



***The
Federal Government's and the
Newfoundland and Labrador
Government's Views on Aboriginal
Governance: A look at the Literature***

Brenda Kelleher-Flight Ph.D.

April 2009

Federal Viewpoints and Stance on Governance

Aboriginal groups complain about the failure of the federal government to live up to what are understood to be federal obligations to aboriginal people, while for its part the federal government largely remains silent and moves cautiously, often only under the impetus of organized protest or legal action (Tanner, Kennedy, McCorquodale & Inglis, 1994), p. vi.

Canada has always had to deal with the presence and demands of Indigenous people. The federal Government has entered into several agreements which shape the history of aboriginal governance in this country. Three examples follow.

The negotiations which began in the late 1970s between the Dene and the Métis of the Mackenzie Valley ended 21 years later with the ratification and approval of the Gwich'in Comprehensive Land Claim Agreement in 1991 (Crane, Mainville, & Mason, 2006), p. 76. This treaty did not address the issue of self-government and it was acknowledged that the concept of self-government would be negotiated within the framework of public government (Crane et al., 2006), p.77.

In 1992, the Nunavut Agreement was ratified by the Inuit and in 1993 it was approved by Parliament (Crane et al., 2006), p.78. This Agreement established a new political territory and permitted local government within the larger Canadian context.

In 1994, the Yukon First Nations Self-Government agreements were signed after 20 years of negotiation. The *Act* set out four legislative and administrative areas of jurisdiction that a First Nation may exercise. These related to: management of specific internal affairs, operations and management; certain programs and services; regulation of land usage; and laws related to specific types of taxation (Crane et al., 2006), p. 81.

These examples affirm, to some degree, Canada's commitment to acknowledge the rights of aboriginal people to govern some of their own affairs. Canada also was a significant partner on the world stage. Canada stated to a UN Working Group (Group, October 1996)

We must take into account the variety of circumstances in which both states and indigenous peoples find themselves world-wide. We must avoid any prescriptive solutions, as desirable as they may seem, but allow the right of self-determination to be implemented flexibly through negotiations between governments and indigenous groups (Xanthaki, 2007) p.194.

According to a report published by the Institute on Governance in 1997, the Government of Canada announced a new Aboriginal Action Plan in its document, "Gathering Strength." Based on the four principles of mutual respect, mutual recognition, mutual responsibility and sharing as recommended by the Royal Commission on Aboriginal Peoples, the Plan begins with a *Statement of Reconciliation* that acknowledges past mistakes and injustices and moves to a *Statement of Renewal* with a vision of the future. One of the four objectives in "Gathering Strength" calls for the development of a new fiscal relationship based on arrangements which are stable, predicable, and accountable and will help foster self-reliance.

Elements of the Action Plan to achieve this objective include the following:

- a) the establishment of multi-year funding arrangements;
- b) a pilot project to consolidate funding from different government departments into one funding arrangement;
- c) the establishment of joint fiscal-relations tables in several provinces to develop government-to-government transfer mechanisms;
- d) the enhancement of accountability arrangements of Aboriginal governments and institutions to their members and to the Government of Canada;
- e) working with Aboriginal governments to increase their capacity to generate their own revenue; and
- f) a number of measures to strengthen the capacity of First Nations in data collection and exchange (p.20).

In 1998, the Mi'kmaq Education Act was passed enabling the Mi'kmaq to regulate their internal affairs specific to education (Crane, Mainville & Mason, 2006), p. 82.

In 1999, Canada defined self-determination as the

right which can continue to be enjoyed in a functioning democracy in which citizens participate in the political system and have the opportunity to have input in the political processes that affect them (Foster, 2001), p.151.

In that same year, the United Committee on Human Rights recommended to Canada that “the practice of extinguishing inherent aboriginal rights be abandoned, as it is incompatible with Article 1 of the Covenant” (Crane et al., 2006), p.248. In the same year, as part of the Gathering Strength initiative, the federal government committed itself to working out government-to-government relationships at an agreed-upon pace acceptable to First Nations (Graham, Latourelle, & DeGagné, 2005), p.2. In 2001, Canada stated that it accepted “a right of self-determination for indigenous peoples which respected the political, constitutional, and territorial integrity of democratic states (Nations, 1999). However, later they objected to the adoption of the Declaration proposed by the United Nations which surprised many (Xanthaki 2007) p.110.

Even though Canada resisted (Wheatley, 2005), p.119, after many discussions a draft Declaration was accepted.

All parties, including states, indigenous representatives and the international community, realize the importance of the Declaration, even as a draft. Anaya views the draft as an authoritative statement of norms concerning indigenous peoples on the basis of generally applicable human rights principles, indigenous representatives consider its contents comprehensive and reflecting the legitimate aspirations of indigenous peoples as a whole (Foster, 2001) p. 120.

Irrespective of the resistance of the federal Government, progress continued to be made in favour of Aboriginal people. Crane, Mainville & Mason outline three other significant events (Crane et al., 2006), pp.82-91. In 2000, the Nisga'a Final

The Federal Government's and the Newfoundland and Labrador Government's Views on Aboriginal Governance:

Agreement sets out a general framework for self-governance of the Nisga'a Nation. The 2003 Tlicho Agreement was signed and the *Ticho Land Claims and Self-Government Act* was proclaimed. In 2004, the Westbank First Nation Self-Government Agreement was signed and legislation proclaimed. This act permitted the people to "implement aspects of the inherent right of self government.

In 2005 Labrador Inuit Land Claims Agreement was approved. It took 13 years of negotiation before the claim was ratified in 2004 and approved by Parliament in June 2005 (Crane, Mainville & Mason 2006), p.91. It gave the LIA the right to make laws in 22 areas from internal affairs to corrections (Crane, Mainville & Mason 2006), p.92.

This chronology demonstrates that Canada has made strides in recognizing the rights of some of the indigenous groups. However, the federal debate, as with debates around the world, is between the rights of the individual versus the rights of a group. There are cautions that groups might perpetuate practices that are illiberal, demoralizing or unacceptable to individuals within the group or setting (Xanthaki 2007), p. 19.

In fact, when the province of Newfoundland and Labrador joined Confederation references to the rights of Aboriginal people were omitted. According to Tanner, Kennedy et al. the "institutional framework of aboriginal relations with the Newfoundland and Labrador government is unlike that in any of the other provinces or territories (Tanner, Kennedy, McCorquodale, & Inglis, 1993).

The terms of union under which Newfoundland and Labrador joined Canada contained no reference to aboriginal peoples... and the Indian Act was not extended to Newfoundland (Kennedy, 2005), p. 3. This was addressed in 1954 with the first of a series of federal-provincial agreements under which Ottawa paid most of the costs for Inuit and Indians for services administered by various departments of the provincial government. Initially, these agreements funded people in designated communities, thus was limited to persons living in northern Labrador. This decision may have been supported based on the meticulous records kept by the Moravians in northern Labrador (Kennedy, 2005), p.3.

Tanner, Kennedy et al. contend that “from Nova Scotia to the Yukon, Canada has a historically entrenched aboriginal administrative system, one based on the ‘wardship’ principle... which means that the people of aboriginal descent are judicially categorized, and on the basis of this categorization certain of them are, in some sense, legally dependent, so that they, and some of their lands, fall under special federal administration (Tanner et al., 1993), p.2.

Thus on the basis of the terms of union and the practices within Newfoundland and Labrador it is important to acknowledge that the historical perspective varies from the historical perspective of the other Canadian provinces.

Newfoundland and Labrador

In Newfoundland, with the exception of one community, [Conne River, which was recognized as a native community by the Government of Newfoundland and Labrador in 1973 (River, 1999), p.1] nothing like this existed (Tanner et al., 1993), p. 2. The second exception occurred on December 6, 2004, when the Governments of Canada and Newfoundland and Labrador passed the *Labrador Inuit Claims Agreement Act* establishing the Labrador Inuit Settlement Area (LISA totaling about 72,500 square kilometers in northern Labrador and 48,690 square kilometers of sea (K. Government, 2006a), p.1. This legislation (*An Act To Ratify And Give The Force Of Law To The Labrador Inuit Land Claims Agreement*) acknowledges the constitutional rights of these Aboriginal peoples because it states

WHEREAS the *Constitution Act, 1982* (Canada recognizes and affirms the aboriginal and treaty rights of the aboriginal peoples of Canada ;

AND WHEREAS the Inuit of Labrador are an aboriginal people of Canada;

AND WHEREAS the Inuit of Labrador claim aboriginal rights in and to the Labrador Inuit Land Claims Area based on their traditional and current use and occupancy of the lands, water and sea ice of the

Labrador Inuit Land Claims Area in accordance with their own customs and traditions;

AND WHEREAS the Inuit of Labrador as represented by the Labrador Inuit Association, Her Majesty the Queen in right of Newfoundland and Labrador and Her Majesty the Queen in right of Canada have negotiated the Labrador Inuit Land Claims Agreement in order to define and achieve certainty with respect to their respective rights and powers in relation to the aboriginal rights claimed by the Inuit of Labrador ("AN ACT TO RATIFY AND GIVE THE FORCE OF LAW TO THE LABRADOR INUIT LAND CLAIMS AGREEMENT," 2006), p.1.

Even though the Inuit will not own the land, they have special rights related to traditional land use. (N. Government, 2008), p. 2; (K. Government, 2006b) December; (Kennedy, 2005). This agreement permitted the Inuit to structure themselves as deemed appropriate to govern their own affairs. They held elections and on October 17, 2006 they formed their own government (K. Government, 2006b). As of June 2006, the Nunatsiavut government passed 16 acts including *The Nunatsiavut Assembly Act, Nunatsiavut Constitution Act, Nunatsiavut Civil Service Act and the Nunatiavut Elections Act* (K. Government, 2006a), p.1 demonstrating the ability of Aboriginal peoples to govern themselves responsibly and effectively.

Despite the different relations in Newfoundland and Labrador, Aboriginal communities have many of the social problems found elsewhere in Canada... and the official provincial policy is to treat aboriginal people the same as other citizens... (Tanner et al., 1993), p.1. Tanner, Kennedy, McCorquodale and Inglis found that they had few sources of evidence regarding the government position on Aboriginal issues but there were many sources outlining the positions of the Aboriginal groups in the province (p.5).

From the government perspective, Labrador has always been different. After Confederation there existed a division of Northern Labrador Affairs (DNLA)

(Tanner et al., 1993), p.17. Today there is still a Department of Labrador and Aboriginal Affairs in Newfoundland and Labrador and a federal department of Canadian Heritage with a branch for Aboriginal Affairs.

Some of the difficulties complained of by at least one aboriginal group, the Labrador Metis, centers around what they perceive as restrictions imposed by the province towards changes they wish to adopt to facilitate more direct forms of self-government. The province's prime concern is with its own lack of jurisdictional authority and its lack of the funds to support the moves requested by aboriginal groups (Tanner, Kennedy, McCorquodale, & Inglis, 1994), p.v.

It is clear that the federal and provincial governments are attempting to negotiating settlements with each aboriginal group, however, settlement with one group does not necessarily mean easier negotiations for the next.

References

- AN ACT TO RATIFY AND GIVE THE FORCE OF LAW TO THE LABRADOR INUIT LAND CLAIMS AGREEMENT, Amended: 2005 c18; 2006 c18 (2006).
- Crane, B. A. Q. C., Mainville, R., & Mason, M. W. (2006). *First Nations Governance Law*. Markham: LexisNexis Butterworths.
- Foster, C. (2001). Articulating Self-Determination in the Draft Declaration on the Rights of Indigenous Peoples. *European Journal of International Law*, 12, 141-157.
- Government, K. (2006a). Highlights from the Nunatsiavut Assembly Meeting in May. *Nunatsiavut News Bulletin*, June.
- Government, K. (2006b). Looking Back and Moving Proudly Forward. *Nunatsiavut News Bulletin*, December.
- Government, N. (2008). *Our Land: Labrador: Inuit: Land Claim*. Retrieved January 2009, 2009, from www.nunatsiavut.com/en/landclaim.php
- Graham, J., Latourelle, A., & DeGagné, M. (2005). *Roundtable on Government-to-Government Relationships in the First Nations Context*. Ottawa: Institute on Governance.
- Group, U. W. (October 1996). *Statement of Canada in the Commission Working Group*. Geneva 31.
- Kennedy, J. C. (2005). *Understanding the Labrador Metis History*. St. John's: National Judicial Institute Seminars on Aboriginal Law.
- Nations, U. (1999). *Report of the Commission Working Group*. Geneva: United Nations.
- River, C. (1999). *Conne River First Nation*, 2009, from <http://www.kinu.ns.ca/excellence/conneriver.html>
- Tanner, A., Kennedy, J. C., McCorquodale, S., & Inglis, G. (1993). *Relations between Aboriginal Groups and Government in Newfoundland and Labrador*. St. John's: A Research Report for the Governance Project: Royal Commission on Aboriginal Peoples.
- Tanner, A., Kennedy, J. C., McCorquodale, S., & Inglis, G. (1994). *Aboriginal Peoples and Governance in Newfoundland and Labrador*. St. John's: A Report to the Governance Project, Royal Commission on Aboriginal Peoples.
- Wheatley, S. (2005). *Democracy, Minorities, and International Law*. Cambridge: Cambridge University Press.
- Xanthaki, A. (2007). *Indigenous Rights and United Nations Standards*. New York: Cambridge University Press.