization of lands has marginalized Eeyou and led to their exclusion in the governance of the territory and exclusion in economic and resource development (Ibid).**

⇒An understanding on a mechanism for the funding of the Cree local government and administration of certain programs and services was concluded. **The Government of Canada insisted on a release from their treaty commitments and obligations to Eeyou through funding agreements that fail to take into account the evolving needs**

and realities of Eeyou self-government (Ibid, p.7).

⇒ Cree Regional Authority – under control of the Eeyou – established by provincial legislation for the administration of programs and services and compensation funds payable to the Crees pursuant to the provisions of the JBNQA. **This Authority does not have any formal powers for Eeyou governance** (Ibid).

⇒ James Bay Regional Zone Council – created by provincial legislation – joint control by the Crees and the James Bay Municipality – to exercise powers over Category II lands in which the Cree exercise certain exclusive rights. **This is a dismal failure since both parties claim jurisdiction and governance** (Ibid).

⇒ James Bay Advisory Committee on the Environment – established to review and oversee the administration and management of the Environmental and Social Protection Regime. The Cree were accorded special status and involvement on the committee, however, **these consultative and advisory bodies have not had any significant impact in the making of policies and legislation for the management of wildlife and environmental protection** (Ibid, p. 8).

⇒ James Bay Native Development Corporation and Cree Trappers Association – established for economic and social development – controlled by Quebec. **This was a dismal failure as Quebec continued to pursue and implement policies that excluded the Crees from direct participation and full benefits from the economic development of Eeyou Istchee** (Ibid).

⇒ Joint Economic and Community Development Committee – tripartite advisory body that involved the Cree people, Quebec and Canada – to review and make recommendations respecting the establishment, expansion, operation and effectiveness of government economic development. **It has been proven to be an ineffective and nonfunctional mechanism for the social and economic development of the Cree people as Quebec and Canada continue to engage in a process of conflicts over jurisdiction and the denial of Eeyou rights** (Ibid).

To a large extent, Eeyou of Eeyou Istchee have been and are still being excluded in the economic development of natural resources within their homeland. This exclusion of Eeyou is due to the failure and refusal of the Governments of Canada and Quebec to respect their commitments and obligations under the JBNQA (Ibid, p.10).

The governments presently continue to exercise colonial domination and control over lands and resources of Eeyou Istchee and in exclusion of the Eeyou exercise of power... the signing of the JBNQA did not mark the end of conflicts, disputes and negotiations. Rather it signaled the beginning of continued interaction often confrontational between Eeyou of Eeyou Istchee and the Governments of Quebec and Canada (Ibid, p. 11).

The Eeyou of Eeyou Istchee have unsuccessfully engaged in numerous reviews on the proper implementation of the terms and provisions of the JBNQA and resorted to litigation (over 30 lawsuits) in defense of our rights and to resolve disputes over the letter, intent and spirit of the JBNQA. In most cases we have not been successful (Ibid, p.12).

The Governments of Canada and Quebec deny that the JBNQA is a treaty for the purposes of the *Constitution Act*, 1982; they consider the Agreement a contractual agreement (Ibid).

The Quebec government has said that the JBNQA has extinguished the rights of the Aboriginal peoples so that they cannot make any claim to self-determination under international law (Ibid).

Treaties, agreements and enabling federal or provincial legislation remain inflexible, rigid and unchanging instruments which have failed to evolve with the nature, scope, origin and exercise of the Eeyou right of self-government (Ibid, p.13).

Recommendations for Legitimacy, Power and Resources of an Effective Self-Government

⇒ **Land claims agreements and enabling legislation** must reflect and explicitly recognize the inherent nature of the right of Aboriginal self-government; they must include enforceable mechanism for the proper implementation of such agreements or treaties; they must recognize and affirm the practice of traditional governance and application of traditional law; they must be clear on the responsibilities, jurisdiction, obligations and commitments of all parties; they should be accompanied by statements of understanding negotiated and signed by the parties that set forth the understanding on the spirit, intent and meaning of the agreements and guide the implementation of these instruments; they must clearly specify that the agreement constitutes a treaty for the purposes of section 35 of the *Constitution Act*, 182 (Ibid, pp. 14 & 15).

⇒ Aboriginal peoples must plan for self-sufficiency in many areas of governance including revenues for self-government (Ibid, p.14).

⇒ Mechanisms, measures and processes respecting the exercise of Aboriginal self-government must provide for accountability, flexibility and opportunity to meet the challenges, evolving realities and changing needs of Aboriginal governance (Ibid, p. 15).

⇒ The social and health status of Aboriginal peoples must be addressed properly, adequately and immediately by the Aboriginal and non-Aboriginal governments and authorities (Ibid).

⇒ Aboriginal peoples and governments and non-Aboriginal governments must redefine and establish just relationships; any partnership on the governance of Aboriginal lands and resources must extend beyond consultative and advisory bodies, beyond delegated authority and beyond administration and delivery of government programs and services (Ibid, p.16).

⇒ The meaning and practice of Aboriginal self-government must be determined by distinct Aboriginal nations and peoples; Aboriginal peoples must progress forward and beyond board governance to nation governance (Ibid).

Exclusive domination and control are serious flaws of the heart and spirit. These flaws of the heart and spirit cannot be rectified by laws, treaties and constitutions of nations and governments... The essential element in any righting of wrongs eludes law and morality because justice lies in the will of the powers that be. Therefore, the powers that be must find within themselves the will, the wisdom, the courage, the good faith and a sense of social justice to end the politics of exclusion and denial of rights (Ibid, p.17).

1990 - Framework Agreement on Indian Education in Manitoba

The purpose of the framework agreement was to recognize the intent to negotiate formal arrangements on Indian education in Manitoba. It was agreed that the following objectives would be pursued in implementing the agreement.

Identify educational matters that required immediate or long term resolution.

Develop an agenda for change that would accelerate Indian control, authority, management and jurisdiction in Indian education in Manitoba.

Conduct research and projects to support and enhance education under Indian jurisdiction.

Develop models of possible education systems under Indian control and management.

Identify the appropriate role of DIAND regarding its educational responsibilities.

Develop a plan for devolution to Indian people of control over and management of educational institutions.

Develop a process for establishing funding arrangements for Indian education.

In 1994, the Assembly of Manitoba Chiefs signed the Manitoba Framework Agreement. The agreement was a bilateral treaty process with Canada that represented a new government-to-government relationship. The agreement stipulated that the peoples of the First Nations would make the decision on the forms of self-government that would emerge from the process.

1993 - Umbrella Final Agreement – Council for Yukon Indians

This settlement agreement was a land claims agreement within the meaning of Section 35

of the *Constitution Act, 1982*. The agreement stated that the Government and Yukon First Nations may negotiate the devolution of programs and services dealing with education to First Nations. Parties to the agreement could also negotiate guaranteed representation for Yukon First Nations on government commissions, councils, boards, and committees to deal with education.

1998 - Nisga'a Final Agreement

This Agreement is a treaty and a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982* (p.17). Nisga'a Lisims Government could make education laws for pre-school through grade 12. Curriculum, examinations and other standards were required to permit the transfer of students between school systems at a similar level of achievement and permit admission of students to the provincial post secondary education systems. The certification of teachers has to be in accordance with standards comparable to standards applicable to those who taught in public or independent schools in British Columbia. Nisga'a laws regarding post secondary education had to include standards comparable to provincial standards.

1998 - Mi'kmaq Education Act

The Mi'kmaq Nation sought the **enactment of legislation** – Bill C-30, the *Mi'kmaq Education Act* to enable the band councils of participating communities to exercise jurisdiction over education through **delegated authority**. Clause 4.2 indicated that the Agreement was not a treaty.

Jurisdiction was defined as “ the power delegated to participating communities”. More specifically, in relation to primary, elementary and secondary levels of education, the participating communities had the power to:

- make and administer laws on reserve; and
- enter into agreements respecting members resident on reserves.

The band councils of participating communities were granted the authority to exercise educational jurisdiction. The band council could establish a community education board that was responsible to the band council. The band council would determine the powers, duties, functions and composition of the community education board.

Participating communities were required to provide primary, elementary and secondary education programs and services comparable to those provided by other education systems in Canada, to permit the transfer of students between education systems without academic penalty.

Mi'kmaw Kina'masuti was a body established to support the delivery of education programs and services by participating communities.

DISCUSSION OF FINDINGS

Key Findings

In terms of the literature reviewed regarding First Nations educational jurisdiction, key findings are discussed in relation to the questions posed at the beginning of the paper.

(1) Meaning of First Nations educational jurisdiction. Clarity and consensus on what educational jurisdiction means are needed if First Nations people at all levels are to make informed decisions on how much or how little jurisdiction is required at local, regional and national levels. According to the findings of the study, the concept of educational jurisdiction involves a variety of meanings: it can refer to inherent jurisdiction, constitutionally based jurisdiction and delegated jurisdiction. This concept can also be discussed in terms of “degree”, that is whether the jurisdiction for First Nations education is an exclusive (sole), partial, or shared responsibility.

(2) Exercising Educational Jurisdiction at the Local, Regional and National levels. When implementing educational jurisdiction at the local, regional and national levels, a number of key elements that must be addressed emerged from the findings of the study. They include: legal mechanisms; structures/bodies; financial arrangements; and general recommendations.

Legal Mechanisms – When exercising educational jurisdiction at the local, regional and national levels, First Nations must determine the legal mechanisms they plan to use to exercise educational jurisdiction. At the **local level**, will First Nations provide educational provisions in modern land claims agreements, treaty process agreements, self-government agreements or enact legislation (Education Act)?

At the **local, regional and national levels**, First Nations must decide what legislation and policies are required to implement and exercise jurisdiction in education without infringing on the Aboriginal and treaty rights to education. At the national level, would First Nations support a constitutional amendment that deals with the fundamental nature of the relationship between First Nations and Canadian governments and provides recognition for First Nations self-government that would include First Nations education? At the national level, would First Nations agree to the development of new federal legislation such as a National Indian Education law? At the regional level, would First Nations expand educational jurisdiction through tribal councils or education authorities? At the local level, would First Nations expand jurisdiction through existing band councils/ self-government bodies or local education authorities? The roles and responsibilities regarding expanded authority would have to be clearly specified at all levels.

It should be noted that the majority of First Nations are choosing to use **Self-Government Agreements (SGA's)** to achieve some measure of jurisdiction over education. According to DIAND, approximately 80 tables have been established to bring First Nations and Inuit communities together with the federal government, provinces and territories, to negotiate self-government arrangements.

A brief analysis of some of the SGA's revealed that jurisdiction in education negotiated in these agreements is "limited and conditional". Educational jurisdiction is limited by "comparability clauses" whereby the federal government insists that First Nations deliver education programs and services at levels comparable to those of the province. First Nations are thus obliged to meet the standards and content of the educational system/program of the provincial or federal governments, not the standards and content that they may desire in education based on their needs and cultural values. If First Nations are required by the SGA to deliver an educational program that is comparable to the provincial system, there will be little or no available options to move away from the status quo. The net effect is that the authority of First Nations to exercise jurisdiction over education and their ability to develop and deliver education in a manner that addresses the cultural, social and educational needs of the communities and students will be enormously limited and diminished.

In relation to the experience of the Crees regarding their land claims agreement – the James Bay and Northern Quebec Agreement – they made the following recommendations. **Land claims agreements and enabling legislation** must reflect and explicitly recognize the inherent nature of the right of Aboriginal self-government; they must include an enforceable mechanism for the proper implementation of such agreements or treaties; they must recognize and affirm the practice of traditional governance and application of traditional law; they must be clear on the responsibilities, jurisdiction, obligations and commitments of all parties; they should be accompanied by statements of understanding negotiated and signed by the parties that set forth the understanding on the spirit, intent and meaning of the agreements and guide the implementation of these instruments; they must clearly specify that the agreement constitutes a treaty for the purposes of section 35 of the *Constitution Act*, 182 (Awashish, 2001, pp. 14 & 15).

Ensuring that agreements are comprehensive and reflective of the needs and desires of First Nations is extremely important because according to the experience of the James Bay Cree, "treaties, agreements and enabling federal or provincial legislation remain inflexible, rigid and unchanging instruments which have failed to evolve with the nature, scope, origin and exercise of the Eeyou right of self-government" (Ibid, p.13).

Structures/Bodies – It is evident from the findings in the paper that there is a need for First Nations to establish structures/bodies for the implementation of educational jurisdiction at the local, regional and national levels. To renew and reform First Nations

education, a comprehensive education infrastructure, that includes structures at the local, regional and national levels, will enhance and support a competent and informed exercise of jurisdiction that will benefit First Nations communities, their members and their children. While the structures listed below serve as a starting point for discussion, First Nations may wish to be innovative and pursue other types of structures that are more suitable to their particular circumstances.

In relation to these structures, First Nations must clearly define the roles and responsibilities of each; develop policies and procedures; design management systems for operations; and provide training for staff in the areas of management and administration.

At the **local level**, three specific kinds of structures were described:

- (1) *First Nations political governance body* - Chief and Council, Self-Government Body, etc.;
- (2) *local education authority* - school committee, school board, etc.; and
- (3) *community education delivery bodies* - schools, post secondary institutes, training bodies, planning committees, etc.

At the **regional level**, three specific kinds of structures were described:

- (1) *First Nations political bodies* - tribal council or regional federation, etc.;
- (2) *regional education authority* - central school board, education centre, or tribal school division, etc.;
- (3) *regional educational delivery bodies* - post secondary education institutes, training bodies, etc.

At the **national level**, two kinds of structures were described:

First Nations political bodies

- Ministry of State for First Nations Relations/ Office of Aboriginal Relations/ Treaty and Aboriginal Rights Implementation Review Commission
- First Nations Recognition and Government Act
- First Nations Treaty Implementation Act
- Aboriginal Lands and Treaties Tribunal Act
- Assembly of First Nations

(2) *national institutions*

- National Education Commission
- National Advisory Committee
- National Indian Education Institute
- Indigenous International University
- Electronic Clearinghouse
- Statistical Clearinghouse
- Documentation Centre
- Educational Associations

Financial Arrangements - Financial arrangements for First Nations education are part of existing funding agreements that are provided by the federal government (DIAND) and processed through the political governance body for each First Nation. With respect to the educational jurisdiction, fiscal decisions regarding educational funding are controlled by the federal government with no input from First Nations. This places a severe limitation on the educational jurisdiction exercised by First Nations. As stated in the literature, “First Nations will determine the extent of the need for resources and the allocation of resources to the various programs and services required in their communities. First Nations will negotiate directly with the Government of Canada... under the bilateral process for resources required to meet their needs” (Assembly of First Nations, *A Declaration of First Nations Jurisdiction Over Education*, p.5).

One of the barriers to exercising educational jurisdiction was funding. It was clearly stated in the literature reviewed that adequate funding had not been provided for First Nations education or the transfer of educational jurisdiction to First Nations. Few First Nations have access to the negotiations and payment processes of the federal government. First Nations have little to no input to resourcing decisions, budget negotiations and cost sharing formulae.

Recommendations in the literature reviewed have requested that the federal government provide adequate resources for First Nations: to conduct local community needs assessments; to formulate long term education plans, to establish education authorities, to provide required training in management and administration; to support education for self-government; and to fund First Nations educational institutions.

It is evident that this will be an area of crucial consideration when discussing educational jurisdiction. Efforts to address this issue will require joint effort on the part of First Nations and the federal government.

General Recommendations – Other recommendations that emerged from the literature in relation to the implementation of First Nations educational jurisdiction are noted below. On-going communication and consultation were essential in building understanding and support for First Nations educational jurisdiction at the local, regional and national levels. Strong networks among organizations and agencies within communities and at the regional and national levels were needed to ensure involvement and support of educational jurisdiction.

Ensuring capacity to effectively manage and administer programs and services within First Nations structures was found crucial. Thus the provision of training was found to be a necessary requirement to ensure success.

Future Directions to Advance Educational Jurisdiction Locally, Regionally and Nationally. Discussions of the frameworks and reform options to advance First Nations educational jurisdiction that were provided in the literature reviewed, *Tradition and*

Education, the Macpherson Report and the RCAP Report, must be undertaken at the local, regional and national levels.

Important Considerations

It is important to keep in mind the following considerations when making decisions about First Nations educational jurisdiction.

“One model” of autonomous First Nations government or structures that can be exported to all situations does not exist. Every First Nation self-government scheme is the product of circumstances that are specific to it. How First Nations educational jurisdiction is exercised at the local and regional levels is dependent on the circumstances and factors specific to it.

There is strength in unity. Size may be used as a measure of capacity and small nations may have difficulty in accessing resources and unequal bargaining power with the federal government. There is more clout with larger collectives. Furthermore, it was clearly stated in the RCAP Report that Bands, under the *Indian Act*, were usually too small for effective self-government. A process was proposed for First Nations to join together to form new institutions to seek recognition of their status as modern nations (Minister of Supply and Services, 1996, Volume 5, p.2). Recommendation 2.3.7 of the RCAP Report stated that all governments in Canada recognize that the right of self-government is vested in Aboriginal nations rather than small local communities (Ibid, p.159). Thus, this is an issue that will require a great deal of discussion in the future.

Many of the documents reviewed referred to the need for Canada to establish a new relationship with First Nations. A key component of the new relationship would be nation building and nation recognition. While this required legislative and institutional reforms, it was indicated that the single most important factor for the new relationship was the political will of the government. This is in fact was one of the key messages provided in the experience shared by a member of the James Bay Cree. Even with a land claims agreement, it was stated that the governments continued to exercise colonial domination and control over lands and resources and excluded the Crees from the exercise of power. Philip Awashish said that “justice lies in the will of the powers that be. Therefore, the powers that be must find within themselves the will, the wisdom, the courage, the good faith and a sense of social justice to end the politics of exclusion and denial of rights. Thus, to move towards true jurisdiction, First Nations must engage in discussions to find a way to influence the “will of the government”.

With the recent Supreme Court Corbiere decision, discussions regarding the jurisdiction of education of urban First Nations and off reserve First Nations students must be undertaken in earnest.

Key Questions

As nations begin to exercise jurisdiction over education, some of the key questions that require careful consideration and ongoing discussion at the local, regional and national levels are highlighted below.

What is the meaning of First Nations educational jurisdiction?

- a. How is educational jurisdiction defined?
- b. What type/degree of educational jurisdiction is exercised?

How is First Nations educational jurisdiction exercised at the local, regional and national levels?

What legal mechanism will your nation use to assume greater jurisdiction over education ? What legislation and policies are required at the local, regional and national levels? How are roles and responsibilities defined within the legislation/policies?

What structures/bodies are used to exercise educational jurisdiction at the local, regional and national levels? How are the roles and responsibilities defined within these structures?

What financial arrangements?

3. What future direction should First Nations take to advance educational jurisdiction?

- a. What steps should be taken at the national level to advance educational jurisdiction?
- b. What should be included in a national strategy and plan?

4. How will off reserve and urban First Nations educational jurisdiction be addressed?

CONCLUSION

In all the literature reviewed, there has been a consistent and compelling message that calls for governments to make meaningful First Nations educational reforms to close the

educational gap that exists between First Nations and Canadians. One of the key requirements for change that has emerged repeatedly over the years is the need for First Nations jurisdiction over First Nations education. This can only be accomplished with the full cooperation and joint efforts of First Nations and Canadian governments. First Nations are passionate about the education of their peoples; they will persist in pursuing what is rightfully theirs. They will continue to assert their indigenous right to educational jurisdiction to ensure that First Nations move towards the implementation of their vision of education.

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