

# **THE SEHEL T INDIAN BAND: AN ANALYSIS OF A NEW FORM OF NATIVE SELF GOVERNMENT**

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## **ABSTRACT/RESUME**

In 1984 the Sechelt Indian Band of British Columbia became the first indigenous Band in Canada to develop its own constitution and to withdraw the lands of the reserve from the Indian Act. This article studies the process which leads to Native Self Government, and the structure of the new government.

En 1984, la bande Sechelt de la Colombie britannique devint la première bande autochtone du Canada à développer sa propre constitution et à retirer les terres de la réserve de l'Acte Indien. Cet article étudie le processus qui mène à l'autonomie, et la structure du nouveau gouvernement.

## Introduction

The Sechelt Band in British Columbia has recently regained self-government through special federal and provincial enabling legislation. This paper will examine this unique legislative solution to one Band's search for self-determination. The paper will look at various concepts of self-government and aboriginal rights to set the context for the following discussion. Varying concepts of land tenure and land holding will be viewed. The paper will look at the Sechelt Band, who they are and how they came to create this new level of government in Canada.

The legal framework which enabled this third level of government to come into existence will be examined in light of the powers, responsibilities, and duties that were redistributed among the Federal Government, Province and Band. Lastly, the paper will look at this new type of community-based Native self-government, to see how it compares to the ideal proposed by many in the Native community and its viability as a form of self-determination.

## What Is Self-government?

The concept of Native self-government and self-determination is intricately linked with aboriginal rights. Definitions of aboriginal rights and self-government vary depending upon circumstances. The artificial divisions amongst Native people, such as treaty/non-treaty, status/non-status, and Metis have an effect upon how self-government is defined.

The traditional Native definition of aboriginal rights is based on the spiritual values inherent in Native life. the following statement clearly illustrates this position:

What are aboriginal rights? They are the law of the Creator. That is why we are here; he put us in this land. He did not put the white people here; he put us here with our families, and by that I mean the bears, the deer, and the other animals. We are the aboriginal people and we have the right to look after all life on this earth. We share land in common, not only among ourselves but with the animals and everything that lives in our land. It is our responsibility. Each generation must fulfil its responsibility under the law of the Creator. Our forefathers did their part, and now we have to do ours. Aboriginal rights means aboriginal responsibility, and we were put here to fulfil that responsibility (Lyons 1985:19-20).

David Ahenakew eloquently proclaims that self-government is an aboriginal right:

The most precious aboriginal right of the First Nations is the right to self-government. Just as the wording of

section 91(24) of the *Constitution Act, 1982* refers to "Indians and lands reserved for the Indians," the concept of First Nation self-government is usually understood to mean two broad groups of jurisdictions: each First Nation governing its own people and their affairs, and governing their land and its use. Traditionally among First Nations, these two concepts are combined. The Creator gave each people the right to govern its own affairs, as well as land on which to live and which to sustain their lives. These Creator-given rights cannot be taken away by other human beings (Ahenakew, 1985:24).

It can be noted in the above that the right to political self-determination is married to the spiritual right to govern; in other words, sovereignty. This sovereignty is a "matter of the heart" — an emotional, not an intellectual concept" (Boldt & Long, 1984:539). In order to make sense of the Native meaning of aboriginal rights and self-determination, it is essential to understand that these two concepts cannot be divorced from one another. Within the framework of Indian spiritual beliefs is found the inter-relatedness of all aspects of life. Religion cannot be separated from politics or government, just as man cannot be separated from his physical environment.

It is difficult for non-Native Canadians to understand the Native world view. Politicians, in particular, view aboriginal rights from the legal and constitutional perspective. Their definition is coloured by a view that has been shaped by hundreds of years of colonial and imperial domination of this land and its original peoples. This western world view does not link together concepts such as land ownership and religious belief. Therefore, to expect a definition created by non-Natives that will be acceptable to Natives is naive. The problem then must become one of who defines aboriginal rights and how will that definition be understood by those who hold political power. Sally Weaver identifies this problem area as follows:

I see the definition and development of Indian government as a job to be done by Indian people. This task subsumes the need to define a concept of government that does not simply include the purely political aspects but incorporates the *political economy* of Indian government. I draw this observation from my analysis of the financial reality that currently contains, curtails, and shapes Indian political activism in this country (Weaver 1984:65).

During the past five years or so, the struggle for a definition has absorbed a great deal of energy. Native leadership has, at this point, reached some sort of consensus that what they wish is the right to govern themselves and to have their "sovereignty" guaranteed in the Canadian constitution. They wish to "complete the circle" that is

Canada. How this sovereignty is to work is still, to me, unclear. One of the stickiest issues concerns the economic base that will nurture the Native communities. The dominant issue for Native people is land.

## Land

Who owns it, who controls it? The Canadian government has claimed ownership of the land since Confederation, and the Canadian state's concepts of land tenure are at complete odds with the system of land-holding and power relationships of traditional, pre-contact Native cultures.

William Henderson said the following about land policy:

Land is today, as it has been historically, fundamental to Canadian Indian policy. In the early years of European settlements, that policy was primarily concerned, on the one hand, with opening up Indian lands for non-Indian occupation without, on the other hand, taking so much so quickly as to lead to open warfare between Indians and settlers (Henderson 1978:1).

Native people did not then understand what Europeans and the British meant by land ownership. In the context of Native culture and beliefs land could not be owned by individuals or groups. It could no more be owned than the air or the water, which had been given to humanity by the Creator.

When the Crown negotiated treaties and accepted surrender of lands the Native people who signed these treaties could not have truly comprehended the ultimate result of their actions. It was incomprehensible to them that land could be bought and sold as a commodity. The true shock and horror followed later and they certainly understand what it means now, for this factor has come to dominate their lives.

Under the provisions of the Indian Act, reserve lands are held by the Crown "in trust" for Indian people, "...reserves are held by Her Majesty for the use and benefit of the respective bands for which they were set apart" (Canada, 1985: Section 18:1). Indians are deemed to have usufructuary title only. That means they can use the land, but not own it. Actually the Crown is the "real owner of all the land in Canada and private persons, including corporations, bands, and band members can only hold some form of estate in land" (Henderson 1978:5). The most common type of estate in land is an estate in fee simple. That is the type of ownership most Canadians understand. Under this type of ownership, land can be bought, sold, used as collateral, mortgaged, transferred and inherited. In the case of Indian lands, ownership is vested in the Crown, so that neither Indian Bands nor individuals have the same rights over the land that fee simple ownership gives. This is the crux of the problem. Without clear title to their land Indian Nations are hampered in any attempts

they may make to build an economy that will support their people.

One of the primary aims of asserting and winning aboriginal rights, and enshrining self-government, is to change the method of land tenure that is essential for self-determination. Native Nations must have control over their land. But how can this be done? The reality of the situation is that self-government and aboriginal rights can only be articulated against a background of the Canadian constitution and political and legal system. To attempt to entrench any relationship that cannot be reconciled in some way with the dominant paradigm can be seen as an exercise in futility. What is required is to try to place solutions within the contexts of the possible and achievable and work from there. A new sort of relationship needs to be developed to facilitate these ends. The Special Parliamentary Committee on Indian Self-Government stated:

...the Committee recommends that the right of Indian peoples to self-government be explicitly stated and entrenched in the constitution of Canada. Indian First Nation governments would form a distinct order of government in Canada, with their jurisdiction defined by constitutional amendment. Such an approach is to be preferred over the proposals advanced by the Minister of Indian Affairs in his discussion paper entitled "The Alternative of Optional Indian Band Government Legislation." Those proposals envisage Indian governments merely as municipal governments and maintain the paternalistic role of the department. The Committee rejects the minister's proposals and does not support amending the Indian Act as a route to self-government. The antiquated policy basis and structure of the Indian Act make it completely unacceptable as a blueprint for the future (Canada 1986c:329).

In addition they noted the following:

What is needed is a holistic approach (that has not been forthcoming under the present legal and administrative regime) and a system under which Indian communities would have the power to establish priorities, to co-ordinate the overall planning, and to control the process of health care. This holistic approach would encompass the spiritual, social, and mental aspects of the life of the individual and the community and would view health as strength, as togetherness, as harmony with the universe, as self-esteem, as pride in self and group as self-reliance, as coping, and as joy in living (Canada 1986c:327, 328).

There is hope that a new relationship is not only possible, but achievable. The next section of this paper will look at the solution put forward by one Indian Band, the Sechelt.

## The Sechelt Band

The Sechelt Indian Band is situated only 50 kilometers north-west of Vancouver, in the vicinity of the Sechelt Peninsula. In pre-contact times the Sechelt people, a division of the Coastal Salish, were divided into four sub-tribes, each having its own hunting and fishing grounds. In the late 1800's the population had reached 21,000, but was decimated by smallpox. In 1988 the population was about 700 persons. Approximately 570 live on Sechelt lands. Their land base of some 1000 hectares is spread over thirty-three separate reserves (see Map 1). Traditionally, the Sechelt economy was based on fishing. More recently logging, gravel extraction, a salmon hatchery and tourism have added to the economic base. Large portions of Sechelt land have been developed and leased to approximately 500 non-Native residents. This now forms a substantial portion of the Band's economic base. The income from leases in 1986 was \$300,000 per annum (Hyatt 1986: 3).

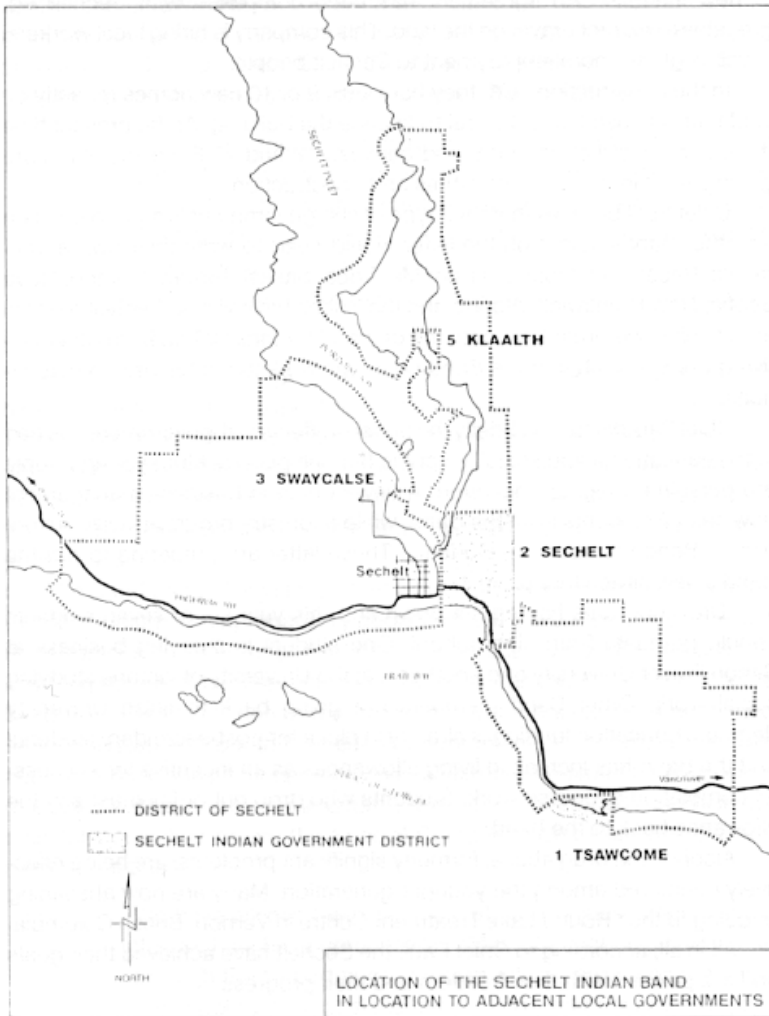
The Band has been enterprising in taking over various aspects of local education. They have instituted classes in their own language for all members of the Band, have created their own pre-school program, which serves both Native and non-Native residents, and have developed programming in the area of Native education for the local school board. The socio-economic problems of the Band have been somewhat less severe than many other Native communities and the community is relatively stable and productive (Canada, 1983a: 6:107).

In a telephone interview on May 18, 1989, Chief Thomas Paul gave the author an update on conditions in the community. The experiment in self-government is going well. He stated, "We don't have to answer to anybody now." It was clear that this new found freedom to run their own affairs is an exciting and heady feeling for the Sechelt people.

They are working hard on their economy through developing a variety of new interests. An agreement has been completed with Sechelt Aggregates to extract gravel on the land. This company is hiring local workers, which is giving more employment to Sechelt people.

In the construction field, they have built 9 or 10 new homes recently on land that was used as collateral to finance the building. At the present time there is a construction boom and between 18 and 25 Band members are getting work in resource industries and construction.

Chief Paul believes that their type of self-government is a good solution for other Bands, although the latter would need to write their own agreements. Recently delegations from Manitoba, Saskatchewan, Ontario, Nova Scotia, New Brunswick, Alberta and the Yukon have visited Sechelt to learn about self-government. Indeed, the demand for information from other Native groups is such that the Band now runs workshops for visiting delegations.



Chief Paul discussed briefly the positive effects self-government has had in the educational and social life of the Sechelt people. More young people are pursuing a higher education. A new course in business management now has 20 students from the Band, while a forestry program in silviculture has 10 Band members as students. These latter are preparing to run the Band's new silviculture project.

Drop out rates have gone down and this year six or seven students should graduate from high school. One student is studying business at Simon Fraser University and another is at the University of Victoria studying social work. Other Band members are going back to finish University degrees. Education funding is already in place for post-secondary students and the Band has increased living allowances as an incentive for successful completion of course work. Students who drop out or fail must pay the allowance back to the band.

Alcohol and drug abuse, formerly significant problems, are being effectively countered among the younger generation. Many are now abstaining or going to the Round Lake Treatment Centre in Vernon, British Columbia.

All in all, according to Chief Paul, the Sechelt have achieved their goals and are pleased with their freedom and their progress.

## **The Twenty Year Journey To Self-government**

More than twenty years ago the Sechelt people were growing progressively more frustrated with the degree of control the Department of Indian Affairs exercised over their lives. In 1986 Chief Stanley Dixon stated: "The Indian Act is like a prison, with four walls around you, and with a warden and guards" (Canada 1986c:4). According to Warren Paull, a Sechelt counsellor, the elders were consulted and the decision was made to begin taking control of their own affairs. The Band negotiated with the Federal Government and began to take over as many services as possible under the provisions of the *Indian Act*. David Crombie, then Minister of Indian Affairs, commented on the process undertaken by the Sechelt Band:

They were the *first* Indian community in Canada granted authority to manage its own lands under the provisions of the *Indian Act*. They won control of reserve funds from the department for their community. They used this power well to manage their lands and provide their own services. They took advantage of every power available under the *Indian Act* (Indian and Northern Affairs Canada 1986a:4).

But this was not enough. The Sechelt Band members found that their hands were still tied in respect to assuming any further rights or powers. Their close proximity to a large urban area, Vancouver, and the need to develop their land demanded that the Band create



a new relationship with the Federal Government. The extensive research done by the Band convinced them that specific enabling legislation would be their way to self-government.

The Band needed legislation that would neither remove them from the Constitutional process regarding aboriginal self-government, nor prevent them from filing a comprehensive land claim separately from the self-government legislation. What they desired was legislation that would remove the Band from the jurisdiction of the *Indian Act*, yet still allow for a continued beneficial relationship with the Federal Government. It was crucial that they not lose their constitutional relationship with the Federal Government in respect to Native land claims and future amendments. In 1983 a Sechelt representative testified before the Special Committee on Indian Self-Government about this issue:

We have always been paranoid about the jurisdictional situation that we have come under. When the federal government, through the Department of Indian Affairs, proposed the white paper policy in the past that they would decentralize the Department of Indian Affairs to the provincial government, that scared the heck out of us. We do not want to get into a jurisdictional situation where a government changes every four years or whatever. That kind of thing is scary. So we would like to actually opt out of the Indian Act but still maintain a jurisdictional situation with the federal government (Canada, 1983a:6:107).

It was not easy to convince Indian Affairs that this solution would work. The first draft of the legislation was rejected by Indian Affairs. The Minister of the Department at that time, John Munroe, did not see any possibilities for legislation tailored to the needs of an individual Band. The Band did not give up, but went back to the drafting table and came up with a more generalized form of legislation which could be more universally applied.

By 1984 they had two proposals before the Department. At the same time the House Special Committee on Indian Self-Government had been collecting data and had made its report to the Government (the Penner Report) (Canada, 1983b). It recommended that rights of Indian Nations to self-government be entrenched in the Constitution, but conceded that other methods of achieving self-government might be pursued. The report stated:

While the committee has concluded that the surest way to lasting change is through constitutional amendments, it encourages both the federal government and Indian First Nations to pursue all processes leading to the implementation of self-government, including the bilateral process (Canada, 1983b: 141).

The Band was beginning to see the light at the end of the tunnel. In 1984, the Sechelt Band held a special ceremony to commemorate their history and their struggle for self-government. At a special commemorative ceremony they installed four beautiful carvings and a plaque. One of the highlights of the ceremony was a speech by Chief Stan Dixon, in which he summarized their struggle:

I first wish to make it clear that the Sechelt approach to Self-Government is its own.

The development of the Constitution of the Sechelt Indian Band reflects the wishes of my people and as the elected Chief of the Band my mandate is to implement this constitution in place of the *Indian Act*. Our people do not seek to impose their approach on anyone else. For my people however, the need is now.

To achieve our goal we require the Federal Parliament to pass legislation which will permit our Band to remove itself from the jurisdiction of the *Indian Act* and allow us to govern ourselves under our own Constitution.

We view the transition in two phrases. First, to implement those sections of our Constitution which is purely in the Federal domain.

The second phase will be to negotiate with the Province of British Columbia contractually to vacate those areas of jurisdiction we wish to occupy. That is our people's recommended approach.

What are the main items in our Constitution:

1. The recognition of the Band as a legal entity at Canadian law.
2. The transfer of title for those lands now reserved only for our use and occupancy to the Band, including the natural resources surface and sub-surface.
3. Control of our citizenship.
4. New fiscal arrangements in form of Federal Transfer Payments.
5. The creation of a Municipal model for Local Government service delivery.

We propose these without prejudice to the Constitution process or to comprehensive land claims settlements. We realize, however, that some of the items may form part of our own comprehensive land claims.

Let me for a moment expand on some of the main points: to us, management and control over the reserve

land...does not offer us the territorial integrity required to be Self-Governing. To have management and control granted subject to regulation which is prepared by the Federal Government will result in the same situation as is in the place under the *Indian Act*. The regulation of our land should and must be ours. We must provide the necessary protection and we must set our procedures in relation to this valued resource.

Secondly, we must determine who our people are. We must provide the necessary process to grant full Citizenship rights. We must provide the necessary appeal procedures. To us, we would never permit the creation of a second class of Sechelt Indians. Once returned to the family, they must have all the rights and privileges and responsibilities as if they had never been removed from our community.

The fiscal arrangements we propose will not cost the people of Canada any more money. It will however, give better value to these funds by allowing the elected Government of the Sechelt Indian Band to allocate these resources to advance progress in our community where we want to see progress made and not where some Ottawa officials think we should.

We will respond to the community needs and be accountable to them.

Finally, why did we select the Municipal model. Quite frankly, it was the logical practical and pragmatic choice.

Our economic resource base relies heavily in the provision of leasehold interest in our land. In this, we compete with non-Indian communities which surround us. Our location and economic base demands we choose a system of Government similar to those of our competitors. In our opinion, it is a reasonable conclusion and because it is reasonable in our circumstances, the potential for its achievement is increased.

One last point:

Perhaps others may say that what we desire is not enough. It doesn't go far enough. That is their right, but it is not their right to deny or obstruct what the Sechelt people want.

We cannot wait much longer. We must be given the opportunity to move very soon. For us the current situation under the *Indian Act* tramples on our initiative, eliminates pride in ourselves and denies us the opportunity to direct our own destiny (Sechelt Indian Band, 1984:39-41).

From the time the Sechelt Band began to draw up its early proposals to the time of the final draft of Bill C-93 (The Sechelt Act) the Department of Indian and Northern Affairs had changed its position on the subject of self-government, and was calling for community based solutions. Acknowledging the difficulties inherent in the process of negotiating Constitutional amendments, the Department set out a series of recommendations in a policy statement of April 15, 1986, which included amongst other approaches, approval of arrangements which would remove the Sechelt Band from the jurisdiction of the *Indian Act*. The Minister of Indian Affairs stated that the Ministry would be establishing a new Indian Self-Government Branch to be headed by an Assistant Deputy Minister (Indian and Northern Affairs, Canada, 1986b:6).

On March 15, 1986 the members of the Sechelt Band went to the polls to hold a referendum on Bill C-93. They voted 167 to 60 in support of the Bill. It went to Parliament, was passed on May 21 and given royal assent on June 17, 1986.

## **Rocks, Not Pebbles In The Path**

The culmination of the twenty year dream had come to fruition, but not without difficulty. Just before the final stages in 1986, the Treasury Board threw a monkey wrench into the gears and almost scuttled the deal. In order to give the Band greater financial freedom, they negotiated an agreement under which the Band would receive its funding in yearly blocks. The Minister was clearly in favour of this financial structure, but at the last minute, he sent a letter to Treasury Board concerning this (instead of going in person, as he had intended) (Hyatt, 1986). Four days later he was transferred to another portfolio. Without Crombie to fight for the yearly payment, Treasury Board tried to impose a new arrangement calling for 10 payments per year, with the revenues of the Band being deducted from the government funding. This was unacceptable to the Sechelt people. It took sustained lobbying by the Band Council to bring Treasury Board around. On August 12, 1986, an agreement was struck. But the new agreement took a toll. Treasury Board deducted \$25,000 from the Band's grant as "...this amount would be lost to the government in interest payments..." (Hyatt, 1986:7). Chief Dixon felt it was a small price to pay to get out of the *Indian Act*.

The Department of Indian Affairs put another last minute road-block in the path of Sechelt self-government. The *Sechelt Act* required an enabling piece of local legislation, the Sechelt Band Constitution, be approved in a referendum by a majority of the Band members and the Governor in Council so that the *Act* could become operable. Suddenly, the Department stated that by "majority" was meant a majority of all adult members on the Band list, even though some members lived out of the country and had no intention of returning for the vote, and other Band members were invalids, unable

to get to polling stations. Hyatt notes that Chief Stanley Dixon "viewed this as an attempt by the government to scuttle the Band's hopes for self-government" (Hyatt, 1986:7).

After a series of meetings and persistent lobbying the Department finally agreed to remove the absent members from the voter's list and to allow invalid members to vote in their homes. On Sept. 26, 1986 a successful referendum was held. The result of the referendum was a vote of 193 to 8 in favour of the new Constitution.

The Sechelt were criticized by other Native Nations who were not in agreement with the process being pursued by the Sechelt Band. They felt this undermined the constitutional process. The Assembly of First Nations (AFN) in particular was very critical, saying that the *Sechelt Act* was just one step above the *Indian Act* and shouldn't be referred to as self-government. The Union of British Columbia Indians opposed the Sechelt plan and was supported by most other Indian Bands in the Province (*Globe & Mail*, Oct. 24, 1986: A8). Representatives of Indian Nations who testified for the Standing Committee on Aboriginal Affairs and Northern Development expressed strong concerns as to the action taken by the Sechelt Band.

Vice-Chief Joe Mathias (B.C. Regional Vice-Chief, Assembly of First Nations) made the following statements before the Committee:

First of all, I will make it very clear to this committee, to the Minister of Indian Affairs and the Sechelt people that we are not here to challenge the Sechelt people. We are not here to dispute their initiative. We are not here to raise a quarrel or enter into a debate with the Sechelt Indian Band and the initiative as outlined in the Sechelt bill.

...We look upon Bill C-93 as being delegated legislation. It is a creation of a model of which the Minister of Indian Affairs calls "self-government" through federal legislation.

...The proposed act is not recognized nor ensures self-government from the AFN's point of view...Firstly, the ultimate jurisdiction under the proposed act rests with non-Indian governments. In other words, we see the federal government, and to a certain extent, the provincial government will have an override power, a veto power. If there is an override power, we do not see that as being self-government (Canada, 1986d:18:4,5).

Warren Paull, a Sechelt counsellor, stated that because opposition was so universal, the Sechelt Band ultimately withdrew its membership in the various provincial and national organizations of which it had been a member. The decision the Sechelt had made to pursue self-government had been over twenty years in the making, had been supported by the elders over the years and had almost

total support of the membership. This was their path and they have not allowed censure to deter them.

Ultimately the Sechelt Band overcame all its prime difficulties, with the exception of the opposition from other First Nations, and achieved their goal.

This paper will now focus on Bill C-93 and the Band's Constitution to see what degree of freedom, what rights and privileges the Sechelt Band have achieved.

### **Bill C-93: An Act Relating To The Establishment Of Self-government For The Sechelt Band**

The purpose of this section of the paper will be to examine Bill C-93, the *Sechelt Act*, its purpose and the rights and duties it enshrines.

Firstly, the purpose of the *Sechelt Act* is to:

...enable the Sechelt Indian Band to establish and maintain self-government for itself and its members on Sechelt lands and to obtain control over and the administration of the resources and services available to its members (Canada, 1986a:4).

The *Act* does not abrogate aboriginal rights. Section 3 clearly states that nothing in the *Act* will "abrogate or derogate" from any **existing** aboriginal or treaty rights of the Sechelt peoples or any other Native peoples, under Section 35 of the Constitution Act, 1982. Therefore the Band has protected itself from losing any rights that may accrue to Native people in future as a result of Constitutional negotiations.

Another salient feature of the *Act* is found in section 5, whereby the "Sechelt Indian Band is hereby established to replace the *Indian Act* Sechelt band." In other words, the Sechelt Band created by this legislation replaces in its entirety the Sechelt Band as it was constituted under the *Indian Act* and therefore, removes the Band from the constraints of the *Indian Act*.

One key to the whole process is found in section 6 of the *Act*. This section states that the Band is a legal entity with all the rights of a natural person, such as the right to enter into contracts and agreements. Critical here is the right to: "(b) acquire and hold property or any interest therein, and sell or otherwise dispose of that property or interest,". This means that the Band holds its land in "fee simple". (A more detailed discussion of the question of land holding will follow.) All of the powers and duties specified in section 6 of the *Act* are to be "carried out in accordance with its constitution" (Section 7).

The *Act* establishes that the Band shall be elected in accordance with the rules and regulations laid out in the Constitution of the Band (Section 8). The act also creates the Sechelt Indian Government

District (Section 17) which, “shall have jurisdiction over all Sechelt lands.”

Section 10 of the *Act* provides for the creation of a written Constitution which establishes the method and means for Band Council elections, and the system of fiduciary accountability to be used. The Constitution establishes a membership code, rules for referenda, and the process whereby Sechelt land will be acquired or disposed of or used. The Constitution also sets out the legislative powers of the Council.

The *Act* sets out an amending formula for the Constitution, and delineates the legislative powers of the council. These are analogous to municipal powers currently found in Canada, with some elements of provincial powers. As per section 14 of the *Act*, the Council, within the extent allowed by the Constitution, has the power to legislate on a wide variety of matters (see figures 1 and 2).

These powers go beyond those normally found in municipal government and give the Band control over all essential services and land development. One of the interesting features of the above is the right of the Sechelt Band Council to tax non-Indian residents of the land, within the constraints imposed by provincial laws where they apply.

Section 23 (1) of the *Act* transfers fee simple title to the Sechelt Reserve Lands to Sechelt Indian Band subject to the interests noted in Section 24. Section 23 (3) extinguishes aboriginal title to the land. The only limitations placed on the power to dispose of lands are found in Section 24 which acknowledges certain interests of the Province and the possibilities of seizure in the case of bankruptcy, Section 25 which notes that the lands are to be held for the “use and benefit of the Band and its members,” and Section 26 which places the powers under the auspices of the Bands constitution.

One interesting factor in Section 25 is noted by Hyatt, who states:

It might be argued that this section recognizes a unique, collectivist nature to the title to these lands...If title to Sechelt lands was to be vested in the Sechelt Indian Band *qua* legal entity, there would seem to be no need to include the words “and its members.” The Sechelt Indian Band as a legal entity is governed by the *Act* and a constitution drawn up by the Band. This latter document specifies how Band lands are to be used. In light of the wording of s.25 one might argue that Sechelt land title is vested not just in a legal entity (the Band) but in some more amorphous collectivity. One might argue that the form of ownership by the Sechelt people is *sui generis* in nature; it is not the same as ownership by a corporation. This consideration might arise if there is a dispute over how Sechelt lands are being used. In resolving this issue, a court might find that the provisions of the Band constitution governing land use are ambiguous. The court

| <u>POWERS UNDER SECTION 14 OF THE ACT</u>  |                                       |                         |                         |
|--|---------------------------------------|-------------------------|-------------------------|
| <u>Sechelt Powers</u>  | <u>Canadian Municipalities</u>        | <u>Indian Act</u>       | <u>Band Or IAB</u>      |
| (a) access to and residence on Sechelt lands   |                                       | 18.1; 20-28; 30-3; 1 81 | IAB<br>IAB/Band<br>Band |
| (b) zoning and land use planning;  | municipal & prov. appeal              | 81                      | Band                    |
| (c) expropriation, for community purposes, of interests in Sechelt lands by the Band;  | federal<br>provincial;<br>municipal;  | 35                      | IAB                     |
| (d) the use, construction, maintenance, repair, and demolition of buildings;   | municipal                             | 81                      | Band                    |
| (e) taxation, for local purposes, of interests in Sechelt lands, and of occupants and tenants of Sechelt lands, including assessment, collection and enforcement procedures and appeals; | federal;<br>provincial;<br>municipal; | 83                      | Band                    |
| (f) the administration and management of property belonging to the Band;   | municipal                             | 81                      | Band                    |
| (g) education of Band members on Sechelt lands;  | provincial;<br>municipal              | 114-123                 | IAB                     |
| (h) social and welfare including the custody and placement of children of Band members;  | provincial;<br>municipal              |                         |                         |
| (i) health services on Sechelt lands;  | provincial                            | 73<br>81                | IAB<br>Band             |
| (j) the preservation and management of natural resources on Sechelt lands;   | provincial                            | 93                      | IAB                     |
| (k) the preservation, protection and management of fur-bearing animals, fish and game on Sechelt lands;  | federal;<br>provincial                | 73<br>81                | IAB<br>Band             |
| (l) public order and safety on Sechelt lands; provincial   | federal                               | 81                      | Band                    |



|   |                                  |                         |                             |
|---|----------------------------------|-------------------------|-----------------------------|
| <p>(m) construction maintenance and management of roads and the regulation of traffic;</p>  | <p>provincial;<br/>municipal</p> | <p>34<br/>73<br/>81</p> | <p>IAB<br/>IAB<br/>Band</p> |
| <p>(n) operation of businesses, professions and trades;</p>   | <p>provincial;<br/>municipal</p> | <p>73<br/>81</p>        | <p>IAB<br/>Band</p>         |
| <p>(o) prohibition of the sale, barter, supply, manufacture or possession of intoxicants on Sechelt lands and any exceptions to a prohibition of possession;</p>                              | <p>provincial;<br/>municipal</p> | <p>85.1</p>             | <p>Band</p>                 |
| <p>(p) subject to subsection (2), the imposition on summary conviction of fines or imprisonment for the contravention of any law made by the Band government;</p>                             | <p>municipal</p>                 | <p>81</p>               | <p>Band</p>                 |
| <p>(q) the devolution, by testate, or intestate succession, of real property of Band members on Sechelt lands and personal property of Band members ordinarily resident on Sechelt lands;</p> | <p>provincial</p>                | <p>42-50</p>            | <p>IAB</p>                  |
| <p>(r) financial administration of the Band;</p>  | <p>municipal</p>                 | <p>61-63; 65<br/>64</p> | <p>IAB<br/>Band</p>         |
| <p>(s) the conduct of Band elections and referenda;</p>   | <p>municipal</p>                 | <p>74-79</p>            | <p>IAB</p>                  |
| <p>(t) the creation of administration bodies and agencies to assist in the administration of the affairs of the Band; and</p>   | <p>municipal</p>                 | <p>83</p>               | <p>Band</p>                 |
| <p>(u) matters related to the good government of the Band, its members or Sechelt lands.</p>  | <p>municipal</p>                 |                         |                             |

FIGURE 1

would then look to s.25 of the *Act* for further guidance. The interests of the amorphous collectivity referred to above may be found to be paramount over the interests of the Sechelt Band as a legal entity (Hyatt 1986:11,12).

It might be noted, in the light of the above legal argument, that the right of the amorphous collectivity is another way of asserting the traditional right of the people to the land, beyond whatever entity is making decisions regarding the land.

Section 31 provides that the Sechelt lands are still reserves for Indians under the meaning of the Constitution Act 1867 (Class 24:91). The lands also continue to be registered under the Reserve Land Register, which is administered under the *Indian Act* in addition to being listed in the Provincial registry.

Ownership of land in "fee simple" has new financial implications for the Sechelt people. It enables the Band to buy and sell land and to use the land as collateral to finance development projects. This raises an issue which many critics of the *Sechelt Act* have addressed. That is the possibility that the land could be lost, leading to the "disintegration and assimilation of the Sechelt Band" (Hyatt, 1986:16). A comparison has been made between the *Sechelt Act* and the *Alaska Native Claims Settlement Act* (ANCSA) of 1971.<sup>2</sup> In the case of ANCSA, the solution was imposed from above on a population that was ill prepared to cope with the corporate structure of the system and who were practicing a lifestyle incompatible with the new structure.

On the other hand, the Sechelt people have been preparing themselves for self-government for over twenty years and have a trained and educated administration. From the information available it would seem that the Sechelt people have built in as many safeguards for their land tenure as possible while still allowing themselves freedom to develop the land. At this time it seems unlikely that they could lose their land, although pressures due to their proximity to Vancouver may come to bear in the future.

Although Bill C-93 removes the Sechelt Band from the jurisdiction of the *Indian Act* there are some areas in which the provisions of the *Indian Act* will still apply. Section 35 of the *Sechelt Act* notes that the *Indian Act* applies except where it is inconsistent with the *Act*, the Constitution of the Band, or a law of the Band. This means that the Sechelt people remain "Indians" under the meaning of the *Indian Act* and are entitled to all the rights and privileges due to "Indians" except where there is a conflict with either the laws or the Constitution and laws of the Band take precedence over the *Indian Act*.

The *Act* provides for the funding of the Band in Sections 33 and 34. Section 33 provides that funds may be granted to the Band by the federal government as per bilateral agreements. Section 34 provides that such money shall be appropriated by Parliament. This places the Band at the mercy of the federal government until they

are self-supporting. As was noted above, the problems with the Treasury Board caused great difficulty just prior to the enactment of the Bill. Without some sort of firm agreement that is embedded in the Bill via an amendment, the Band still remains vulnerable. As at Spring 1988, however, it seems that this vulnerability is not as severe as it might be. The Band already had in place its funding agreement for the post-secondary education of students, and its education program is not threatened by Federal spending ceilings.

The government of the Sechelt people is provided for in the *Sechelt Act* and elucidated upon in the Band Constitution. The next section of the paper will examine certain aspects of the Constitution as they apply to local government, Sechelt style.

## Sechelt Band Constitution

The Sechelt Constitution is the companion document to the *Sechelt Act*. It spells out in detail how lands are to be registered, how Council is to be elected, the Band membership code, how referenda are to be held and when, the processes of funding, administering and in every way legislating this government. The Band Constitution is a carefully drawn, precise 50 page document. I will attempt to highlight some of the salient features.

### Band Membership

This section sets out requirements for Band membership. The initial list is comprised of the members as recorded on the date of enactment of the *Act*. It is the prerogative of the Council to amend the list thereafter according to the criteria set down in Sections 3 to 10. Provisions for membership are based upon such criteria as birth, marriage and divorce relationships, blood, adoption, entitlement under the *Indian Act* and entitlement by Band vote.

### Band Land Regime

This section specifies that the land is to be held by the Band "...for the use and benefit of the Band and its members..." (2:1). It also, specifies procedures for granting allocation of lots, the taking of lands for public purposes (by the Province), the granting of leases and interests in Sechelt lands, and processes for surveying and referenda.

One very interesting feature of this section pertains to the regulation regarding approval for the disposition of lands. It is as follows:

...no Sechelt lands may be mortgaged, sold, or otherwise have the title to them transferred, unless the mortgage, sale or title transfer has been first approved in a **referendum by a vote 75% in favour by all the Band electors** (emphasis added) (Division 4:1).

Many provisions in the *Sechelt Act* and the Constitution reflect the desire of the Sechelt people to protect their land and their culture. The above noted clause is one significant way in which this is manifested.

#### Natural Resources

Division (3) gives the Band the full power to “dispose of any rights or interests in all natural resources on, in and under Sechelt lands” (3:1) subject to the restriction in sections 24, 35, 39, 40 & 41. Clauses 3:2 to 3:4 cover the methods by which permission may be granted to remove any natural resources, such as timber, gravel, sand, clay or other substances. In order to develop these resources, consent of the Band electors is required by referendum if the term of the permit is more than five years, or the permit “is in respect of Sechelt Lands that were previously in a natural and undeveloped condition” (3:3,a). In all other cases a two-thirds majority vote of Council is required.

This is a formidable protection for untouched lands. Even were there to be at some time a Council whose desire for the monetary rewards of development exceeded their devotion to the land, the restraining nature of the Constitution will act as a protection.

#### Referendum Procedures

This sets out in detail the procedures to be followed when referenda are called. These rules and regulations ensure proper methodology, accountability, and universal accessibility by all members, even if they are illiterate or incapacitated. The careful attention to detail in this section reflects the great emphasis placed upon fairness and honesty by the Sechelt people.

#### Band Monies

Most Band funds will come from the following sources:

##### **Revenue Monies:**

- annual lease revenues
- annual equivalent rents arising from prepayment of leases
- fees for permits
- interest on investments
- interest on loans made from the revenue of the Band
- interest on capital funds
- donations to the Band
- British Columbia special payment; and
- administrative fees.

##### **Capital Monies:**

- money from the sale of land
- money from the sale of other capitol assets
- royalties from the sale of non-renewable resources

These sources of revenue are in addition to the federal transfers allowed under the *Sechelt Act*. The Constitution also spells out in detail how monies are to be handled. Extensive financial controls are set in place to ensure fiduciary responsibility and accountability.

In addition to the above, the Constitution covers such items as procedures for approving laws, administration and management of Band lands, the preservation and protection of fish and game, maintenance and construction of roads, regulation of traffic, the operation of business, professions and trades, laws regarding the manufacture, sale and barter of alcohol, and laws pertaining to the devolution of property of Sechelt Band members resident on Sechelt lands.

#### The Sechelt Indian Band Council

The Sechelt Indian Band Council is established by Section 8 and 9 of the *Sechelt Act*. The procedures and regulations for its election and operation are contained in Part II: Divisions 1 to 5 of the Constitution. The Council is to consist of one Chief and four councillors to be elected every three years. The number of councillors will be increased from time to time as the population grows, so that there will always be one councillor for every 120 members resident on the land. The procedures for nominations and elections by secret ballot are very similar to non-Native methods of elections.

The Council may legislate in certain areas formerly administered by local, provincial and federal levels of government. Where there is some overlap with other levels of government, the Council will have to make efforts to co-ordinate the action. A potential for conflict exists in this area if co-ordination of activities becomes a problem.

There are also provisions for amending the Band Constitution. Such amendments would have to be approved by the Band and the federal government. This is another area in which the Band seems somewhat vulnerable to federal control. It is unlikely that powers, once granted, would be removed. Moreover, although the federal government retains some control in this area, the Band Council will likely operate fairly autonomously.

### **The Province And The Sechelt Band<sup>3</sup>**

The Province of British Columbia has had strained relations with Native people since entering Confederation. Indians comprise approximately 3% of the population, some 93,000 persons (Taylor and Paget, 1988). No treaties have been signed by the majority of British Columbia's Indian population and there has been an on-going dialogue on the subject of comprehensive land claims. According to Taylor and Paget (1988), 260 thousand of the 360 thousand square miles of the Province are now under some kind of comprehensive claim. The Federal government has accepted the land claims on the condition that the Province provide a land base. This the Province refuses to do.

The Province has tried to resolve Indian Claims by insisting that aboriginal title does not exist, or "...if it did exist it was extinguished and if not extinguished it is a federal responsibility..." (Taylor and Paget, 1988:2.1.3) The Province has also refused to acknowledge any possible solution through constitutional entrenchment of Native self-government. The only solution the Province has been willing to opt for is a municipal type of self-governance. It is along these lines that the Province negotiated with the Sechelt and although somewhat reluctant, had to defer to the interests of the Sechelt Band and the Federal Government in the Development of Sechelt self-government.

On July 23, 1987 the Province of British Columbia passed Bill 4-1987 entitled *The Sechelt Indian Government District Enabling Act*. This is a companion piece to the Federal statute. Bill 4-1987 contains a number of significant items:

"...it recognizes the Sechelt Indian Government District; it clarifies provincial powers with respect to the Sechelt; it establishes an appointed advisory council; it ensures provincial laws apply; it confers provincial benefits on the Band; it suspends direct provincial property taxation; and it enables the delegation of provincial responsibilities to the Band" (Taylor and Paget, 1988:3.3).

An important item in Bill 4-1987 is the appointment of an Advisory District Council. As the Band Constitution and the Federal Act make no provision for the election of non-Native representatives to the District Council, a potential for conflict exists. Hyatt stated:

If these non-natives within the Sechelt Indian Government District are to come within the legislative power of the District Council, it will be necessary for them to be given some means of representation. This will be particularly necessary if the District Council is allowed to assume some of the taxing power of the province.

On the face of the *Act* there is no apparent provision made for non-native representation on the District Council. Section 19(2) of the *Act* states that the "...District Council shall consist of the members of the (Band) Council." These two bodies will therefore be identical in make-up (Hyatt 1986:26).

To date the non-Native tenants on Sechelt lands have been supportive of the Band achieving self-government and have not lobbied for representation. The Advisory District Council may alleviate any tension which might arise in future over non-Native representation.

The purpose of the Advisory Council is to "represent all the residents of the Sechelt Indian Government District" (Taylor and

Paget, 1988:4.3). This council is a creation of the Province and is not provided for under the Federal statute. This council will give non-Natives occupying Sechelt lands an opportunity to be heard. The initial Council will be composed of four appointed persons, with elections to be held in the fall of 1990. Both Natives and non-Natives will be eligible to vote and to hold office.

The Advisory Council is strictly an advisory body to the District Council and its responsibilities are clearly delineated. They are to be responsible for:

- planning the services program for the District;
- estimating the costs of the servicing program;
- recommending a servicing program including proposed financing to the District Council; and
- receiving and considering petitions relating to the provision of a service in the District.

The Sechelt Indian Government District is also a member of the Sunshine Coast Regional District. Once the Sunshine Coast Regional District passes an enabling law, the Sechelt will sit as equals with the other district municipalities and fully participate in the politics and government programs and services of the region.

*Bill 4–1987* only has a life of twenty years. Unless a referendum of the Band and approval of the Provincial cabinet are secured for continuation of the Act, it will be repealed on June 30, 2006. The implication of this will be addressed later in the paper.

Two other pieces of enabling legislation have been recently passed, the *Land Title Amendment Act*, 1988 and the *Sechelt Indian Government District Home Owner Grant Act*. The former is a fairly complex document that provides for the registration of Sechelt land title under the Provincial *Land Title Act* using the Torrens Systems. This is primarily geared to the non-Native residents of Sechelt land so that they can have the security of registering leased land within the provincial land registry system (Taylor and Paget, 1988).

The latter piece of legislation grants eligibility for provincial Home Owner Grants to Sechelt residents. Generally these sorts of grants have not been accessible to Native people living on reserves. This act now changes this to include all peoples resident on Sechelt land.

The impact of the Provincial enabling laws, along with the Federal legislation and the Band legislative instruments, has been to create a new form of government. This gives the Sechelt people “almost complete political and administrative autonomy, freedom from the scrutiny of the *Indian Act*, control of Band lands, considerable financial independence and their own Band constitution” (Taylor and Paget, 1988:3.4).

## **The Implications Of The Sechelt Act For Native Self-government?**

In this paper I have looked at a set of enabling legislation that, according to David Crombie, the former Minister of Indian Affairs and Northern Development, granted a form of self-government to a First Nation. In his address to the House of Commons on February 7, 1986. He noted:

Mr. Speaker, today I rise to ask all Hon. members to consider legislation that will **restore self-governing rights** to the Sechelt Indian community of British Columbia. Moreover, the proposed legislation will demonstrate the Government's commitment to advancing self-government for all Indian people and thereby advance the cause of Canada [emphasis added] (Canada, 1986b).

The government's policy statement on Indian self-government issued on April 15, 1986 affirmed the municipal model of self-government. It stated that the government was going to focus on community-based solutions, pragmatic in nature. The policy document affirmed that:

[As] the federal government believes that local communities, not central governments, are best able to make the important decisions affecting people's daily lives, discussions and negotiations to advance self-government will be community-based; conducted at a practical level and at a measured pace; and, tailored to specific circumstances that exist today (Indian and Northern Affairs Canada, 1986b:2).

But, the question in the minds of many is whether or not this particular case is the exception to the rule, or whether it will provide a model for the future. First Nations are rightfully apprehensive that the Provincial government will use this as a test case to push their model of community-based legislation on other reserves and perpetuate the divide and rule methods they have used in the past.

Taylor and Paget (1988) note that the Province did not achieve all its aims of placing the Sechelt totally under the auspices of provincial statutes. The Province, Taylor and Paget assert, has had "to accept the Government of Canada's prerogative to create a 'local government' with federally delegated powers" (1986:6.3). However, while the Province does not have total control it may exert influence through its financial arrangements with the Band. There is a delicate balance of power among the three levels of government. Taylor and Paget assert:

...the Government of Canada, conscious of the sensitivity of its relationship with the Province has constrained the exercise of the District's powers such that it does not offend provincial sensibilities particularly in the areas of fairness and due process. Consequently, the Province



has achieved its objectives in the area indirectly rather than directly (1988:6.3).

There is reason to feel the Federal Government will also push the municipal model. First Nations criticize the legislative solution as being a betrayal of their aims for sovereignty and in this they are supported by the findings of the Penner Report. It called for the entrenchment of self-government in the Canadian Constitution. The Report states:

The surest way to achieve permanent and fundamental change in the relationship between Indian peoples and the federal government is by means of a constitutional amendment. Indian First Nation governments would form a distinct order of government in Canada with their jurisdiction defined (Canada, 1983b: 44).

However, the Report goes on to note that bringing about Constitutional amendments at this time will be a long process and that in the interim the Committee "considered other courses of action for achieving Indian self-government: the courts, the bilateral process and legislative action" (Canada, 1983b:45). It could be construed that within the context of the Penner Report the process undergone by the Sechelt Band might qualify as self-government via "legislative action". However, the Penner Report, in speaking about the legislative solutions proposed by the Department of Indian Affairs and Northern Development states that:

The proposal envisages Indian governments as municipal governments and fails to take account of the origins and rights of Indian First Nations in Canada. A major objection is that permission to opt in would be a favour granted to bands that the Minister of Indian Affairs, in his discretion, deemed to be sufficiently "advanced". The paternalistic role of the Department would be maintained (Canada 1983b:47).

The reason so many Indians oppose this form of legislation is because it does not recognize the sovereignty of First Nations, but rather involves a delegation of power and a transfer of responsibilities. This is seen as a continuation of paternalistic policies. Mr. Penner, in the Commons Debate on the *Sechelt Act*, reinforced the findings of the Report:

Perhaps it is how far the Department is willing to go or how far it can go, but it is for that very reason that Indian leaders are somewhat apprehensive about the route we are taking today, the so-called legislative path or avenue. That is why Indian leaders continue to stress with vigour that what we have to pursue is the constitutional route.

When we have done that, and when we have been successful at the constitutional level, then it will not be how far the Minister or the Department is willing to go or, as my hon. friend opposite said, how far they can go. Rather, it will be what rights or powers flow from the Constitution of Canada. **Legislation cannot replace the need for constitutional recognition** [emphasis added] (Canada, 1986b).

The First Nations insist that only constitutional solutions are acceptable. However, the collective will to achieve consensus in this regard seems to be missing from the responsible government departments. The thrust of the Department of Indian Affairs and Northern Development is the community-based approach. The conclusion of the 1986 policy statement notes:

Community-based self-government negotiations will occupy a high priority in the Department of Indian Affairs and Northern Development. While we intend to focus considerable effort toward negotiations leading to community-based self-government, we intend to strive to complete the constitutional process. It is our belief that the community-based negotiation will make a valuable contribution to the constitutional process and help it to achieve success. In the meantime, we are convinced that there are immense gains to be made by undertaking negotiations which are community-based, tailored to specific circumstances and which move forward steadily at a measured pace (Indian and Northern Affairs Canada, 1986b:11).

For the Native Nations of Canada, this approach will take a lot of time and effort. It will consume scarce human and financial resources that a community already groaning under the burdens of poverty can ill afford. One can easily understand why the government's community-based self-government approach might be construed as an attempt to divert attention from the constitutional process.

In all fairness to the Sechelt Band, my research has convinced me that they have indeed followed their own path and pursued their own goals. They have been impatient with the process the First Nations have been following regarding embedding aboriginal rights in the Canadian Constitution. It is understandable. Their particular circumstances have demanded relatively quick action to gain control of land development in their area.

The Sechelt have achieved a type of government that is not just a municipality. The Sechelt Indian Government District is a creation of the Federal, not the Provincial government. Therefore provincial laws only apply where they do not conflict with the *Sechelt Indian*

*Band Self-Government Act*. The Band Council has significant powers as shown in Figure 1, beyond those of conventional municipalities and, in some cases, provincial governments (Taylor and Paget, 1988).

However, they may well have jumped the gun on their fellow First Nations by inadvertently giving the government a test case to market. It certainly seems that this has become the case, as both the Province of British Columbia and the Federal government are encouraging local solutions. The implications for Indian Bands across Canada merit further study. Few could or would directly apply the Sechelt formula to those in other circumstances. It bears repeating that the placement of Sechelt lands near Vancouver and the long history of close Sechelt relationships with non-Natives and the urban area, make this case unique.

On the other hand, there are some very positive elements to the *Sechelt Indian Band Self-Government Act*. Firstly, the sense of responsibility that the Band has shown in its dealings with all levels of government, with its non-Native tenants and neighbours, and with its own members has created an excellent impression of the capabilities and talents of Native people. Much goodwill has come about over the last twenty years as a result of the sustained actions of the Sechelt nation to gain self-reliance, and the Band has had considerable support from its tenants and neighbours in the pursuit of its goal. This is a very important factor when gauging public response to First Nations attempts to entrench aboriginal rights in the Canadian Constitution.

Such has been their success, Chief Paul reports, that in spite of the negative attitudes of national Native political organizations, First Nations from Alberta, Saskatchewan, Manitoba, New Brunswick and the Yukon have sent delegations to the Sechelt to learn about the process they have followed. The Sechelt administration has become adept at putting on workshops on self-government for such deputations. Another positive factor to be considered is the success the Band is having in establishing a secure economic base through the management of their lands and the development of their resources. Their successes will have a positive impact on other First Nations looking for credibility and public support for their efforts.

In the long run it may be that the effort of the Sechelt Band to regain their lost independence may have positive effects on the aspirations of other First Nations, even though critics do not see it that way now. Pioneers are often derided if they deviate from the perceived norm. In this case, however, if one supports the rights of First Nations to have control over their own affairs, it may well be premature to censure the efforts of the Sechelt people.

## **Conclusion**

Only the future will show us the outcome of the actions of the Sechelt Band in seeking self-government through the legislative

process. It is necessary to see the efforts of the Sechelt Band against the picture of an immense struggle of two forces, each with a very different world view. One way of reconciling these two views is succinctly articulated by John D. Whyte. He stated:

...if we were able to see aboriginal self-government as the removal of peoples from a dominating yoke, then we would be more inclined to think of the process of constitutionalizing aboriginal self-government as an exercise in statecraft. We might view our responsibility to be to help in the designing of a political arrangement that allows aboriginal peoples authority to determine their own social order. We would view ourselves as involved in the recognition and articulation of basic conditions of liberation. Viewing the process as being this sort of exercise of statecraft would produce, I believe, a different stance in relation to points of legal analysis than would be produced if the process is seen as simply responding to claims made under the existing constitutional order (Whyte, 1987:79).

The only completely fair solution for First Nations is the entrenchment of aboriginal rights and self-government in the Canadian constitution. As Thomas Berger asked "...what measures can establish a fair and equitable relationship between dominant societies, cast in the European mould, and the Indian people?" (Berger, 1984:3). All those involved, both Native and government leaders, recognize that only an act of collective will can accomplish this goal. This will most likely take a very long time. Until then solutions such as that pursued by the Sechelt Band may not be the ideal, but they should be expected and perhaps even encouraged as providing at least interim measures of self-determination and self-reliance.

**APPENDIX**  
**CHRONOLOGY OF EVENTS**  
**(Source: Taylor and Paget, 1988)**

**1985**

- February 5, 1985      Bill C-93, *Sechelt Indian Band Self Government Act*, introduced in the House of Commons.
- March 15, 1985      Sechelt Indian Band votes 70% in favour of legislation.

**1986**

- March 15, 1986      Referendum on exercising self-government and transfer of land from Canada to Sechelt Band passed by Sechelt Band.
- May 3, 1986          Bill C-93, *Sechelt Indian Band Self- Government Act*, passed.
- June 17, 1986        Royal Assent given to Bill C-93.
- September 26, 1986      Referendum on Band Constitution successful.
- October 9, 1986        *Sechelt Indian Band Self Government Act* proclaimed.

**1987**

- March 11, 1987        *Sechelt Indian Government District Enabling Act* introduced in British Columbia legislature.
- April 3, 1987          *Sechelt Indian Government District Enabling Act* adopted by British Columbia Legislature.
- May 26, 1987          *Sechelt Indian Government District Enabling Act*, given Royal Assent.
- July 23, 1987          Sechelt Indian Government District Enabling Act, proclaimed, Order In Council 1466.

**1988**

- March 5, 1988 Band referendum approves transfer of powers from Band to District Council.
- March 17, 1988 Sections 17 to 20 of *Sechelt Indian Band Self Government Act* proclaimed by Federal Cabinet enabling transfer of powers from Band Council to District Council.
- March 25, 1988 *Sechelt Indian Government District Property Taxation Suspension Regulation* adopted by Cabinet of British Columbia.
- June 16, 1988 *Sechelt Indian Government District Enabling Act: Regional District Participation Regulation* adopted by Cabinet of British Columbia.
- June 16, 1988 *Land Title Amendment Act, 1988* adopted by British Columbia legislature.
- June 21, 1988 *Sechelt Indian Government District Home Owner Grant Act* adopted by British Columbia.
- June 23, 1988 *Sechelt Indian Government District Enabling Act: Advisory Council Regulation* adopted by British Columbia.
- June 24, 1988 Official Inauguration of Sechelt Self-Government.

## NOTES

1. Much of the information in this section is taken from newspaper clippings, an interview with Sechelt counsellor Warren Paull, and from Hyatt, 1986
2. For details of the latter, see Berger, 1985
3. For a more detailed description of the legislative framework, see Taylor and Paget, 1988.

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### Sechelt

Sechelt Band Constitution