

Aboriginal Self-Government In Canada

Thomas J Courchene

In this International Year of Indigenous Peoples, it is a special honour and privilege to be invited to speak to Australians about aspects of aboriginal self-government in Canada. At the outset, I must note that I am not an expert on aboriginal self-government in Canada. Few people probably are, given the complexity and the dimensions of the issue, particularly when one realises that aboriginal self-government will eventually entail hundreds of separate negotiations. What I will offer are a few broad perspectives and then some more-detailed analysis of what I think is the most significant development, namely the set of negotiations relating to self-government for the fourteen First Nations in the Yukon.

There is a second introductory point that merits airing. On the surface at least, our two nations appear quite similar. We are both parliamentary federations. We are both constitutional monarchies. (While the recent enthusiasm in Australia for becoming a republic does not have its counterpart in Canada, we have already gone through the emotional exercise of replacing the Union Jack with the Maple Leaf.) We are among the largest nations in the world; we are both resource-rich and we both have generous social contracts sustained by comprehensive equalisation programs. Actually, Canada followed Australia's lead here, basing our equalisation program on the principles enshrined in the Commonwealth Grants Commission. Of particular relevance for this paper, we both share the land with indigenous peoples, or First Nations as they prefer to be called in Canada. And neither nation can be proud of the manner in which historically or culturally we have dealt with these first peoples.

In spite of these similarities, our respective histories and culture and our geo-economic and geo-political environments are so different that policies appropriate to Canada are not likely to make much sense for Australia and vice versa. Thus, while you may find some insights and indeed some potential policy options in what I have to say about aboriginal self-government in Canada, I want to emphasise from the outset that my comments are intended to present information about aboriginal self-government in Canada and *not* to make recommendations about what may be appropriate for Australia.

This paper is divided into three sections. The first part will consist of a brief profile of Canada's aboriginal peoples. Part II will then focus on an analytical or theoretical model for self-government — one that proposes a First Nations province (or a small number of such provinces) within Canada. This model may have very little to do with reality. Its role is to present a conceptual framework for thinking about aboriginal self-government. The third and most important part outlines the recent agreements with the Yukon First Nations which will grant them quasi-provincial or territorial status (not in the political sense, but rather in terms of their range of powers) within the Canadian federation. A short conclusion completes the paper.

A Brief Profile Of Canada's First Peoples

Table 1 presents an overview of the population and geographical distribution of Canada's aboriginal peoples. As the Table indicates, there are four aboriginal groupings:

- registered or status Indians (inset 1);
- the Inuit (inset 2) who mostly inhabit the north and who may be more familiar to you in terms of their former name, Eskimos;
- non-status Indians (inset 3) — persons who have Indian ancestry but who for some reason have lost or have been denied their status as registered Indians; and
- the Métis Nation (also inset 3) composed of persons who are part aboriginal and (generally) part European.

Each of these four aboriginal groupings were effectively granted full participation (along with the provincial premiers and the Prime Minister or his designate) in our recent round of constitutional discussions. Each also has the equivalent of a national organisation and their leaders (frequently women) are, to a person, highly articulate and effective politicians.

From Table 1, the total aboriginal population is just under one million persons, or four per cent of Canada's total population. However, for some provinces like Saskatchewan, where the Table 1 totals exceed 100,000 persons, they represent more than ten per cent of the provincial population. Moreover, these figures are only guesstimates — some estimates run closer to a million and a half persons, with the additional numbers coming in the Métis and non-status Indian categories.

I want to focus in somewhat more detail on the registered or status Indians. Along with the Inuit, these are the aboriginal groupings that, constitutionally, Canada has a fiduciary responsibility toward. (Many of the registered Indians are also covered by Treaties with Canada or the Crown which are still in force. In this sense, the parallel is probably closer with New Zealand than it is with Australia.) As the side panel to inset 1 indicates, Canada has about 2300 reserves for the roughly 600 Indian bands. In general, each of these bands is an independent and autonomous First Nation. Travellers along the highways and byways of Canada are by now quite familiar with the road signs that read, for example, 'Siksika Nation — 60 km' or 'you are now entering the territory of the Serpent River First Nation'. That these reserves literally dot the entire Canadian landscape is evident from Chart 1, which indicates the geographical dispersion of Indian lands (or 'reserves'). The two large 'white' areas in the Chart, namely Northern Quebec and the eastern and northern part of the Northwest Territories are, as inset 2 of Table 1 indicates, the home of the Inuit and few other persons. Only the island of Newfoundland has no reserves, although the remainder of the province of Newfoundland, namely Labrador, is also peopled by the Inuit.

Because, among other reasons, these reserves are frequently little more than 'muskeg, rock and sand'¹ and living conditions on reserves are often deplorable, very substantial numbers of First Nation citizens live off-reserve, typically in the larger urban centres. From inset 1 of Table 1, about 200,000 of the 500,000 registered Indians live off-reserve. This poses substantial problems because, while the federal government recognises its fiduciary responsibility for Indians on reserves, it assumes that once First Nations persons leave the reserves the respective provinces should look after their socio-economic needs. And if the status Indians fall into these jurisdictional cracks, the situation is even worse for the non-status Indians and Métis who suffer the discrimination meted out to aboriginals without any rights to fall back on. Recently, however, several provinces have instituted preferential hiring policies for visible minorities and disadvantaged groups in the hope that this may ameliorate their situation somewhat.

Still focusing on status Indians, Table 2 contains data relating to an especially tragic episode in Canadian and Indian history. Under the Indian Act (introduced shortly after Canadian nationhood), if an Indian woman married a white man, not only was she typically forced to live off-reserve but she and all her offspring lost their Indian status. As a result, probably hundreds of thousands of First Nations people lost their birthright. In 1985, the Indian Act was amended (via Bill C-31) to allow for the restoration of status. The federal government was overwhelmed by the response. As Table 2 indicates, nearly 100,000 Indians regained their status. To my knowledge, data are not available on the countless thousands of others who, for whatever reason, could not substantiate their claim. Intriguingly, Ovide Mercredi, the current Grand Chief of the Assembly of First Nations (essentially the Assembly of the Chiefs of the roughly 600 Indian bands), regained his status through the C-31 route.

In terms of socio-economic status, the registered Indian population is largely transfer- or welfare-dependent. From Table 3, 45.6 per cent of all Indians fifteen years of age and over have government transfer payments as their primary source of income. This compares with 19.4 per cent of the general population. But even this is an underestimate of the Indians' economic plight because the figures in Table 3 include the elderly receiving social assistance and only four per cent of first Nations persons were older than sixty-five years in 1981 compared, for example, to nine per cent for the general population. Projections indicate that, by 2001, nineteen per cent of Canadians will be under fourteen years of age and fourteen per cent will be over sixty-five. Comparable projections for status Indians suggest that these percentages will be thirty-one per cent and five per cent respectively. Thus, the Indian population is dramatically younger (on average eleven years younger) than the Canadian population and this poses corresponding policy challenges.

1. Courchene, Chief Dave, 'Commemoration Address', Address by the President of the Manitoba Indian Brotherhood at the Treaty Centennial Commemorations, Lower Fort Garry, Manitoba, 2 August, 1971. (Available from the School of Policy Studies, Queen's University.)

There is one bright light on the horizon: the numbers of status Indians pursuing post-secondary education has increased markedly. Thanks to the availability of post-secondary-education allowances, there are now over 20,000 Indians at universities and colleges, compared with less than one hundred twenty years ago.

To close off this brief profile of Canada's first peoples, Table 4 presents estimates of the federal government's per capita spending on Indians resident on reserves in 1989-90. The total is roughly \$10,000 per person. While this may appear to be a large amount of money, it should be noted that the per capita spending on the average Canadian by all levels of government (including an allocation for the current deficits) is, if anything, somewhat larger.² However, the bases for these two estimates are quite different so that strict comparisons can be misleading. But the essential point is that something must be very wrong at the policy level when spending of this magnitude does not achieve meaningful results. This obvious poverty of existing policy approaches is a major reason why Canada and Canadians are sympathetic to the increasing demands on the part of the First Nations for self-government. Relatedly, while self-government will likely be expensive, most of the needed funds are already being spent — they just have to be re-channelled.

With this backdrop, I now turn to an analytical approach to aboriginal self-government.

An Indian-Lands or First Nations Province

Included as an integral part of the 1992 Constitutional Accord that was agreed to by all first ministers and the leadership of the four aboriginal groups was the recognition of the *inherent right* of aboriginal peoples of self-government *within Canada*. The term 'inherent right' implies that the right always existed: hence, the right is recognised, not 'created'. And the term 'within Canada' implies that aboriginal governments would be one of the three recognised orders of government in Canada: aboriginal governments would not be sovereign in the international sense.

Other aspects of this Constitutional Accord relating to aboriginals included:

- the entrenchment of the inherent right to self-government would not create new rights to land. The existing and on-going land claims would proceed in the normal way;
- there would be a five-year delay in the justifiability of the right of self-government. This would allow for political rather than judicial solutions to self-government;
- aboriginal and treaty rights would continue to be guaranteed equally to men and women. This was intended, in part at least, to ensure that the tragic episode discussed in the context of Table 2 could never be repeated;
- treaty rights were to be interpreted in a just, broad and liberal manner taking into account the spirit and intent of the treaties and the context in which they were negotiated; and
- all future constitutional amendments that directly refer to the aboriginal peoples would require aboriginal consent.

This Accord, which included amendments and provisions in many other areas (including a proposal for an elected, equal and effective Senate; 'distinct society' status for Quebec; a guarantee to Quebec of twenty-five per cent of the seats in the House of Commons; and a transfer of several powers from the federal government to the provinces), went down to resounding defeat in the national referendum on 26 October 1992. I think that it is fair to say that this defeat had much more to do with the non-aboriginal provisions of the Accord: Canadians were generally in favour of aboriginal constitutional aspirations. In any event, many of the provisions, including aboriginal self-government, will now have to be pursued through the political process, where they probably belonged in the first place.

However, while Canadians are generally sympathetic to aboriginal rights, I think that it is also fair to say that during these recent constitutional discussions there was (and still is) considerable anxiety in terms of precisely what aboriginal self-government might mean. Beyond the concern that it might involve aspects of international sovereignty (which a few of the First Nations clearly desire), three general questions arise:

2. Courchene, Thomas J & Powell Lisa M., *A First Nations Province*, Institute for Intergovernmental Relations, Queen's University, Ontario, 1992, Table 12.

- What would be the powers of these governments?
- How would these governments relate to the existing governments? and
- How would aboriginal self-government be financed?

In order to address these issues head-on, as it were, I proposed³ that the most obvious approach, and one that Canadians are totally familiar with, would be to grant full provincial status to an 'Indian Lands Province' or a 'First Nations Province' (henceforth FNP). Prior to focusing on the FNP and how it would address these three issues, a few details are in order.

First, this would be a land-based province — essentially the province would incorporate all the Indian lands in Chart 1. Thus, while land-based, these lands would not be contiguous, which is not as daunting in our progressively telecomputational age as it may have been a decade ago. Second, the land and population base of the existing reserves would make the FNP a relatively small province in the Canadian context — about half the size of Nova Scotia in terms both of population and land mass. However, this is likely to be a substantial underestimate of what an FNP might eventually look like. Apart from the land claims in the northern territories (dealt with later), as of 1989, 519 specific land claims had been filed and this excludes the 'comprehensive' claims which are not related to treaties. Once these claims come to some conclusion or other, the likelihood is that an FNP could be, geographically, one of the larger provinces.

Third, since this is an Indian-lands-based province, it does not address the important issue of aboriginals living in urban areas. Thus, an FNP cannot be a complete approach to aboriginal self-government. (As we shall see, however, the Yukon First Nation Agreements do address this issue.) Fourth, as already noted, there could be more than one FNP — although not too many because part of the rationale is to reap some economies of scale. The final preliminary point is that even if the Indians were to opt for some variant of this model, it is highly unlikely that they would ever use the term 'province'. They want to be one of the three orders of government, quite distinct from the other two. Nonetheless, I shall continue to use the term 'province' because of the information and substance that this brings to the analysis. Indeed, it provides immediate answers to the three earlier questions, to which I now turn.

Powers

In terms of powers, the answer is straightforward: FNP would have the same powers as Ontario or Quebec, or any other province. In the Australian context, the rough equivalent would be the powers of, say, New South Wales, except that, unlike the Australian states, the Canadian provinces have control over welfare (unemployment benefits in your terms) and have the right to levy (and do levy) income and sales taxes.⁴ The FNP would probably use its powers to implement some version (or different versions in different parts of FNP) of a native justice system. This would not be that anomalous in the Canadian context because Quebec already uses 'civil law' while the rest of the provinces have a common-law system.

Were such an FNP implemented, down the line a bit one would likely find First Nations development corporations, a First Nations university (part of the 'peace dividend' is that Canada no longer needs two English-language military colleges — one would be sold or turned over to FNP) and perhaps First Nations financial institutions. Readers are probably as good as I am in terms of forecasting what other FNP institutions might emerge.

Relations Among Governments

Like other provinces, FNP would have its appropriate number of Senate seats and would elect the appropriate number of members of Parliament from its province (based, obviously, on multi-reserve constituencies).

The internal structure of FNP would be up to the First Nations themselves. My guess is that it would be highly decentralised and confederal, because the ultimate autonomous unit would still be the individual

3. Courchene, Thomas J, 'How About Giving Natives a Province of Their Own?' *Globe and Mail*, 18 October 1990, editorial pages; and Courchene, Thomas J & Powell Lisa M., *A First Nations Province*, Institute for Intergovernmental Relations, Queen's University, Ontario, 1992.

4. In the Canadian context, levying provincial income tax is not difficult because Ottawa collects the tax for the provinces. Levying sales taxes would be more complicated. The FNP could mount its own bureaucracy or the various constituent First Nations could tie themselves into the sales-tax regimes of their contiguous province.

First Nation. For example, the FNP assembly might be composed of Chiefs with an upper house composed of elders. The internal constituent units might be along regional or linguistic groupings of individual First Nations. In other words, the end result could well be the opposite of the Germany-EC relationship. Germany is a federal nation embedded in a confederal Europe. FNP might well be a confederal province embedded in a federal Canada. The essential point, however, is that the internal design of FNP would be left to the First Nations in the same way as the internal design of Ontario is left to Ontarians.

This conception of an FNP which I propose is not as revolutionary as it might at first appear. Indeed, the 600 or so First Nations are essentially currently administered as if they were one big province, run out of the federal Indian Affairs bureaucracy. Areas like welfare, health, education and other 'provincial' powers are currently being provided to these First Nations. What would happen under FNP is that this bureaucracy would fall under the control of FNP. Some of the functions could be coordinated from the centre, some would clearly be decentralised and some would likely end up being contracted out to the adjacent province or city, just as they are now. Thus, this is really more evolutionary than revolutionary. There is, however, one critical difference: henceforth the monies and the control would come from FNP.

There is another advantage to this sort of arrangement. Different First Nations find themselves in different stages of readiness and have different sorts of aspirations in terms of self-government. Some want only municipal-type powers. Others want powers that may exceed provincial powers in certain areas. Rather than having each band negotiate with Ottawa every time it wants an increase in its powers, full provincial powers would be transferred to FNP and then individual First Nations could negotiate with themselves, as it were, in terms of drawing down additional powers.

Finally, entry and exit from FNP would be free and open. If a Canadian citizen (aboriginal or otherwise) resides on FNP land, he or she would be subject to FNP laws. Similarly, if a status Indian lives outside FNP territory (say, for example, in Winnipeg) he or she would be subject to Manitoba, not FNP, laws. And so on, with respect to the full range of areas where provinces interact among themselves and with the federal government.

Financing

Canada's equalisation program would also apply to FNP. Thus, in addition to its own revenues, the equalisation program would ensure that FNP had, as the Canadian Constitution stipulates, 'sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.' Given that the socio-economic condition of the First Nations would, initially at least, be so far below that of other provinces, it may well be the case that a special form of equalisation would be required for some interim period. The obvious example here is the formula financing model currently used for Canada's territories. Specifically, one would define some thing akin to a 'gross expenditure base'; that is, the amount needed to deliver public goods and services of comparable Canadian quality to the First Nations. From this total one would subtract the amount of revenues raised by the FNP as well as any other monies it would receive from Ottawa, and the difference would be the formula financing or equalisation payment due to the First Nation. Readers will recognise that this corresponds in spirit, if not in detail, to the operations of the Commonwealth Grants Commission in Australia.

This equalisation would presumably be transferred to FNP which, in turn, would engage in a 'second tier' or internal equalisation program to achieve some equity across various First Nations.

Summary

I have glossed over a good many of the details and, indeed, some of the complexities and complications related to an FNP.⁵ However, the general approach should by now be quite familiar to an Australian audience, since it essentially applies the principles inherent in the operations of state governments to the aboriginal peoples.

I emphasise again that the FNP is an *analytical exercise*. The likelihood is that it will never be fully implemented in practice (although as the rest of the paper indicates, it has been largely implemented in

5. Many of these are addressed in Courchene, Thomas J & Powell, Lisa M., *A First Nations Province*, Institute for Intergovernmental Relations, Queen's University, Ontario, 1992, 13. One major complication is that section 87 of the Indian Act exempts First Nations from taxation by other governments for income earned on Indian lands. One possible way around this is to have *both* the FNP proportion as well as the federal portion of income taxes returned to the First Nations as their 'own revenues'. This would then be an offset under the equalisation program and would (or could) be fiscally neutral.

the Yukon). However, even if the FNP turns out to be unacceptable constitutionally or impractical operationally, it should nonetheless provide a valuable benchmark against which other approaches can be assessed or addressed. Given that aboriginal self-government essentially involves integrating another order of government into a federal system, whatever approach or approaches are chosen will almost inevitably draw upon aspects and/or principles of the FNP model because this is the way that Canadians practice federalism.

I now turn from theory to practice and shall focus on the path-breaking Yukon First Nations self-government agreements. I should warn the reader in advance that I was privileged to be a consultant to the Yukon First Nations in these negotiations. Thus, the natural tendency on my part may be to heap too much praise on these self-government arrangements. Accordingly, I shall provide (hopefully) adequate documentation so that readers can make up their own minds on this issue. Finally, it would be nice to be able to claim that the reason why these arrangements resemble the FNP model in places has to do with my input. Reality is different, however: the Yukon First Nations had been negotiating these agreements for over two decades before I appeared on the scene.

Self-Government in Action: The Yukon First Nations Agreements

When Australians and even Canadians hear of major recent breakthroughs in aboriginal self-government in Canada, what they typically have in mind is the creation of Nunavut ('our land' in the Inuit language). Nunavut is indeed a breakthrough. The Inuit are to be paid \$580 million (in 1989 dollars) over fourteen years. These are 'compensation dollars', quite apart from equalisation-type funding to finance Nunavut on a year-by-year basis. The deal gives the 17,500 Inuit absolute ownership of selected parcels of land carved out of the former Northwest Territories that add up to roughly 350,000 square kilometres, with subsurface rights to 36,257 square kilometres. Nunavut as a whole will contain 200 million square kilometres, more than a fifth of Canada's land mass (see Figure 1). The Nunavut government will be a 'public government' and thus will operate as part of the Canadian parliamentary system, not as a version of aboriginal self-government. However, Nunavut will be Inuit-controlled by virtue of demographics. Inuit now make up eight-five per cent of the population and will likely remain the overwhelming majority. Nunavut will not come on stream until 1 April 1999, the lead time deemed necessary, in part at least, to ensure that programs are put in place so that the Inuit themselves, not 'southern whites', will run the bureaucracy.

To be sure, Nunavut is a major victory for the Inuit and a giant move forward in terms of realising aboriginal self-government in Canada. Essentially, it creates a new territory within Canada and, in a sense, is in line with the dictates of the FNP model. However, in another sense, Nunavut is unlikely to be a model for the rest of the First Nations. Much more difficult conceptually, operationally and negotiation-wise is to grant self-government to a group of First Nations that occupy pockets of land that are non-contiguous. This is precisely what the Yukon First Nations self-government agreements accomplish and why they, rather than Nunavut, are more likely to be a model agreement for the rest of the First Nations.

There are fourteen First Nations in the Yukon Territory. In terms of Chart 1, the Yukon is the triangular formation in the upper-north-west of Canada. While Chart 1 is a stylised depiction of Indian lands, there are actually fourteen dots in the Yukon, corresponding to the fourteen Yukon First Nations. The population of the Yukon is just under 30,000, twenty-five per cent of whom are First Nation peoples. Because the various fourteen First Nations are in different stages of readiness in terms of embracing self-government (and because there is a limit to the number of negotiations that can be ongoing at one time), the negotiation process has proceeded on a First Nation by First Nation basis. To date, self-government agreements have been signed with four First Nations. The remaining agreements will come on stream over the next few years. These are tripartite agreements, negotiated among the First Nation and the governments of the Yukon Territory and Canada. The Yukon Territorial Government has already ratified the agreements. Ratification by the First Nations is in mid-stream. The expectation is that the Government of Canada will give its imprimatur fairly soon, perhaps as early as next month.

This bit of administrative detail out of the way, I now focus on the substance of the agreements. There are two key negotiated documents — the 'Umbrella Final Agreement' (which becomes modified slightly for each First Nation and is then referred to as the First Nation Final Agreement) and the 'Self-Government Agreement' (which is also First Nation specific, but again quite uniform). For convenience, these documents will be referred to as the UFA and the SGA respectively. There are also negotiated 'implementation plans' related to the UFA and the SGA. Finally, there is a Financial Transfer Agreement or FTA (essentially an equalisation program) negotiated pursuant to the SGA.

The UFA

The UFA is the master document, as it were. In effect, it is a land claims settlement which, pursuant to sections 35(1) and (3) of the *Constitution Act (1982)*, as amended by the *Constitution Act Proclamation, 1983*, may well become a formal part of the Canadian Constitution.⁶ Included as an integral part of the UFA is a transfer of 16,000 square miles of land to the Yukon First Nations (YFN) as well as over \$200 million (in 1989 dollars) financial compensation, a significant portion of which will go to repay monies borrowed to sustain the more-than-two-decade negotiation process. As an aside, on a per capita basis, this compensation is larger than the Nunavut compensation. The UFA is an overview document in another sense as well: it establishes some of the basic parameters and principles under which the SGA, and to a lesser extent the Financial Transfer Agreement, were to be negotiated. Most importantly, perhaps, the UFA sets out the relationship between the YFN and the land, both for lands set aside for the YFN and for other lands in the Yukon.

Because the UFA is roughly 300 pages long, it is impossible in this present paper to attempt even a summary. By way of compromise, Table 5 contains the UFA's chapter headings. Some brief comments are in order. Chapter 3, dealing with eligibility and enrolment issues, breaks new ground in the Canadian context. Way back in the negotiation process, the YFN abandoned the distinction between status and non-status Indians and, instead, adopted the concept of a YFN 'citizen'. While citizenship is based largely on ancestry, it also incorporates citizenship arising from marriage, adoption and even, for lack of a better phrase, cultural and spiritual affinity.

It is evident from Table 5 that most of the UFA provisions relate in one way or another to stewardship over the land and the environment — land use, land management, forest, fish and wildlife management, water management, surface rights, boundary issues, non-renewable resources, heritage (which includes parks, burial sites and the naming of places), etc. In some of these areas, the YFN will be assuming what elsewhere in the country would be 'federal powers' (for example, with respect to fishing) and in all cases they will be full participants in the husbanding/stewarding of the environment. The YFN are peoples of the land and now they have the power to ensure that the land will always be there for them and, indeed, will be there in a way that they, not the rest of Canada, deem appropriate.

Other chapters deal with issues that are elaborated in the SGA — self-government itself, the financial transfer agreement, taxation and accessing royalties from resources on YFN lands and provisions in some cases for sharing royalties on crown lands. Finally, but hardly exhaustively, there is an important chapter on dispute resolution which allows for mediation and, if the parties agree, arbitration as well as judicial review.

The SGA

In order to facilitate the description and analysis of YFN self-government, the Appendix contains selected provisions of the Champagne and Aishihik First Nations SGA. (The Champagne and Aishihik First Nations are one of the fourteen YFN.) As with the UFA, the SGA is a tripartite agreement among Canada, the Yukon Territory and, in this case, the Champagne and Aishihik First Nation. The first point to make is that all parties recognise that this will be a special sort of government. As the 'whereas' clauses and the 'principles' in the Appendix indicate, YFN self-government will be a co-mingling of the traditional and the modern. From 2.1: 'The Champagne and Aishihik First Nations has traditional decision-making structures and desires to maintain these traditional structures integrated with contemporary forms of government'. While meaningful self-government for the YFN could not be otherwise, it is nonetheless a significant achievement to have formal recognition of these institutions. And for anyone who is familiar with traditional 'consensus' decision-making, it is especially gratifying to have this recognised as the democratic institution that it really is.

On the day the SGA comes into force, the Indian Act as it pertains to the Champagne and Aishihik First Nations shall cease to exist and the associated rights, title, interests, assets, obligations and liabilities shall vest in the Champagne and Aishihik First Nations. Section 9.2 in the Appendix lists the new legal status and powers of the First Nation.

6. The relevant section of the Constitution Act 1982 read:

35(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognised and affirmed...

35(3) For greater certainty, in subsection (1) 'treaty rights' includes rights that now exist by way of land claims agreements or may be so acquired.

For what its worth, my non-legal opinion is that these First Nation Final Agreements will qualify under section 35(3) to be enshrined in the Constitution.

The SGA also spells out the requisite nature of the First Nation constitutions. Section 10 in the Appendix contains some of the relevant provisions. Others include providing for adequate financial reporting, for amendment procedures, for procedures that allow citizens to challenge the validity of First Nation laws, and more generally for ensuring that the First Nation can be held accountable to its citizens. As an intriguing aside, while the Australian states have their own constitutions, the Canadian provinces do not.

Legislative Powers

Turning now to the legislative powers of the First Nation under the SGA, section 13.1 presents one of the exclusive powers — internal management and administration. Obviously, this has to be part and parcel of meaningful self-government.

Section 13.3 of the SGA relates to the legislative powers of the First Nation that apply only on its own territory. Again the Appendix presents only selected clauses. One that should have been included is the licensing and regulation of any person carrying on any business, trade, profession, or other occupation. Determining the extent of some of these powers — in particular q), the power over the administration of justice — will require future negotiations among the parties. As a final comment on the section 13.3 powers, I draw your attention to section w) which reads: 'other matters coming within the good government of Citizens on Settlement Land' — which is in the nature of a catch-all or even a residual power.

Note that the powers enumerated under section 13.2 (that is, powers to enact laws in the Yukon) also apply to First Nation territory (settlement land) because these settlement lands are by definition in the Yukon.

These are rather sweeping powers. Whether they are greater or lesser than those of the existing provinces is really beside the point (although one might note in passing that the powerful provincial clause 'property and civil rights' is absent from section 13, although parts of it are covered elsewhere). What is relevant is that, barring some unforeseen circumstance, these powers appear wholly adequate for the YFN to secure their future as a self-governing and self-determining culture, society and nation within Canada.

What is unique about the SGA, certainly in comparison with the FNP model elaborated earlier, is that the YFN will be able to provide programs and services to their citizens beyond Settlement Lands, but still in the Yukon. By and large, these powers (reproduced in section 13.2) relate to the social envelope — education, health, welfare, marriage, adoption. Thus, the SGA is really a combination of a 'territorial model' (powers depend on *where* you are) and a 'citizenship model' (powers depend on *who* you are). This citizenship model operates in a few areas in the rest of Canada. For example, school taxes in Ontario can be directed either to the public or Catholic school systems and therefore depend on who you are, not where you are. This approach makes considerable sense in the Yukon since roughly half the population resides in Whitehorse. Whether this concept can be carried over in terms of aboriginal self-government negotiations in southern Canada is far from clear. At the very least, it poses a challenge to negotiators.

Taxation

Section 14 relates to taxation powers. These too are broad powers, but there are some further provisions (not reproduced in the Appendix) that indicate that some of these powers are concurrent. In turn, this implies further negotiations. The ability to exercise direct taxation powers is, under section 14.3, subject to a time delay so that Canada can put together a coherent approach to Indian taxation. Nonetheless, these must appear as sweeping powers to Australians since they exceed, in *de facto* terms at least, what the Australian states can do.

A slight detour is warranted here. Part of the rationale for the extent of these tax powers is that the Canadian government has become convinced that the right to tax is an integral component of meaningful self-government. From an Autumn 1991 speech by the Minister of Finance, Don Mazankowski, to a conference on Indian taxation:

Up until now, the legislative regime has recognised only one type of tax power for Indian governments — municipal-like property taxes. But the status quo is unacceptable. For strong self-government to be a reality, Indian communities must have access to a wider range of tax powers — not just the right to levy property taxes....

In many Indian communities, there may well be sufficient economic activity to form a tax base. We are willing to work with you to design tax systems that can ensure that Indian governments

have the ability to tax this economic activity on Indian lands. Cooperation between the federal government and Indian governments can do more than simply define the parameters for the exercise of Indian government taxation. There are ways that the federal tax system can be used to facilitate taxation by Indian governments....

We are willing to examine how the administrative experience and capability of the federal government can be potentially harnessed to help in making Indian government taxation feasible even in relatively small communities.⁷

However, while Ottawa appears (and is) very generous when it comes to extending significant taxing powers to the First Nations, there is an important underlying rationale for this generosity. My reading of the situation is that the federal and provincial governments are concerned that aboriginal self-government will become synonymous with tax havens. The Finance Minister admitted as much (albeit obliquely) in the same speech:

Uncoordinated tax systems — with the potential for overlapping application — cause problems for everyone, including taxpayers, administrators and governments. Potential problems caused by overlapping tax jurisdictions, such as double taxation and tax avoidance, are dealt with through agreements and conventions between taxing authorities. We are willing to work with Indian governments to establish this type of relationship between Indian and other tax systems.⁸

In any event, what matters for purposes of this paper is that the YFN have access to broad taxing powers. Moreover, the Yukon First Nations have, for compensation, renounced section 87 of the Indian Act which had exempted them from taxation. However, self-government requires adequate revenues not just the right to levy taxes. Enter the equalisation program or the Financial Transfer Agreement.

The Financial Transfer Agreement

Section 16 of the SGA provides for the negotiation of a Financial Transfer Agreement (FTA). Unlike the UFA and the SGA, the FTA is a bilateral agreement between the First Nation and the federal government. The principles underpinning the FTA appear in sections 16.1 and 16.2 of the Appendix and these more or less track the equalisation principles contained in the Canadian Constitution. The nature of the FTA is along the lines of the Yukon Territorial Government formula financing approach outlined earlier. Basically, a gross expenditure base (that is, the amounts of money needed to deliver the comparable level of goods and services) is negotiated and from this is subtracted First Nation revenues and other federal transfers to arrive at the financial transfer. As is the case with equalisation in Canada and Australia, the revenues that are subtracted are not actual revenues, but rather standardised revenues — the revenues that would exist if comparable tax rates were levied. The First Nation need not levy taxes, but the financial transfer will be calculated on the assumption that taxes at rates comparable to those elsewhere are being levied. Moreover, the offset rate for tax revenues against the gross expenditure base is less than dollar for dollar. Both of these provisions encourage the First Nation to engage in taxation. But again, this will be their decision.

As section 16.6 of the Appendix indicates, the financial transfer is, in general, to be provided on an unconditional (no-strings-attached) basis. This follows Canadian practice in terms of equalisation transfers to the provinces.

Prior to some summary comments on these agreements, there are two other issues that need to be addressed. The first of these relates to the time-frame for the implementation of self-government and the second relates to the potential for reaping economies of scale.

Implementation Time-Frame

While the First Nations will have all the SGA powers on the day that the agreements are ratified, it is highly unlikely that they will access these powers immediately. There are at least three reasons for this. The first is that it is very difficult to build up the necessary personnel and expertise from a standing start, as it were. Many of these programs and services require a degree of financial, legal and administrative backup that can only be developed over time. Second, for some programs it may be optimal for all fourteen First Nations to access them at the same time. But, as already noted, it may be a couple of years before all fourteen First Nations complete their negotiation and ratification process.

7. Mazankowski, the Honourable Don, 'Notes for an address to the Indian Government and Tax Conference' (Whistler D.C.), 12 November, 1991.

8. Ibid.

Third, the First Nations may be quite satisfied with how some programs are currently delivered. The SGA provides for First Nation legislation in areas that they are not occupying: if the current provider (for example, the federal government or the Yukon Territorial government) accepts these legislated conditions then there is less need for the YFN to deliver the programs themselves.

Indeed, the SGA and the FTA anticipate that not all programs will be accessed immediately. Section 17 of the SGA (not reproduced in the Appendix) details the process by which additional programs can be taken down after the agreements come into force and it also contains provisions relating to the associated funding. The FTA was also designed explicitly to accommodate future program and services takedowns.

What this means is that the First Nations have flexibility to exercise their powers as their priorities, aspirations and expertise dictate.

Internal Structure of the YFN

While the individual First Nations are the signatories of these agreements, they may decide to provide some of the public goods and services in concert. Indeed, the incentives are all in this direction, since any savings achieved by this would accrue to the First Nations. For example, it probably would not make much sense for each First Nation to hire a professional to oversee the operations of the FTA when one for all fourteen would likely suffice, given the likely similarities in the FTAs. Moreover, in this fiscal climate it is highly unlikely that Ottawa will be overly generous in terms of the FTA, so that the only way to deliver all programs and services adequately may be to seek out economies in delivery whenever and wherever they exist.

Once again, the SGA allows for this possibility. This is clear from section 12 (in the Appendix) which deals with the delegation of powers. Of particular interest here is the Council for Yukon Indians (section 12.1.6). This Council has, in various forms, existed for many years and it played a lead role in the negotiation of all of these agreements. In political science terms, it is a sort of confederal superstructure which is responsible to the YFN leadership. Once the agreements are ratified, the YFN may wish to reconstitute this body in more formal terms and to grant it various powers. For example, the role of liaison with other governments — federal, provincial, territorial — may well be best done through some such federal or confederal institution. Likewise, as in the FNP discussion above, the Council for Yukon Indians could initially assume responsibility for all programs and services and then devolve them to the individual First Nations as soon as they are able and willing to take them down.

What is clear from the very structure of the agreements, however, is that power rests with the individual First Nations and that delegation of any administrative, legislative or delivery powers to a YFN superstructure will be their decision.

Summary

This, then, is an overview of the Yukon Indians' self-government agreements. I have attempted to focus briefly on a rather broad range of areas. Were the audience composed largely of lawyers and political scientists, for example, I would have placed more emphasis on issues relating to concurrency and paramountcy as they relate to First Nation legislative powers. I might add in passing that there cannot be a legislative void because laws of general application (whether federal or Yukon Territory laws) will apply until the First Nations enter the field.

No doubt some problems will crop up. These agreements are unprecedented: there is no existing experience to model them after. Hence, it is virtually inevitable that some events will not have been anticipated.

Finally, there is, of course, no guarantee that these or any self-government agreements will be successful. I think that it has to be this way. If there is not the possibility for failure, it is also the case that there is little likelihood for success. This is the essence of meaningful self-government and self-determination. However, I would add that the Yukon Indians have been preparing for self-government for a long time and they are determined and confident of their future as self-governing First Nations.

One final point. Thus far, the emphasis on the financial side, both in this paper and in Canada generally, has been in terms of the costs of self-government. But there is the distinct possibility for self-government to be a very significant positive-sum financial game. To the extent that self-government will lead to a decrease in the welfare dependency of First Nations and, more generally, to economic development on Indian lands, not only will the First Nations be better off financially but so will the federal treasury.

Conclusion

It may not be accidental that the two high-profile self-government agreements — Nunavut and the YFN agreements — are located in that part of Canada where there are territories rather than provinces. Crown land in these territories generally rests with the federal government, so that it may be easier to negotiate land claims. South of the 60th parallel, most Crown land rests with the provinces so that they have to do the transferring of land, even if some of the compensation comes from Ottawa. Nonetheless, there have also been breakthroughs south of 60. The James Bay Agreement among Quebec, the federal government and the James Bay Cree is a case in point. Recently, the province of Saskatchewan turned over substantial sums of money to the First Nations in order for them to buy additional land in the province. And, as I noted in the introduction, there are probably hundreds of on-going negotiations throughout the country.

In terms of these negotiations, it seems clear the Yukon Indians' settlements are likely to be precedent-setting, not only in terms of the principles and substance of the agreements but as well because they involve a group of First Nations who occupy non-contiguous parcels of Indian land — exactly the situation of the remaining 600 or so First Nations with reserves located inside the boundaries of the existing provinces.

While the YFN agreements are likely to be precedent-setting for the rest of Canada, I have not attempted to speculate in terms of the implications that these models might have for addressing Aboriginal self-government in Australia. Intriguingly, however, the 1993 Report of the Commonwealth Grants Commission (the CGC)⁹ devotes Chapter 6 to issues relating to the funding for Aboriginals and Torres Strait Islanders. Among the proposals that the CGC appears willing to entertain is the following: 'that the Commission establish an inquiry to investigate (principally) how fiscal equalisation could be applied to Aboriginal communities and how relative needs of the communities could be assessed'.¹⁰ Should the CGC receive a mandate to undertake this inquiry, it is inconceivable that the Yukon First Nations agreements and, in particular, the Financial Transfer Agreement (that is, the YFN equalisation program) would not figure prominently in terms of the range of alternatives that the CGC canvasses.

This slight detour aside, in terms of the broader Canadian perspective, it is important to recognise that the Yukon First Nations self-government agreements have implications that transcend aboriginal self-government. Without putting too fine a point on it, when we Canadians are addressing aboriginal self-government we are, at the same time, re-constituting Canada.

I want to end on a personal note. If all goes as expected, these agreements could be proclaimed in the near future. Indeed, the proclamation could well be one of the first official actions of Brian Mulroney's government. This would be fitting because the federal government could have abandoned the negotiations after the defeat of the Referendum. Instead, Canada stayed the course. So did the Yukon government. On this day I will be especially proud to be a Canadian.

But the day will belong to the Yukon First Nations. Words cannot describe the roller-coaster of emotions involved in a lengthy and complex negotiation of this sort. Nor can words describe the courage and determination of the leadership and the citizens of the Yukon First Nations and, beyond this, their unswerving belief in their mission and their commitment to future generations. However, it will also be a day filled with anxiety, for while they will celebrate the successful termination of negotiations, they will also be fully aware that this is also the beginning of the new challenge of self-government. In the midst of all this emotion, however, I suspect that most of them will also see their way to say, 'Good on you, Canada'.

At long last, this could be the start of something grand. Thank you. I am willing to entertain questions, if there are any.

[Editor's Note: The official signing ceremony took place in the Yukon on 29 May 1993.]

Questioner — Firstly, are the Inuits of the northern Yukon part of the self-government agreement? Secondly, you referred to the concept of consensus being adopted as a democratic notion. Is there any provision for elections within the self-government move?

9. Commonwealth Grants Commission, *Report on the General Revenue Grant Relativities, 1993, Volume One, Main Report*, AGPS, Canberra.

10. *Ibid.*, 67.

Professor Courchene — To answer the first part of your question, the northernmost First Nation in the Yukon is the Old Crow. Remember that the Yukon shares a border with Alaska, so that some of the people go freely between these borders. There are some Dene in the lower part of the Yukon and that is creating a bit of a transboundary problem. I do not think there are any Inuits in the north of the Yukon; I could be wrong. The north of the Yukon is a point. It does not include the Mackenzie Delta and that is where the Dene are.

The second question concerned elections. I presume you mean election of chiefs?

Questioner — No, elections for the government body, however that is going to be done.

Professor Courchene — If the governing body is confederal — by definition, a confederal system would be the government. The leaders of the government would elect the chief of, say, the Council of the Yukon Indians. That would be a confederal model. In terms of elections, some chiefs are elected; some are not elected.

There are some highly interesting examples in the rest of Canada. For example, among the Mohawks only males can be chiefs, but only women can elect them. Women can impeach them. The impeachment provision in the United States Constitution is taken from the Six Nations approach to impeachment. The word 'caucus' is an Algonquian term for consensus, so a lot of the things that we take for granted, like the whole notion of American Federation — even the Australian Federation — come initially from this concept of the confederacy of the Iroquois. Some of the constitutions require elections. There are hereditary chiefs in some parts of the country, but a lot of them now are elected. So it just depends on which part of the country you are talking about. As I mentioned earlier, a lot of them are women.

Questioner — I think you said that self-government depends on self-sufficiency. Could you explain how that might be?

Professor Courchene — I will give you an example from regional development. Canada has tried hundreds of different ways and spent millions and millions of dollars to try to make the maritime provinces more self-sufficient. We tried to make them like little Ontarios. We put all sorts of money into these provinces, but we never asked them what might be best for them and let it work from the bottom up. As a result our regional policy in Canada is not very viable, even to this day. I think it is the same with the Yukon First Nations, and with any nation. If our approach is always to put a safety net under them, so that if they slip we are going to catch them, then they have very little incentive to make sure they do what they know they have to do. I think that getting rid of welfare dependency means that, from day one, they will know that it is up to them to make sure this works. The agreements are there; they have the money to do it; they have to manage themselves and be responsive to their own citizens. So I think that when they get the ability to integrate all their social programs in ways that they want and not the ways we thought were good for them, we will see a remarkable change.

In particular, there will never be a situation, as occurs in the rest of Canada, where somebody who is collecting welfare is not doing anything. The Yukon Indians are a collective society. The group is as important as the individual, so if some people in the First Nation have to be on welfare, they are going to have to do something for the First Nation in return, even if it is only chopping wood for the elders. They will have to do something to be part of the community. I think that what they are trying to do is build up their faith in themselves and their spirit as a community. We cannot do that for them; they have got to do it on their own. I think that, finally, at long last, we are turning to the right approach and that is 'Let them do it'. It may not work, but I think that it will.

Questioner — What thought has been given to dispute resolution between the nations? I can see that disputes might come about because the nations have management of resources and may like to develop resources differently. Where rivers or perhaps mining or other resources cross boundaries, what happens if disputes arise?

Professor Courchene — The Yukon First Nations will have control of the resources in their area. They are not anti-development, but the development that will occur on the Yukon First Nations lands will be according to the Yukon First Nations priorities and their standards, whatever they are, for the environment or whatever else. So disputes will occur, but if there is some sort of transboundary issue, they will be no different from the disputes that occurred between British Columbia and Alberta. Within the First Nations I think those disputes will be relatively easily solved, because the umbrella final agreement will look after that.

I should have mentioned that, when you look at all these areas, there are about a dozen boards where both Ottawa or representatives of the Yukon territorial government and the First Nations will sit to resolve any disputes but, more basically than that, to do the planning, whether it is for water resources, for forest habitat, or for efficient game management. These are cooperative exercises. They are managing the land, not only in their territory, but generally to protect it. A particularly troublesome area is fishing. The salmon go all the way up the river and it is important that the First Nation right near the mouth does not take all the salmon. So within the Yukon First Nations they are having allocation limits for salmon. What happens if the salmon are short this season? This will impact in some ways on fishing in the whole Yukon area. These things have to be worked out.

Questioner — I was thinking particularly in the case of somebody deciding to dam a river to generate electricity or something such as that. I was just thinking forward to that and wondering about the federal government; I think between the states there would be some sort of overriding view or it may be possible to come to some agreement with them. I was just interested in what you have conceived in terms of a mediating process.

Professor Courchene — There are provisions set out for mediation and arbitration, but they relate basically to the contents of the agreement. You are talking about something that might develop outside of the agreements. Given that the First Nations are sovereign in terms of some of these areas and on their own land, this would be resolved in the same way as a dispute between Saskatchewan and Alberta would be resolved — it would probably have to go to the courts.

Questioner — Because of Lester Pearson, I have a tremendous admiration still for what can come in the way of commonsense and social conscience from Canada. I would like to ask you about problems that I see very much in human nature at the moment. There is a tendency for people, when one gives them quick so-called university education, to forget to be public servants and to become government servants. In these cases, where they are in charge of people, it is very tempting for them to think they are superior to them and the danger becomes acute. There is also the danger, when one has well recognised separate areas of self-government, of there being an awful temptation for people in the urban areas of other provinces to say, 'Get back to where you belong'. Those are painful challenges within the situation, and I wondered if you feel that Canada is certainly well able to say that that cannot happen?

Professor Courchene — In terms of the last issue, one of the criticisms of my model — not the Yukon Indians model but the one I gave earlier — is that this is like the South African homelands. I want to address that. That is partly what you are saying by 'Get back to where you belong'. The best answer I have heard about that is from your own Justice Brennan. In response to some issue related to the northern territories, he said, 'There is an awful lot of difference between a home and a prison'. But it goes beyond that. These are going to be open societies. There will be a lot of white or non-aboriginal people living in these aboriginal communities. Once they are taxed, they are going to have to have some say in the city governments. Beyond that, Nunavut, for example, is a fully open government. It may initially have an aboriginal-type constitution, but beyond that it will be run like any public government in Canada.

One of the things that happen, and one of the things that may relate partly to what you said, is that quite often these look like they are closed governments because the provincial governments, not the Indians, want them that way. They want to make sure that if any citizens of their province move into these territories that province is still providing their citizens with services. Some of these areas may appear as if the Indians are trying to build lands that nobody else can get into. It is quite the opposite. Quite often they are forced, if they want to get self-determination, to move into that mould.

In terms of your more general issue, about going back to your land, one of the real changes that has made a big impact in Canada is the Canadian Charter of Rights and Freedoms, where for the first time we tried to marry a charter with a parliamentary system of government. It does not always fit very well because the charter constrains the supremacy of Parliament. Because we recognised a whole bunch of new groups such as the aboriginals, and we give language rights to certain areas; we give rights to the disabled, I think Canada has become more tolerant of all of those things. It has quite a profound impact on our society. I do not think you are going to find this. I do think that some of these aboriginals living in the urban areas will go back — maybe not for long periods of time, but they will go back because the reserves will now be a place where they can get strength from if they are actually fully self-governing. In any event, the Indians are quite open, and appropriately so, to having full education of their citizens. So what you say may happen — one cannot rule it out — but we have become a lot more tolerant than we were a decade ago. When the degree of agreement is such that the Yukon territorial government can sign something with the Yukon Indians knowing that they have to live together forever because

they occupy the same basic land, I would hope that that sort of approach is going to carry over into other parts of the country, too.

Questioner — Is there a strong separatism movement at all among the First Nations? Do you think that the formation of a province of First Nations may ultimately be a stepping stone to full separation from Canada? Speaking personally, as you say, as much as we Canadians very much appreciate and support these reforms, I for one would be somewhat sad to see a province of First Nations not part of Canada.

Professor Courchene — To get to the nub of what you are saying, both you and I know that there is a series of First Nations, namely the Mohawks, who have aspirations to more than just national powers. This comes for several reasons. First, they are in a peculiar piece of land. They are part in Quebec, part in Ontario and part in the state of New York, so they are international in any event. They have a quasi-office at the United Nations. I talked to one of the local chiefs at one point. He showed me his passport. They have Mohawk passports. It turns out that if you give the British about eighteen days lead time they will accept these passports. His had a British stamp in it.

There are some areas within Canada or some First Nations that, because of their historical relationship, would still want to maintain the internationalisation that they have. I do not think that is true of most other First Nations. Some of them want to be on a government to government level. Because they have treaties with the Crown, they feel that they are every bit as important as the federal government. But they do not really want to be outside of Canada. I think the best example I can give you comes from the province of Quebec, which also has aspirations to separate. The way I tend to view the Quebecois situation within Canada is that the reason why an English-speaking person — although I have French ancestry — has trouble understanding the Quebecois is that for Quebecois Quebec will always be their nation and Canada will always be their country. They separate nation from country. The rest of us do not. I imagine Australians in general associate your nation and country with Australia. But the aboriginals are exactly like the Quebecois: their nation is going to be their First Nation, but their country is also going to be Canada and they will not give up either.

Appendix

Selective Aspects of the Champagne and Aishihik First Nations Self-Government Agreement

The "Whereas" Clauses

1. the Champagne and Aishihik First Nations has traditional decision making structures based on a moiety system and are desirous of maintaining these structures;...
2. the Champagne and Aishihik First Nations asserts, subject to Settlement Agreements, continuing aboriginal rights, titles and interests with respect to its Settlement Land;...
3. the Parties recognise and wish to protect a way of life that is based on an economic and spiritual relationship between Champagne and Aishihik citizens and the land;...

Principles

- 2.1 The Champagne and Aishihik First Nations has traditional decision-making structures and desires to maintain these traditional structures integrated with contemporary forms of government.
- 2.2 The Parties are committed to promoting opportunities for the well-being of Citizens equal to those of other Canadians and to providing essential public services of reasonable quality to all Citizens.

Legal Status of the First Nation

- 9.2 The Champagne and Aishihik First Nations is a legal entity and has the capacity, rights, powers and privileges of a natural person and without restricting the generality of the foregoing may:
 - 9.2.1 enter into contracts or agreements;
 - 9.2.2 acquire and hold property or any interest therein, sell or otherwise dispose of property or any interest therein;
 - 9.2.3 raise, invest, expand and borrow money;
 - 9.2.4 sue or be sued;
 - 9.2.5 form a corporation or other legal entities; and
 - 9.2.6 do such other things that are conducive to the exercise of its rights, powers and privileges.

Constitution

- 10.1 The Champagne and Aishihik First Nations Constitution shall:
 - 10.1.1 contain the Champagne and Aishihik First Nations citizenship code;
 - 10.1.2 establish governing bodies and provide for their powers, duties, composition, membership and procedures;...
 - 10.1.3 recognise and protect the rights and freedoms of Citizens;

Delegation

- 12.1 The Champagne and Aishihik First Nations may delegate any of its powers, including legislative powers, to:
 - 12.1.1 a public body of official established by a law of the Champagne and Aishihik First Nations;
 - 12.1.2 Government, including a department, agency or official of Government;
 - 12.1.3 a public body performing a function of government in Canada, including another Yukon First Nation;
 - 12.1.4 a municipality, school board, local body, or legal entity established by Yukon Law;
 - 12.1.5 a tribal council;
 - 12.1.6 the Council for Yukon Indians; or
 - 12.1.7 any other legal entity in Canada.

Legislative Powers

- 13.1 The Champagne and Aishihik First Nations shall have the *exclusive* power to enact laws in relation to the following matters:
- (a) administration of Champagne and Aishihik First Nations affairs and operation and internal management of the Champagne and Aishihik First Nations;...
- 13.2 the Champagne and Aishihik First Nations shall have the power to enact laws in relation to following matters in the Yukon (both on and off Settlement land):
- a) provisions of programs and services for Citizens in relation to their spiritual and cultural beliefs and practices;...
 - c) provisions of health care and services to Citizens, except licensing and regulation of facility-based services off Settlement Land;
 - d) provision of social and welfare services to Citizens, except licensing and regulation of facility-based services off Settlement Land;
 - e) provision of training programs for Citizens, subject to Government certification requirements where applicable;
 - f) adoption by and of Citizens;
 - h) provision of education programs and services for Citizens choosing to participate, except licensing and regulation of facility-based services off Settlement Land;...
 - l) solemnisation of marriage of Citizens;
- 13.3 The Champagne and Aishihik First Nations shall have the power to enact laws of a local or private nature *on Settlement Land* in relation to the following matters:
- a) use, management, administration, control and protection of Settlement Land;
 - c) use, management, administration and protection of natural resources under the ownership control or jurisdiction of the Champagne and Aishihik First Nations;
 - d) gathering, hunting, trapping or fishing and the protection of fish, wildlife and habitat;
 - k) planning, zoning and land development;
 - q) administration of justice;
 - t) control or prevention of pollution and protection of the environment;
 - w) other matters coming within the good government of Citizens on Settlement Land.

Taxation

- 14.1 The Champagne and Aishihik First Nations shall have the power to make laws in relation to:
- 14.1.1 taxation, for local purposes, of interests in Settlement Land, of occupants and tenants of Settlement Land in respect of their interests in those lands, including assessment, collection and enforcement procedures and appeals relation thereto;
 - 14.1.2 other modes of direct taxation of Citizens (and, if agreed under 14.5.2, other persons and entities) within Settlement Land to raise revenue for Champagne and Aishihik First nations' purposes; and...
- 14.3 The Champagne and Aishihik First Nations shall not exercise its power to make laws pursuant to 14.1.1 until the expiration of three years following the effective date of Self-Government Legislation, or until such earlier time as may be agreed between the Champagne and Aishihik First Nations and the Yukon.

Self-Government Financial Transfer Agreement

- 16.1 The Government of Canada and the Champagne and Aishihik First Nations Shall negotiate a self-government financial transfer agreement in accordance with 16.3, with the objective of providing the Champagne and Aishihik First Nations with resources to enable the Champagne and Aishihik First Nations to provide public services at levels reasonably comparable to those generally prevailing in Yukon, at reasonably comparable levels of taxation.
- 16.2 Subject to such terms and conditions as may be agreed, the self-government financial transfer agreement shall set out:

- 16.2.1 the amounts of funding to be provided by the Government of Canada towards the cost of public services, where the Champagne and Aishihik First nations has assumed responsibility;
 - 16.2.2 the amounts of funding to be provided by the Government of Canada towards the cost of operation of Champagne and Aishihik First Nations government institutions;
and
 - 16.2.3 such other matters as the Government of Canada and the Champagne and Aishihik First Nations may agree...
- 16.6 Payments pursuant to the self-government financial transfer agreement shall be provided on an unconditional basis except where criteria or conditions are attached to the provision of funding for similar programs or services in other jurisdictions in Canada.

TABLE TWO

TABLE THREE

TABLE FOUR

TABLE FIVE

CHART ONE

FIGURE ONE