

**REVISITING THE RCNE: AN EVALUATION OF THE  
RECOMMENDATIONS MADE BY THE ROYAL COMMISSION  
ON THE NORTHERN ENVIRONMENT CONCERNING THE  
NATIVE PEOPLE IN NORTHERN ONTARIO**

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INTRODUCTION

Since the publication of Thomas Berger's The Report of the Mackenzie Valley Pipeline Inquiry,<sup>1</sup> the relationship between Native people and the northern environment has become a dicey political issue. As is often the case in such situations, governments have responded by establishing task forces, boards of inquiry,<sup>2</sup> and royal commissions to provide them with expert advice. The final report of one such body--the Royal Commission on the Northern Environment (RCNE)--was tabled in the Ontario Legislature on 29 August 1985.

Titled simply, Final Report and Recommendations of the Royal Commission on the Northern Environment, the 450 page document contains 129 recommendations. Seven deal with the need for a "Northern Development Authority" to control the pace of industrial growth; forty-one propose changes to Ontario's Environmental Assessment Act; fifty-one are concerned with the future of forestry, mining, and tourism; seven focus on planning in the north; and three touch on the problems of resource-dependent communities.<sup>3</sup> There are also nineteen recommendations that deal with what the commission refers to as "The Indian people in the North of Ontario."<sup>4</sup>

The latter recommendations are well worth examining in detail, not only because Indian people account for more than half of the region's population,<sup>5</sup> but also because many of them depend on its resources for food and employment.<sup>6</sup> Under the circumstances, an evaluation of the RCNE's "Indian" recommendations is timely. Before presenting the analysis, however, it is worthwhile to consider the background of the RCNE--the longest<sup>7</sup> and most expensive public inquiry in Ontario's history.



8

MEMORANDUM OF UNDERSTANDING

At the end of the last century, people in southern Ontario began to complain about the way the provincial government was auctioning timber berths. They worried that "the sales were too large, that they were made preceding elections for the benefit of political friends, and that they were being made too quickly and at too low a price."<sup>9</sup> They were also upset by allegations that the forest industry was producing greater economic benefits for Americans than themselves. Since it was Ontario's forests that were disappearing, they felt that they were being treated unfairly.<sup>10</sup>

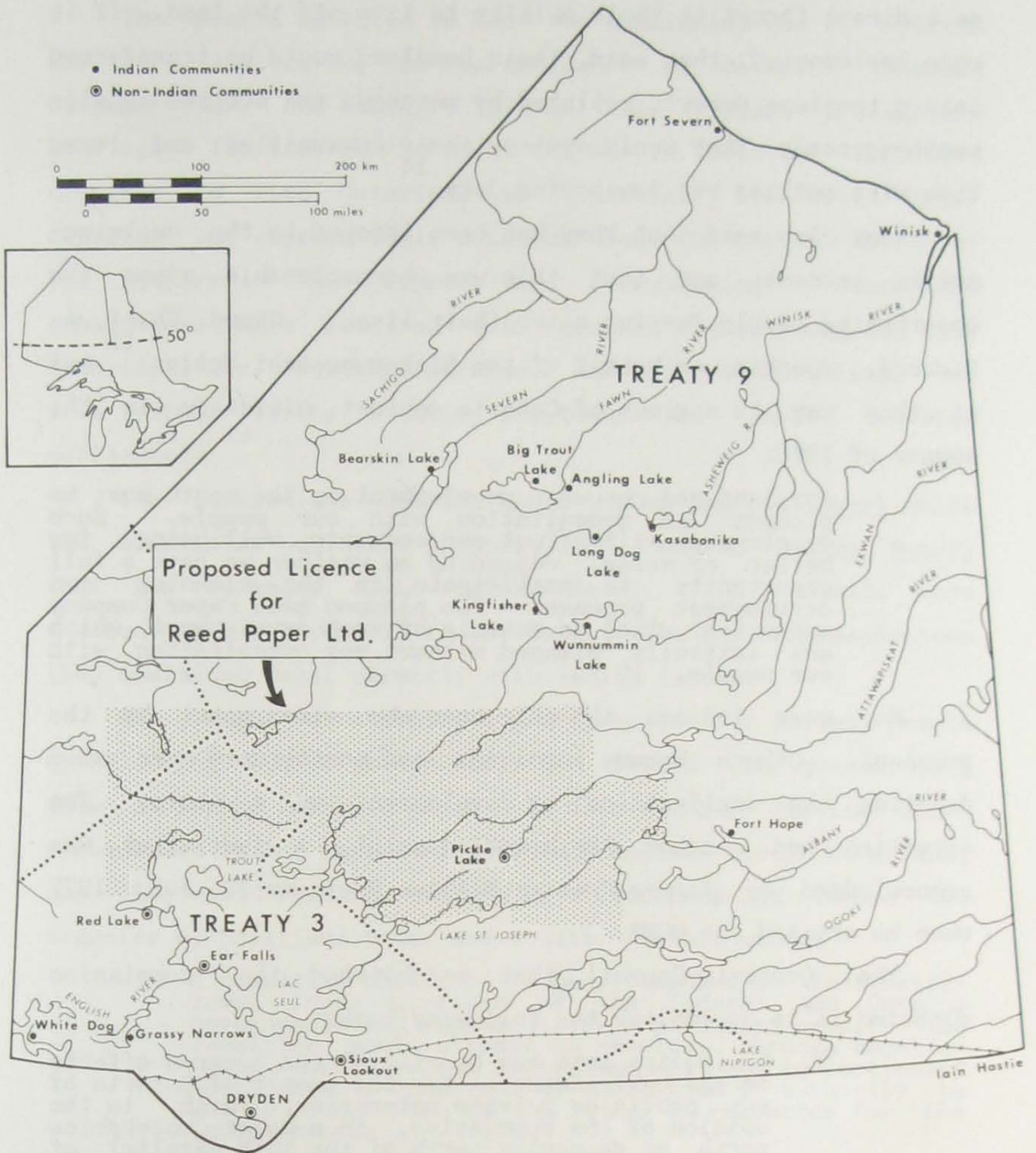
During the 1970s a similar outcry was heard in the north. The event that sparked the controversy was a 1976 Memorandum of Understanding between the Government of Ontario and Reed Paper Limited. The agreement, which gave the company the right to harvest timber from part of the last, large, uncut forest in the province, was unparalleled in its magnitude. Under its auspices, the company agreed to build a sawmill complex in the Red Lake-Ear Falls area in exchange for access to "the largest continuous cutting area ever allocated to a single company" in Ontario (see Map 1). More specifically, the agreement

gave Reed the right, subject to certain conditions, to cut conifers in 49,200 square kilometres of virgin forest. The size of that tract was tied to the capacity of the pulp and sawmill complex contemplated by the Agreement: enough wood fibre was needed to feed a manufacturing facility producing 900 to 1,000 tonnes of pulp daily [that is, about 10 per cent of the province's daily production] and 180 million board feet of lumber annually. 11

THE INDIAN REACTION

At first, Indian people were the most outspoken critics of the proposal. At the time the memorandum was signed, the company "owned a large wood-processing, pulp and paper complex at Dryden ... the wastes from which flowed into the Wabigoon River."<sup>12</sup> The effluents, which included methyl mercury, had already polluted the waterways that the people who lived in the Whitedog and Grassy Narrows Indian Reserves depended upon for their livelihood, and the residents were shocked that Reed had





Map 1: Proposed Licence for Reed Paper Ltd. in relation to selected Indian and non-Indian communities



secured approval to build a new mill before it had repaired the damage that its first had caused.<sup>13</sup>

Farther north there was also dismay. Indian people living in remote settlements in northwestern Ontario saw the agreement as a direct threat to their ability to live off the land. If it were implemented, they said, their homeland would be transformed into a treeless desert, polluted by mercury, and scarred by all-weather roads that would destroy their communities and leave them with nothing but low-paying jobs.<sup>14</sup>

They also said that they had been ignored in the decision-making process, and that this was unconscionable since the undertaking would forever alter their lives. Grand Chief A. Rickard, speaking on behalf of the Nishnawbe-Aski Nation,<sup>15</sup> put it this way to a group of Ontario cabinet ministers in the summer of 1976:

Any land and resource development in the north must be planned in consultation with our people. Such development will affect our economic well-being, for better or worse, depending on whether we have a full opportunity to participate in the planning and development process. The planned Reed Paper Company expansion...[is] an example of such development, which was initially planned without any consultation with our people.<sup>16</sup>

Nor were Indians the only ones who were upset by the proposal. Others became involved, and northerners were soon debating the implications of development as a whole. The situation had reached the breaking point, a fact that was acknowledged by former Premier William Davis on 13 July 1977 when he created the RCNE.

The Order-in-Council that established the commission directed it to accomplish the following tasks:

1. to inquire into any beneficial and adverse effects on the environment ...for the people of Ontario of any public or private enterprise, which, in the opinion of the commission, is a major enterprise north or generally north of the 50th parallel of north latitude ...
2. to inquire into methods that should be used in the future to assess, evaluate and make decisions concerning the effects on the environment of such major enterprises ...
3. to investigate the feasibility and desirability of alternative undertakings ...[and]



4. to report and make recommendations to the Minister of the Environment ...with respect to the subject matter of the inquiry as the commission deems necessary and desirable to carry out the purpose of the Environmental Assessment Act, 1976. 17

#### MR. JUSTICE HARTT'S FINDINGS

The person selected to head the commission was E. Patrick Hartt, a Justice of the Supreme Court of Ontario. Between November 1977 and February 1978 he held fifteen preliminary hearings, fourteen in the north and one in Toronto. They were designed to give Ontarians an opportunity to voice their concerns and express their opinions about the subject matter of the inquiry. The response was overwhelming. Over 450 submissions were received--from men and women, young and old, industrialists, business persons, and environmentalists, and from people living in cities and towns and remote, isolated settlements.<sup>18</sup>

The submissions were the basis for an Interim Report which the commission published in April 1978, and an Issues Report that was released eight months later. The contents were decidedly pro-Native; in fact, half of the six recommendations they contained dealt directly with Indian issues.

One sought to establish a new direction for Indian people by allowing them to govern their own affairs and guaranteeing them a secure economic base. To this end Mr. Justice Hartt recommended that a new, tri-partite committee should be struck, one that would resolve outstanding differences and oversee the transfer of political power and wealth. In his words,

A committee should be formed, composed of ministerial-level representatives of the federal and Ontario governments and representatives of Indian people. The committee would attempt to resolve, through negotiation, issues raised by its members, and in particular would address questions of devolution of authority to govern local affairs and access to resources for the Indian people .... 19

During the hearings Mr. Justice Hartt was also impressed by the plight of the residents of the Whitedog and Grassy Narrows Indian reserves, whose traditional economy had been destroyed by the contamination emanating from Reed's Dryden mill. To overcome the problem he recommended that



As its first priority, the [abovementioned] committee should address the plight of the Indian communities of Whitedog and Grassy Narrows. Methods to ensure access to resources and viable community economics, along with related supportive programs should be considered jointly by the committee and the communities. To facilitate this, a mutually acceptable fact finder should be appointed to review and report on available information and options within 90 days. 20

In addition, in order to buttress the Indians' traditional economy, Mr. Justice Hartt made the following recommendation about wild rice--a foodstuff with economic and symbolic connotations in traditional Ojibwa society: 21

The Government of Ontario should not implement any new policy on wild rice which would weaken the Indians' position in this industry in the north. During the next five years, the Indians should be given the opportunity to develop a viable wild rice industry on their own. To foster this, no new licences to harvest wild rice should be granted to non-Indians during this period. The government should provide assistance, for example, by examining the influence of water control structures on the productivity of the harvests, by appropriate research into improved growing and harvesting methods, and by necessary training programs. 22

Equally important, Mr. Justice Hartt made it clear that his work was only a beginning and that the commission should not be dissolved. Instead, he advised the government to appoint a new commissioner who would be headquartered in the north. As he put it,

Questions have been raised about a southerner being charged with the responsibility for an inquiry of this type. Concern has been expressed that many of our staff and operations have been resident in Toronto. I am not insensitive to these concerns. Clearly, neither I nor my staff can hope to acquire in a short period of time the detailed knowledge and feeling of the north which lifelong residents have. Nonetheless, I would suggest one justification for our approach to date. The fact that we, as southerners, have been so affected and influenced by the problems of the north seems to me a greater testimony to their seriousness than if a group of northern residents had come to the same conclusions. I do agree, however, that the Commission must now establish itself in the north, avail itself of northern expertise and be readily accessible to northern people. 23

Finally, Mr. Justice Hartt suggested that the commission should help to establish a "task force of northern residents ... to investigate and recommend ways for the people of the north to become effectively involved in the making of decisions by Government Ministries and Agencies that affect their lives and communities." 24 He also made it clear that the task force should include both Native and non-Native representatives.



Having made these recommendations, Mr. Justice Hartt resigned,<sup>25</sup> and on 2 August 1978 he was replaced by a "lifelong" northerner--Mr. J. Edwin J. Fahlgren, the former President and General Manager of Couchenour Willans Gold Mines near Red Lake.<sup>26</sup>

#### MR. FAHLGREN'S APPROACH

Indian leaders did not welcome the change. As a former executive-director of the commission explained,

Ed Fahlgren was viewed by Indian leaders as a mining industrialist, and his ability to be impartial was immediately brought into question. Chief Rickard of Treaty No. 9 said that it was like putting the fox in charge of the chicken-coup. Other Indian leaders felt the same. 27

Whether or not Mr. Fahlgren tried to overcome these suspicions is impossible to tell. In some respects he seemed insensitive. Very quickly, he placed a low priority on the issue that gave rise to the commission--the Memorandum of Understanding with Reed. In retrospect, he justified this on the following grounds:

Reed commissioned a design for the pulp and sawmill complex and employed a consultant to select suitable sites for the various parts of the complex and to prepare an environmental impact statement. The Ministry of the Environment found Reed's assessment to be inadequate under the Environmental Assessment Act. The Commission reviewed Reed's voluminous documentation and was left with many questions and concerns about environmental effects. These questions have never been answered since Reed ceased work on the project, ostensibly because of changed financial and economic circumstances which, it said, made the project's viability doubtful ....

Thus, shortly after the beginning of the Commission, the very project that had led to its establishment and that, inevitably, would have been a primary focus of its work, ceased to exist. 28

In his Interim Report, however, Mr. Justice Hartt had warned that, "even if the company does not proceed with its present plans, there will be mounting pressure to harvest the existing forest resource because of the steadily declining availability of suitable timber in other areas of the Province."<sup>29</sup> The contradiction was not lost on Indian people, particularly those in the Whitedog and Grassy Narrows Indian reserves who were still waiting for compensation from Reed.<sup>30</sup>



Mr. Fahlgren also failed to follow-up on three other issues that were of concern to Indian people. Although Native and non-Native leaders were invited to participate in the task force that Mr. Justice Hartt had proposed, the atmosphere was tense and the group dissolved within a matter of months. Mr. Fahlgren also spent a considerable amount of time in the south, particularly towards the end of his term, and this too rankled Indian people. Nor did he tackle the problem of wild rice.

In other respects, however, Mr. Fahlgren was more aggressive. For instance, instead of concentrating on the Treaty No. 3 area as Justice Hartt had done, he shifted his attention to the area covered by Treaty No. 9. Moreover, during his eight-year term he allocated over \$1,500,000 to Native communities and organizations in order for them to become involved in his inquiry, that is, between ten and fifteen percent of his total budget and more than seventy-five percent of the funds that he eventually set aside to allow the public to conduct research, prepare briefs, and participate in the final hearings (see Table 1). In addition, nine of the nineteen sites in which Mr. Fahlgren held his hearings were Indian communities.

Mr. Fahlgren also pursued a number of promising new models to encourage Native participation in his inquiry. As he put it in his final report,

First, [the commission] ...made efforts to publicize the role of the inquiry and to transmit the results of its work and other information to the communities in order to elicit constructive response and positive input from them, and it produced newsletters and took on a staff of information officers to do so .... A second model called for collaboration research projects to be undertaken by the Commission and Native agencies .... A third model .... was the Commission's support and sponsorship of an independent impact study at Fort Hope. In the fourth model, I sought to secure participation by Native people through their submissions ...and at hearings held in their communities and elsewhere .... The fifth model entailed the circulation of research reports by my staff and consultants. 31

Unfortunately, the experiment failed. The models did not yield the desired results. In fact, according to Mr. Fahlgren, the only "productive" one was the project at Fort Hope. There, the commission sponsored a program of research and planning for three and a half years. The outcome was a report titled



TABLE 1

FUNDS ALLOCATED TO NATIVE COMMUNITIES AND  
ORGANIZATIONS BY THE RCNE, 1978-1983

PERIOD	Amounts Allocated To		
	Indian Communities	Indian Organizations	Metis Organizations
1978-79	11,196	6,511	4,465
1979-80	35,120	10,143	6,193
1982	117,071	4,650	27,230
1983	21,620	14,347	-
Ongoing	229,625	902,545	65,642
<u>TOTALS</u>	<u>484,632</u>	<u>938,196</u>	<u>103,530</u>

SOURCE: Adapted from J.E.J. Fahlgren, Final Report and Recommendations of the Royal Commission on the Northern Environment (Toronto: Ontario Ministry of the Attorney General, 1985), Appendix 3, pp. 2-9.



The Ogoki Road: An Avenue of Worry. In Mr. Fahlgren's view,

[t]he study's findings, along with the recommendations made to the Commission at the Fort Hope hearings, lead the Commission to conclude that a strategy consisting of a set of five interdependent components must be devised and implemented for the community's survival and development .... The first component, the prerequisite for the success of the other four, calls for mobilizing the community's cultural heritage, social strengths, and skills so as to bring about community cohesion and self-reliance and make the community a better place in which to live.... The... second calls for import substitution, the production of goods and the provision of services locally to replace high cost alternatives now imported from the outside.... The third... focuses on the production of goods for export to the outside and the sale of goods and services to outsiders coming into the community.... The fourth... calls for the creation of opportunities for Fort Hopians to work in the "outside" economy, particularly in its natural resource-based segment, as well as for continuing access to hinterland resources for traditional uses. The fifth component of the strategy calls for action by governments, working in concert with the community, to create the external prerequisites for ensuring that development is beneficial to the community. 33

Yet the Fort Hope model was not without problems, a fact that Mr. Fahlgren also admitted when he wrote that, "[m]any of the projects and actions that .... [band] members tentatively identified require further 'mulling over,' fleshing out, and feasibility testing."<sup>34</sup> Thus, even the "productive" model produced tentative results only.

Equally important, Mr. Fahlgren experienced political problems in his dealings with Native people. For instance, although he claims that he established fruitful relationships with Indians at the grass-roots level, "where interaction could take place largely unencumbered by political rhetoric,"<sup>35</sup> he also said that "I regret that I could not forge a productive working relationship with Grand Council Treaty No. 9."<sup>36</sup> In fact, at one of his first hearings, Mr. Fahlgren refused to recognize the Council "as a party with a direct and substantial interest in the inquiry," which would have given it the right to cross-examine witnesses. He later relented, but only after he was instructed to do so by the Divisional Court of the Supreme Court of Ontario.<sup>37</sup> Then, seemingly to add insult to injury, the Council refused to attend the hearings. Nor did he establish a productive relationship with Metis and non-status Indians.



## A CONFUSED BEGINNING

Unfortunately, the problems that Mr. Fahlgren encountered with Native northerners are reflected in the only chapter in the final report that deals directly with Indian issues. It begins with the following statement: "Following the approach taken in Canada's Constitution, the term "Indian" is used in this report to refer to status and non-status Indians as well as Metis."<sup>38</sup> Such comments are unorthodox to say the least. While Mr. Fahlgren appeared to have included Metis and non-status Indians within his purview--in fact, he did not--he is mistaken when he states that such people are considered to be "Indians" in constitutional terms.<sup>39</sup> Instead, the Constitution Act, 1982 speaks about "aboriginal" people, and although the Metis are included,<sup>40</sup> non-status Indians are ignored.

The commission also errs when it states that "The concept of 'status' resulted when treaties specified those entitled to benefits .... Native people whose ancestors for one reason or another were not included in the treaties became 'non-status' Indians."<sup>41</sup> The fact is that the status- non-status distinction dates back to an 1857 law that initiated enfranchisement.<sup>42</sup> The treaties with the Native people in northern Ontario were concluded after that date.<sup>43</sup>

Nor is the commission correct when it claims that "Lack of special status also plagues the Metis people who are of Indian heritage but who, by their own admission, are not full-blooded Indians."<sup>44</sup> As mentioned earlier, the Metis possess the same constitutional status as Indians and Inuit. What remains to be done is to allocate them land and resources,<sup>45</sup> and that involves more than affirming their status.

While some may believe that criticisms of this sort depend on nitpicking details, the fact that the final report contains such errors belies Mr. Fahlgren's contention that he regards Indians, Metis, and non-status Indians as "equal."<sup>46</sup> Although he does say that his "recommendations dealing with Indians and their communities apply to all three groups,"<sup>47</sup> as will be seen below, the contents suggest otherwise. In any event, lumping the three groups together does them all a disservice. Given the



historical and constitutional differences between them, each merits special attention.

#### CORPORATE STATUS

A lack of attention to detail is also evident in some of the chapter's recommendations. Recommendation 4.1 calls on "Ontario [to] recommend to the federal Government that the Indian Act be amended to give full status as legal persons to band councils and bands."<sup>48</sup> "[I]f implemented," the commission says, this "would give Band Councils the advantages and liabilities of corporate status."<sup>49</sup>

According to Mr. Fahlgren, corporate status would stimulate the Indians' economy. In his words,

reserve lands are currently held by the federal Government in trust for the resident bands. The legal status of the Indian bands means that their capacity to own lands directly and to enter into business contracts and relationships is non-existent. The federal Government must assist in clarifying a situation which impedes this desirable goal ....<sup>50</sup>

When it comes to liabilities, however, the report is silent. This is unfortunate because, upon closer examination, corporate status could be accompanied by the alienation of Indian land. Under the terms of the Indian Act, "Reserve lands are not subject to seizure under legal process."<sup>51</sup> Mr. Fahlgren's recommendation would eliminate this protection. In fact, the tone of the recommendation is reminiscent of the Trudeau government's White Paper on Indian affairs,<sup>52</sup> which was an anathema to Indian people.<sup>53</sup> In any event, the Indian Act already allows bands to "surrender" land for economic development,<sup>54</sup> and, before it was amended in June 1985, it contained a provision that gave bands the opportunity to own land in the way that municipalities do.<sup>55</sup>

#### EDUCATION

Other recommendations are flawed in a different way. Those that deal with education are paternalistic at best. Consider the following:

4.15 ... That elected school boards be established in each Indian community to be responsible for the administration and delivery of educational services at the local level.



4.16 ... That the Indian community school boards, in conjunction with the Ministry of Education and Native parents, establish a special curriculum for community schools which is on a par with provincial standards but which also accommodates the traditional culture.

4.17 ... That Indian community school boards and the Ministry of Education recruit teachers from qualified members of the community.

4.18 ... That Indian community school boards in northern communities provide Grade 9 and 10 within the community.

4.19 ... That the Province of Ontario move immediately to approve the construction of a first-class high school with technical and vocational options at a remote location selected by representatives of Indian community school boards. 56

On the surface, such recommendations appear beyond reproach. They seem to echo the sentiments of the National Indian Brotherhood (NIB), the forerunner of the Assembly of First Nations, which called for Indian control of Indian education more than a decade ago.<sup>57</sup> However, unlike the NIB, Mr. Fahlgren insists on direct provincial involvement, and that may be unconstitutional. Under the terms of the British North America Act (1982), Indian education is a federal responsibility.<sup>58</sup> Direct involvement by the Ministry of Education might therefore be construed as illegal.

Moreover, even if the federal government delegated its responsibility for Indian education to Ontario, provincial involvement may ultimately rob Indian people of the opportunity to design an educational system that can respond to their needs as they see them. Certainly they require financial support, but no strings need be attached, especially ones that lead to a mammoth bureaucracy in downtown Toronto. Mr. Fahlgren would have been better advised to recommend that the Government of Ontario insist that the federal government transfer the control of Indian education in northern Ontario directly to Indian people, and that sufficient funds be allocated to make Indian control of Indian education a reality in Ontario's north.

#### MOTHERHOOD

Still other recommendations fall into the category of "motherhood" statements. One calls on "Ontario [to] introduce legislation to require that ... persons undertaking prospecting



or mineral exploration on lands occupied by Indian communities give reasonable advance notice to the communities affected of the nature and timing of such activities."<sup>59</sup> Another proposes "[t]hat the Ministry of Natural Resources train and employ Indian Conservation Officers."<sup>60</sup> Yet another advises Natural Resources to "establish special committees to advise the Ministry on research, planning and resource management matters as these pertain to Indian communities; and that ... Indian Conservation Officers be among the persons named to such committees."<sup>61</sup>

Although each of these recommendations is worthwhile, one wonders about their impact. While they may be important in a symbolic sense, their practical import is doubtful. Requiring prospectors to advise Indian people that they are entering their land is tokenism at best. And the Government of Ontario already has agreed to hire Indian conservation officers.<sup>62</sup> It has also agreed to allocate Indian people the power to co-manage some of the province's resources.<sup>63</sup> Under the circumstances, such recommendations are weak.

## LAND

Notwithstanding these difficulties, the report also contains a number of positive recommendations. Those that deal with land are examples. One calls on the government to "grant Crown land to Indian communities north of 50 ...."<sup>64</sup>

Although this sounds like empty rhetoric since the amount and location of the land are not specified, three other recommendations spell out the terms and conditions on which the allocation would be based. The first calls on the government to "appoint a Northern Land Commissioner under the Public Inquiries Act to identify and report to the Government on Crown lands to be granted to and for the use, benefit and eventual ownership of Indian communities north of 50 for the settlement of these communities, their present and future residents, and the surrounding environment."<sup>65</sup>

The second establishes the parameters under which such a person would work:



[T]he ... Commissioner, [it says,] in identifying and recommending Crown land for grant to northern Indian communities, [should] consider [the following]:

- the adequacy of existing reserves for community needs;
- current and future populations;
- present and future community requirements for food gathering, housing, community facilities, water supply, energy, fuel, building materials, transportation and communications;
- existing surface and subsurface rights;
- the needs of existing, contemplated or likely local businesses or economic development projects;
- the views of the Indian community affected; [and]
- the need for buffer zones to shelter the community from adjacent resource development impacts. 66

The last gives an indication of the commissioner's power. It reads as follows:

That on receipt by the Government of Ontario of the report of the Northern Land Commissioner, the Government of Ontario unconditionally grant all rights in the lands identified by the Commissioner to the Government of Canada in trust for the use, benefit and eventual ownership of the indicated Indian communities; and that after such grants have been made, the Government of Ontario be prepared to negotiate the unconditional granting of additional or alternative land if and when petitioned by representatives of northern Indian communities. 67

These recommendations are noteworthy in a number of respects. For one thing, a Northern Land Commissioner would be an ideal position to help resolve existing and future disputes about land. For another, given the parameters under which such a person would operate, it could be that the pressure that has been placed on the Indians' land-base as a result of a rapidly growing population will be alleviated.<sup>68</sup> Equally important, avoiding a once-and-for-all allocation would allow Indian people to gain access to northern resources as circumstances dictate, and granting them unconditional rights to the land would allow them to derive new economic benefits from the north. In fact, those benefits could be substantial since, in addition to the above recommendations, the commission also recommended "[t]hat all income earned by residents and [Indian] businesses living or located on land granted by the Government of Ontario be exempt from taxation ...."<sup>69</sup>



Yet other benefits may accrue to Indian people on account of five other recommendations about land. They call on the government to establish what the commission calls "community use areas," where Indian people would be allowed to undertake traditional economic endeavours without the threat of unannounced industrial development. They read as follows:

4.10 ... That the Government of Ontario designate community use areas in the province north of 50 in which hunting, fishing and trapping by Indian persons would have priority over other resource users, subject to Recommendation 4.11 and to 4.14.

4.11 ... That the Government of Ontario establish procedures for designation of community use areas by the Ministry of Natural Resources; that such procedures be activated by an application by an Indian community located north of 50 and that the Ministry designate the Community Use Area as applied for within 90 days of the application if it has received evidence of the community's reliance on the area for hunting, fishing and trapping.

4.12 ... That the Ministry of Natural Resources exclude from any area designated as a community use area any existing rights of use of occupancy and make provision for easements to permit public access along water ways and reasonable public recreational and tourism uses which are not likely to impinge on fishing, hunting and trapping by members of the Indian community for whom the designation of a community use area was made.

4.13 ... That the Ministry name an independent scientist acceptable to affected Indian communities whose decisions on the appropriateness of any restriction on levels of hunting, fishing or trapping would be binding on all parties.

4.14 ... That in the event of any resource use other than fishing, hunting and trapping by the affected Indian community and its residents being proposed for a designated resource use area, a precondition of such use be the negotiation of a resource-use agreement between the developer and the [proposed] Northern Development Authority. 70

Why Mr. Fahlgren decided to place the responsibility for selecting "community use areas" in the hands of the Ministry of Natural Resources and an independent scientist rather than the proposed Northern Land Commissioner remains a mystery. In any event, the idea of establishing such areas is timely, for it would allow Indian people to pursue their traditional means of earning a livelihood and, at the same time, leave them free to become involved in other economic endeavours.

In fact, the only negative aspect of the recommendations about land is their context. Mr. Fahlgren justifies the



allocation of Crown land and the creation of "community use areas" strictly on economic and humanitarian grounds.<sup>71</sup> His argument would have been more convincing if he had also considered land claims, aboriginal rights, and self-government. Yet in the final chapter of the report Mr. Fahlgren says this:

I felt disinclined to debate issues pertaining to land claims, aboriginal rights and the Constitution, for to do so would have surely compelled me to step beyond my mandate and would, in any event, have been counter-productive to its discharge.<sup>72</sup>

The disclaimer is unconvincing. The RCNE's mandate is a matter of interpretation, and its meaning is determined by political will. If Mr. Fahlgren had wanted to discuss "land claims, aboriginal rights and the Constitution" he could have interpreted his mandate to accomplish these goals. The fact that he devotes so much attention to Indian education attests to this fact.

Nor is it true that a consideration of land claims, aboriginal rights, and self-government would have prevented the commission from completing its work. Such topics are at the forefront of Native-Canadian affairs. Ignoring them will not make them disappear, and considering them could have provided added justification for the positive recommendations that Mr. Fahlgren brought forward. Thus, in the final analysis, the RCNE may be remembered just as much for what it did not say as what it did say.

## CONCLUSION

Despite the strength of some of its recommendations, the final report of the Royal Commission on the Northern Environment is not a victory for the Native people of northern Ontario. Metis and non-status Indians were not given the attention they deserve. The Ontario Metis and Non-Status Indian Association estimates that there are upwards of 100,000 such people in the province,<sup>73</sup> yet they were all but ignored. What they require in order to have a secure future in the north is land and access to resources, and about these the commission was silent. In addition, the commission is confused about their history and constitutional status.



Indian people will also likely be disappointed in the commission's recommendations. Some are simply "motherhood" statements that would have a negligible impact at best. Those concerned with Indian education may be illegal. In any event, they are counterproductive, and would rob Indian people of the right to establish a system of education that can respond to their own needs. The idea of "corporate status" for Indian reserves is also flawed in the sense that it could easily result in the alienation of Indian land. In addition, land claims, aboriginal rights, and self-government were intentionally ignored, and this detracts from the only positive "Indian" recommendations that the report contains: first, those that call for the appointment of a Northern Land Commissioner to oversee the transfer of Crown land to Indian communities; and second, those that call on the government to establish "community use areas" where Indian people could pursue their economic endeavours without being threatened by major industrial enterprises such as the one that gave rise to the commission.

Finally, and perhaps most important of all, the recommendations are no longer timely. Had they been delivered when the Progressive Conservatives held power, they might have embarrassed the Ontario government into redressing the problems that Native northerners encounter.<sup>74</sup> Instead, the recommendations are the responsibility of the new Liberal government of Premier David Peterson, who, when in opposition, was a harsh critic of the RCNE. In that sense they may be a dead political issue. Nor are the recommendations a top priority among the Native people in northern Ontario, who, now more than ever, are focusing their attention on self-government.<sup>75</sup> Under the circumstances, time seems to have taken its toll on the RCNE, and may have eliminated even the good that its recommendations about land might have achieved.

#### NOTES

<sup>1</sup> Thomas Berger, The Report of the Mackenzie Valley Pipeline Inquiry (Ottawa: Supply and Services Canada, 1977).



<sup>2</sup> The names, terms of reference, and output of such bodies can be secured through Info Globe, a computerized database. Appropriate search terms include Indian, Inuit, and Metis in conjunction with north.

<sup>3</sup> J.E.J. Fahlgren, Final Report and Recommendations of the Royal Commission on the Northern Environment (Toronto: Ontario Ministry of the Attorney General, 1985), pp. R-1 to R-23.

<sup>4</sup> Ibid. pp. R-10 to R-13.

<sup>5</sup> E. Patrick Hartt, Interim Report of the Royal Commission on the Northern Environment (Toronto: Royal Commission on the Northern Environment, 1978), p. 19.

<sup>6</sup> See Paul Driben, The Northern Economy: Benefits, Problems and Prospects (Toronto: Royal Commission on the Northern Environment, 1982). Although there are other recommendations in the final report that impinge on Native people, this paper focuses on those that are contained in the chapter devoted to "The Indian People in the North of Ontario."

<sup>7</sup> David Frood, "\$12-million Failure Foulds calls Commission," The Chronicle-Journal [Thunder Bay], 30 August 1985, p. 2.

<sup>8</sup> Portions of this section of the paper are based on Driben, pp. 1-4.

<sup>9</sup> Joseph Schull, Ontario Since 1867, (Toronto: McClelland and Stewart Limited, 1978), p. 58.

<sup>10</sup> Ibid.

<sup>11</sup> Fahlgren, pp. 5-9.

<sup>12</sup> Ibid., pp. 5-8 - 5-9.

<sup>13</sup> See Anastasia M. Shkilnyk, A Poison Stronger than Love: The Destruction of an Ojibwa Community, (New Haven: Yale University Press, 1985), pp. 221-230.

<sup>14</sup> A. Richard, Basic Issues and Priorities of Grand Council Treaty Number Nine (Cobalt: Highway Book Shop, 1977), pp. 22-25.

<sup>15</sup> The Nishnawbe-Aski Nation was formerly called Grand Council Treaty No. 9. It represents about 22,000 Cree and Ojibwa people in northern Ontario.

<sup>16</sup> Rickard, pp. 3-4.

<sup>17</sup> Fahlgren, Appendix 1, pp. 1-2.

<sup>18</sup> E. Patrick Hartt, Issues Report, (Toronto: Royal Commission on the Northern Environment, 1978), pp. 264-274.



- 19 Hartt, Interim Report, p. 41.
- 20 Ibid.
- 21 See Frances Desmore, How Indians Use Wild Plants (formerly titled Uses of Plants by the Chippewa Indians), (New York: Dover Publications, Inc., 1974), passim.
- 22 Hartt, Interim Report, p. 41.
- 23 Ibid., p. 33.
- 24 Ibid., p. 41.
- 25 Mr. Justice Hartt also made two other recommendations. One called for a public review of the environmental implications of a proposed lignite mine south of Moosonee. The other proposed that the commission conduct a thorough review of a land use plan that the Ministry of Natural Resources had prepared for northern Ontario. Ibid., p. 40.
- 26 For information about Mr. Fahlgren's background see Kieran Simpson (ed.), Canadian Who's Who 1985, (Toronto: University of Toronto Press, 1985), p. 375.
- 27 Personal communication, Mr. Jon Del Ben, executive-director, Royal Commission on the Northern Environment, August 1981-January 1983.
- 28 Fahlgren, pp. 5-9 - 5-10.
- 29 Hartt, Interim Report, p. 9.
- 30 A final settlement was reached in 1985.
- 31 Fahlgren, pp. 10-9.
- 32 For more information about the Fort Hope project see J.A. Kleinfelder and A. Yesno, The People North of 50: In Quest of Understanding, (Thunder Bay: Albany Research Associates, Inc., 1984).
- 33 Fahlgren, pp. 10-17 - 10-18.
- 34 Ibid., pp. 10-16.
- 35 Ibid., pp. 10-10.
- 36 Ibid., pp. 10-9.
- 37 Ibid., pp. 1-18.
- 38 Ibid., pp. 4-1.



39

This is not to say that the Metis do not have a legitimate claim to "Indian" status under the terms of the British North America Act. For more about this see Clem Chartier, "'Indian': An Analysis of the Term as Used in Section 91(24) of the British North America Act, 1867," Saskatchewan Law Review, 43 (1978), 38-80. Non-status Indians are in a different position. According to Bill C-31, a limited number of non-status Indians are eligible to have their band membership and Indian status restored, which would make them Indians in constitutional terms. However, not all non-status Indians are eligible, and those who are not are outside the scope of the constitutional definition of "Indian." For more about this see Paul Driben, "As Equal as Others," Policy Options, 6, No. 5 (1985), 7-8.

40

Canada, The Constitution Act, 1982, (Ottawa: Queen's Printer, 1982), p. 10.

41

Fahlgren, pp. 4-1.

42

John S. Milloy, "The Early Indian Acts: Developmental Strategy and Constitutional Change," in Ian A.L. Getty and Antoine S. Lussier, eds., As Long as the Sun Shines and Water Flows: A Reader in Canadian Native Studies, (Vancouver: University of British Columbia Press, 1983), p. 58.

43

Three treaties were made with the Native people in northern Ontario: Treaty No. 3 in 1873, Treaty No. 5 in 1875, and Treaty No. 9 in 1905-1906.

44

Fahlgren, pp. 4-1.

45

See, for example, Canadian Intergovernmental Conference Secretariat, Federal-Provincial First Ministers Conference on Aboriginal Constitutional Matters, Verbatim Transcript (unverified and unofficial), (Ottawa: Intergovernmental Document Centre, 1985), passim.

46

Fahlgren, pp. 4-1.

47

Ibid.

48

Ibid., pp. 4-14.

49

Ibid.

50

Ibid., pp. 4-16.

51

Canada, The Indian Act, R.S., c. 149, (Ottawa: Queen's Printer, 1969), passim.

52

See Canada, Statement of the Government of Canada on Indian Policy 1969, (Ottawa: Queen's Printer, 1969), passim.

53

See, for example, Indian Chiefs of Alberta, Citizens Plus, (Edmonton: Indian Association of Alberta, 1970), Manitoba Indian Brotherhood, Wahbung: Our Tomorrows, (Winnipeg: Manitoba Indian Brotherhood, 1971), and Union of British Columbia Indian Chiefs, A Declaration of Indian Rights: The B.C. Indian Position Paper, (Victoria: Union of British Columbia Indians, 1970).



54 Canada, The Indian Act, p. 37 ff.

55 Canada, The Indian Act, pp. 50-51. For a more detailed criticism of corporate status see Thomas R. Berger, Village Journey: The Report of the Alaska Native Review Commission, (New York: Hill and Wang, 1985), pp. 33-44.

56 Fahlgren, pp. 4-36 - 4-37.

57 National Indian Brotherhood, Indian Control of Indian Education, (Ottawa: National Indian Brotherhood, 1972).

58 Department of Justice, A Consolidation of the Constitution Acts 1867-1982, (Ottawa: Supply and Services Canada, 1982), pp. 29-30.

59 Fahlgren, pp. 4-21.

60 Ibid., pp. 4-23.

61 Ibid., pp. 4-23 - 4-24.

62 See Indian Commission of Ontario, Agreement Between Canada, Ontario, Anishnabck, Nishnawbe-Aski, Grand Council Treaty No. 3, AIAI, and Six Nations Band, (Toronto: Indian Commission of Ontario, 1982), p. 15 ff.

63 Ibid., passim.

64 Fahlgren, pp. 4-19.

65 Ibid.

66 Ibid., pp. 4-20.

67 Ibid.

68 Northern Ontario contains one of the fastest growing segments of the Native population of Canada. Department of Indian Affairs and Northern Development, Indian Conditions: A Survey, (Ottawa: Department of Indian Affairs and Northern Development, 1980), pp. 10-14.

69 Fahlgren, pp. 4-21.

70 Ibid., pp. 4-25 - 4-27.

71 Ibid., pp. 4-19 - 4-27.

72 Ibid., pp. 10-9.

73 Ontario Metis and Non-Status Indian Association, OMNSIA, (Toronto: Ontario Metis and Non-Status Indian Association, n.d.), p. 1.



74 See Charlotte Montgomery, "Report on North urges new forests, land for Natives," Toronto: The Globe and Mail, 31, July 1985, p. A1.

75 See Rudy Platiel, "Talks to chart course of Native self-rule," The Globe and Mail [Toronto], 29 November 1985, p. A18.



