

# Chapter 4

## DEALING WITH DIFFERENT RIGHTS

Much has been made of the privileges enjoyed by the First Nations peoples under the *Indian Act*: tax exemptions, all sorts of special health, education and housing measures, and much more. At first glance, it would certainly seem that First Nations peoples are better treated than the majority of citizens.

In this regard, it is said that the *Indian Act* has turned Amerindians into spoiled children who are not the least bit interested in giving up all the tax privileges they receive. Moreover, Aboriginals are thought to have been made to exploit the system because they don't pay taxes and have all sorts of privileges without wanting to take any responsibility. First Nations peoples are said to be costing us a great deal; hence the federal government should stop supporting them. Then they would see that autonomy entails concomitant responsibilities. Furthermore, it is thought that Amerindians should be given their autonomy at the earliest possible moment, after which government support should stop.

Such statements, expressed openly during open-line radio broadcasts or in letters from readers of major dailies, judge Aboriginal communities harshly and with finality. Moreover, the tone is particularly hurtful and betrays a great deal of ignorance and misunderstanding.

An in-depth analysis of the *Indian Act* reveals that, far from constituting a regime of privileges, the Act actually constitutes a regime of Amerindian guardianship. Although, at first glance, guardianship appears to be advantageous, it has many serious drawbacks.

### A REGIME OF GUARDIANSHIP

We saw in the previous chapter that *Indians and lands reserved for Indians* have fallen under the exclusive jurisdiction of the federal government since Confederation in 1867. This is not the case for other citizens, who are governed by both the federal and the provincial governments.

To understand the origin of this particularity, we have to go back to the Conquest, at which time the British Crown wanted to ally itself with the Amerindian nations, given their importance on a military and strategic level. In an official document, the *Royal Proclamation of 1763*, the King affirmed his desire to ensure the "protection" of the "Nations or Tribes of Indians with whom We are connected." The Proclamation, which has constitutional value, even mentions obtaining the consent of the Amerindian nations with respect to the settlement of their lands.

However, when the Government of Canada adopted its first *Indian Act* in 1876, a shift had clearly occurred in the administration of Amerindian affairs. These "nations and tribes" whose "protection" had to be assured would be placed under the guardianship of the federal government.

Renée Dupuis, the author of a work on the Amerindian issue in Canada, summarizes this guardianship regime well:



Young girls carrying wood, Mistassini, 1957

Photo: Jos. Morin,  
Archives nationales du Québec, Quebec City

[TRANSLATION] Revised in 1951, the federal Act clearly constitutes a regime of guardianship of Indians (both individually and collectively) and of the lands reserved for them. Actually, the Indians have a status equivalent to that of a minor child, since they are subject to the control of the government, which has the authority to make

#### THE SO-CALLED "EQUALITY" GRANTED BY THE 1969 WHITE PAPER

In 1969, Jean Chrétien, who was then Minister of Indian Affairs and Northern Development under the Trudeau government, released the *Statement of the Government of Canada on Indian Policy*. This White Paper was unanimously rejected, and it led to the unprecedented mobilization of all Aboriginal organizations throughout Canada.

According to the authors of the document, the "just society" promised by the Liberal government required that federal guardianship be abolished. In return, the Liberal government would make all citizens equal and terminate special status for First Nations peoples, as attested by the following two extracts from the White Paper:



Photo: Duncan Cameron, National Archives of Canada, PA 170161

This Government believes in equality. It believes that all men and women have equal rights. It is determined that all shall be treated fairly and that no one shall be shut out of Canadian life, and especially that no one shall be shut out because of his race.

[...] In the long term, removal of the reference in the constitution would be necessary to end the legal distinction between Indians and other Canadians. In the short term, repeal of the *Indian Act* and enactment of transitional legislation to ensure the orderly management of Indian land would do much to mitigate the problem (Canada, Indian Affairs, 1969).

Generous in appearance, this proposal of equality instilled anger and indignation. The reaction was all the stronger given that in the previous year many Aboriginal leaders had agreed to participate in provincial "advisory committees" formed by the Department of Indian Affairs. The response of the Aboriginal groups was immediate and virulent. An Aboriginal leader from Alberta, Harold Cardinal, immediately responded with the publication of a book that has since become well-known: *The Unjust Society. The Tragedy of Canada's Indians*. From the first page, the author affirmed that once again First Nations peoples had been betrayed by a program that offered nothing less than cultural genocide. The policy presented in June 1969 was a thinly veiled program of extermination by way of enfranchisement. Not mincing his words, Cardinal added that to survive an Amerindian had to become a good lit-

decisions on their behalf. All aspects of the lives of individuals and communities are supervised, from an Indian's birth to his death, from the creation of a band to the cessation of a reserve. Responsible for this regime on behalf of the government, the Minister of Indian Affairs holds all powers in this regard. The guardianship regime determines Indian status, as well as band membership, the political and administrative structure, reserve management, tax exemptions, and financial administration, while making Indians wards of the State (Dupuis 1991, 42).

Up to 1985, the renunciation of Indian identity was the price to be paid for acquiring all the attributes of citizenship. The Act provided that an Amerindian or even an entire Amerindian community could apply for enfranchisement, upon certain conditions. To be enfranchised meant no longer legally being an Indian, and hence an enfranchised Indian had to leave his

community. Concretely, this meant assimilation, which was the principal objective of the Act. Despite amendments made in 1985 and a government policy advocating greater autonomy for the First Nations, the *Indian Act* is still in force. And it is wrongly perceived to be a regime of privileges that exists to the detriment of the general public.

the white man with dark skin. The author went on to affirm that even though Americans living to the south had invented the adage “The only good Indian is a dead Indian,” Canadians were prepared to modify the expression slightly to “The only good Indian is a non-Indian” (Cardinal, 1969).

A little further on, Harold Cardinal underlined the strange resemblance between the White Paper’s proposal and the “policy of termination” espoused by the United States in the early 1950s. This policy, established by the Eisenhower government, had disastrous results, in particular on Aboriginal lands, and was finally abandoned (ibid.).

In June 1970, the Indian chiefs of Alberta responded in turn by releasing their Red Paper, entitled *Citizens Plus*, at a meeting in Ottawa with Prime Minister Trudeau and the Minister of Indian Affairs (standing, right, in photograph). The chiefs reiterated on their behalf one of the principal recommendations of the Hawthorn–Tremblay report, published in 1966. In their investigation of the situation of the First Nations peoples of Canada, the authors of this report had recommended the recognition of Amerindians as privileged citizens rather than the end of special status for them because, as well as the rights and duties normally arising from citizenship, they held certain additional rights as privileged members of the Canadian community (Hawthorn and Tremblay, 1966, vol. I).

The signatories of the Red Paper were especially concerned since they represented nations that had signed treaties in 1876, 1877, and 1899. This was the perfect opportunity to remind the government of the solemn promises expressed by the representatives of the Crown during the negotiation of these agreements. The treaty commissioners had clearly indicated that their promises would be honoured “as long as the sun shines and the rivers flow.”

The policy proposed in the White Paper was finally abandoned. One of the positive consequences of the whole affair was the development and consolidation of Aboriginal political organizations in each of the provinces and throughout Canada. In 1970, the National Indian Brotherhood was established. In 1980, it would become the Assembly of First Nations, at the time of discussions pertaining to the repatriation of the Canadian Constitution. The work of these new organizations paid off. In 1982, the Canadian Parliament adopted constitutional provisions designed to better protect the fundamental rights of Aboriginal peoples—a complete reversal of the policy that had been drawn up thirteen years previously.

## ADVANTAGES AND DISADVANTAGES

In reality, it is much more accurate to say that Amerindians living on the reserves have rights that differ from those of other citizens. Although in certain respects Amerindians have advantages that others do not have (certain tax exemptions, for example), they are also deprived of a number of rights.

The fundamental right of any person to the peaceful enjoyment and free disposition of his property is a good example of this deprivation. This right is recognized in the *International Covenant on Civil and Political Rights* (UN), which was ratified by Canada. In areas of Quebec jurisdiction, this right is also guaranteed by section 6 of the *Charter of Human Rights and Freedoms* of Quebec. However, the exercise of this right is not fully guaranteed on reserves, which are under federal jurisdiction. For example, the right is not guaranteed with respect to property and transfers of real

<b>INDIANS LIVING ON RESERVES HAVE DIFFERENT RIGHTS FROM OTHER CITIZEN THEY ARE ALSO DEPRIVED OF CERTAIN RIGHTS</b>	
<i>Situation of an Indian living on a reserve</i>	<i>Situation of a citizen living in a municipality</i>
<b>LAND OWNERSHIP AND POSSESSION</b>	
<ul style="list-style-type: none"> <li>- A right of possession or occupation</li> <li>- The Minister of Indian Affairs and Northern Development issues certificates of possession and occupation</li> <li>- A right of transfer to the band or another member of the band only; the transfer is not valid unless it is approved by the Minister</li> <li>- Reserve lands are not subject to any legal seizure</li> <li>- They cannot be mortgaged, hence limiting borrowing ability</li> </ul>	<ul style="list-style-type: none"> <li>- A right of ownership</li> <li>- An owner obtains an actual property title</li> <li>- Any landowner may sell freely to anyone he or she so desires, including to one or more persons residing outside the municipality</li> <li>- Right of seizure</li> <li>- Mortgage right and borrowing capacity</li> </ul>
<b>DESCENT OF PROPERTY</b>	
<ul style="list-style-type: none"> <li>- The Minister has exclusive jurisdiction over testamentary matters regarding Indians</li> <li>- A will has legal effect only when approved by the Minister</li> </ul>	<ul style="list-style-type: none"> <li>- Any person of sound mind may bequeath his or her property to anyone at all</li> <li>- Any holographic or notarial will generally have legal effect after death</li> </ul>
<b>PROPERTY OF MENTALLY INCOMPETENT PERSONS</b>	
<ul style="list-style-type: none"> <li>- The Minister is granted exclusive jurisdiction over the property of an Indian who is mentally incompetent</li> </ul>	<ul style="list-style-type: none"> <li>- The family or, failing this, the Public Curator has jurisdiction over the property of a mentally incompetent person.</li> </ul>
<b>PROPERTY OF MINOR CHILDREN</b>	
<ul style="list-style-type: none"> <li>- The Minister may administer all property to which the minor children of Indians are entitled, or ensure the administration thereof, and he may appoint a guardian for such purpose</li> </ul>	<ul style="list-style-type: none"> <li>- The parents of a minor child, or failing this, the person acting in their stead (the guardian) are responsible for the property of minor children</li> </ul>
<b>ALIENATION OF PROPERTY</b>	
<ul style="list-style-type: none"> <li>- The property of an Indian or a band located on a reserve cannot be the subject of a privilege, a pledge, a mortgage, or a seizure</li> </ul>	<ul style="list-style-type: none"> <li>- All property may generally be mortgaged or seized</li> </ul>

property, or with respect to testamentary matters. The table included in this chapter, which compares the situation of an Amerindian living on a reserve with the situation of an ordinary citizen living in a municipality, provides a good illustration of the situation.

Any person living in a municipality who has the means to do so may purchase land. The transaction is simple and takes place between individuals. This is not the case on reserves.

*Situation of an Indian living on a reserve*

*Situation of a citizen living in a municipality*

**ACCESS TO CONSUMER CREDIT**

- Because the real and personal property of an Indian on a reserve is not seizable, access to consumer credit and even the obtainment of a credit card often prove impossible, regardless of the Indian's income and solvency

- Any solvent person holding real or personal property as security can generally have access to consumer credit and can obtain a credit card

**TAXATION**

- Ordinarily, no Indian or band is subject to taxation on the ownership, occupation or possession of a property on a reserve. However, the band council may make by-laws for local purposes regarding land on the reserve, including rights to occupy, possess or use such land

- In a municipality, owners are subject to municipal taxes and school taxes

**Retail Sale**

- Exemption from sales tax when the sale is made on a reserve between Indians or to an Indian
- Personal property other than a motor vehicle purchased off a reserve by an Indian is tax-exempt if delivered by the seller to the reserve for consumption or other use

**Retail Sale**

- GST and QST is applicable on the sale of products and services throughout the province of Quebec

**INCOME TAX**

- Exemption from income tax when work is performed on the reserve
- Exemption from income tax when work is located off the reserve, but only for an employer located on the reserve
- An Indian's income is *taxable* when work is performed off the reserve for an employer located off the reserve
- An Indian's employment insurance benefits are taxable only if they are paid on the basis of taxable income

- Income from employment or benefits are taxable
- The employment insurance benefits of every citizen are taxable

Amerindians are deprived of the right of land ownership. They have only a limited right of possession or occupation. Nor are land transfers subject to the free-market system as in the case of a municipality.

The right of seizure on reserves is another revealing example. The real and personal property of an Amerindian or a band cannot be seized. At first glance, this could seem to be an advantage. In



The Indian Act does not apply to the Inuit in any way.

Photo: Gérald McKenzie



Two Amerindian women became known for their fight against the sex-based discrimination contained in the Indian Act. Sandra Lovelace (on the left in the photograph), a Malecite from New-Brunswick, lost her Indian status in 1970 after she married a non-Indian. She wouldn't have lost this status had she been a man who married a non-Indian woman. During the same period, Jeannette Corbiere-Lavell (on the right in the photograph), an Ojibwa from Ontario who had been in the same situation, made an unsuccessful appeal before the Supreme Court of Canada to have the discriminatory article in the Indian Act invalidated. In a split decision in 1973, the Supreme Court ruled that the Canadian Bill of Rights did not take precedence over the Indian Act. This defeat and the lack of any further domestic recourse saw Sandra Lovelace take her case to the Human Rights Committee of the United Nations where she won her case. In June 1990 in Montreal, the two women received the Robert S. Litvack Human Rights Award.

Photo: Jean-Yves Létourneau, La Presse

reality, it is a major disadvantage in terms of economic development. With no right of seizure, an Amerindian cannot borrow, contract a mortgage or have free access to consumer credit. It is not surprising that few Aboriginal businesses have been able to develop.

Moreover, the scope of the privilege conferred by the income-tax exemption has been greatly exaggerated. In the majority of Amerindian communities, this exemption is taken into account in determining salaries. To what extent is this privilege really a privilege if salaries are appreciably lower as a result? Hence, we should be careful about commenting on it. Once again, we cannot isolate one component of the *Indian Act* without taking into account all components of the guardianship regime.

Moreover, the exemptions set out in the *Indian Act* apply only to *registered Indians*, and not to all Aboriginal peoples. For example, the Inuit are not subject to this law of exception and therefore pay taxes like anyone else.

### SELF-GOVERNMENT: AN ALTERNATIVE TO GUARDIANSHIP

As we have seen, Amerindians had only one way of keeping their identity: government guardianship. The only other possibility was to apply for enfranchisement and be assimilated. This regressive provision of the Act, which treated the First Nations like children, was abolished in 1985, as was the provision that permitted discrimination on the basis of sex by removing the Indian status of Indian women who married non-Indian men.

The creation of Aboriginal governments, now under discussion, represents a new path, providing hope that Indians would be able to survive, develop, and thrive as communities. At long last, this represented the opportunity for First Nations peoples to be in charge of their own destiny and to preserve their collective dignity. The creation of Aboriginal governments is all the more justified in that the Aboriginal peoples of Canada were granted the status of *peoples* in the Canadian Constitution. For its part, even though it did not recognize the 1982 con-



The Haudenosaunee, also known as the Six Nations Iroquois Confederacy, issues its own passports—an affirmation of its independence and political sovereignty. For Iroquois representatives there is no question of presenting a Canadian passport.

Photo: Roger Lemoyne



A group of Amerindian police cadets receive their diplomas during a ceremony at the Institut de police du Québec in June 2000

Photo: Pierre Lepage

stitutional agreement, in 1985 the National Assembly of Quebec passed a resolution stating that the Aboriginal peoples were nations; this meant that self-government agreements had to be entered into. The resolution went on to affirm that not only were assimilation policies no longer valid, they were also prohibited.

### AUTONOMY IN THE AREA OF EDUCATION

The Indian residential-school system ended in 1969. In the mid-1970s, the Department of Indian Affairs and Northern Development administered approximately 30 elementary schools in Aboriginal communities. Secondary and post-secondary students were required to enrol in the Quebec public school system, and the federal government entered into financing agreements with the institutions concerned (MEQ 1998, 4).

In the space of 20 years, the Aboriginal school system changed radically, initially as a result of the “take charge” movement launched in 1972 by the National Indian Brotherhood. In 1973, the Department of Indian Affairs and Northern Development endorsed and committed itself to this effort. In Quebec, the signing of the *James Bay and Northern Québec Agreement* in 1975 and the *Northeastern Québec Agreement* in 1978 led to the creation of two school boards, one for the Cree and the other for the Inuit. The Naskapis, for their part, administered their schools within the Central Quebec School Board. In 1997–1998, nine school establishments were administered by the Cree School Board, 14 were administered by the Kativik School Board and one was administered by the Naskapis. Funding was received from the two levels of government. Elsewhere, Amerindian communities gradually took charge of federal schools, with the funding provided entirely by Indian Affairs. In 1985, communities were consolidated under the Quebec First Nations Education Council, which provided certain services to member communities. In Montagnais communities, with the exception of Mashteuiatsh, the education mandate was entrusted to the Institut culturel et éducatif montagnais (Montagnais Cultural and Educational Institute).



The school bus in Kangiqsualujuaq, Nunavik

Photo: Tourisme Québec, Heiko Wittenborn

Atikamekw students learn about computers in the school in Manouane

Photo: Claudette Fontaine, MEQ collection



### SCHOOLS ON RESERVES AND IN ABORIGINAL VILLAGES IN QUEBEC FROM 1977 TO 1997 \*

Year	Federal Schools	Aboriginal Schools	Total
1977–1978	29	–	29
1987–1988	9	37	46
1997–1998	1	61	62

\* (Source: Ministère de l'Éducation, Education Statistics Bulletin, Portrait of the Aboriginal School Population of Québec, 1998. Data taken from Table 4, p. 5).

The number of Aboriginal schools therefore doubled in 20 years. “Thus, most Aboriginal people now have access to elementary and secondary schools in their own communities” (ibid. 7). However, despite this undeniable progress, student drop-out and failure rates are of particular concern.

Despite the persistence of federal guardianship, we are fortunately very far removed from the days when Indian Affairs agents acted like “kings and masters” on the reserves. Significant steps toward autonomy and self-government have been taken. In the early 1970s, the National Indian Brotherhood chose the area of education to spearhead the “take charge” movement, publishing *Indian Control of Indian Education*. Today, elementary and secondary education is almost entirely administered by band councils, as is the case for health and social services, recreation, housing, public security, and economic development, where self-government agreements have been entered into. Since the signing of the *James Bay and Northern Québec Agreement* and the *Northeastern Québec Agreement*, the Cree and Naskapi have no longer been governed by the *Indian Act*, but are governed by the *Cree–Naskapi (of Québec) Act*, which gives them much more autonomy.

#### RECONCILING DISTINCT RIGHTS AND EQUALITY RIGHTS

The existence or recognition of distinct rights could at first glance seem incompatible with the right to equality set out in our charters of rights and freedoms.

In this regard, we often confuse equality with sameness. The text of the Charter of Human Rights and Freedoms of Quebec helps us better understand the real meaning to be attributed to the right to equality. The preamble indicates that all human beings are above all “equal in worth and dignity.” Nowhere in the Charter is it indicated that all human beings must be the same. In fact, the

respect for differences forms the basis of numerous other fundamental rights and freedoms, including the freedom of conscience, freedom of opinion, and freedom of religion and religious belief. And the right to one’s own cultural life is just as much a human right as any other, being expressed in particular by a certain way of life that is tied to the land and the use of natural resources.

Moreover, Aboriginal peoples are not Quebec and Canadian citizens like everyone else, and they never were Quebec and Canadian citizens under either the French regime or the British regime. They are distinct citizens, and this undeniable reality must be taken into account in the interpretation to be given to the right to equality. Since 1982 in particular, the Canadian Constitution has clearly indicated that Aboriginals are “peoples” and that in this regard they have collective rights. We cannot invoke an individual right to equality in order to advocate their assimilation or deny them the right to exist, the right to develop, and the right to thrive as collectivities. The issue of the rights of



Photo: Pierre Trudel

Aboriginal peoples is the subject of specific provisions in the Canadian Charter of Rights and Freedoms, which classifies “aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada...” as rights and freedoms like any others (section 25).

**A DISTINCT STATUS SINCE THE FRENCH REGIME**

*Up to 1760: under the French Regime,*

“Allies of His Most Christian Majesty.”  
(section 40 of the Capitulation Act of Montreal, 1760)



A photograph of the Indians of Quebec Association, founded in 1965. Standing: Chiefs Daniel Vachon, Smally Petawabano, and Harry Kurtness; Miss Whiteduc, secretary; Chief William Wysote; José Sam and Tom Rankin. Seated: Chiefs Max “Oné-Onti” Gros-Louis, Andrew Delisle, and Mike McKenzie.

Photo: W. B. Edwards, ICEM collection

*1763: under the British Regime,*

“Nations and tribes” whose “protection” must be assured.  
(Royal Proclamation, 1763)

*1867 in the Constitution of Canada,*

“Indians” and “lands reserved for Indians,” under the exclusive jurisdiction of the federal government.  
(section 91.24 of the Constitution Act, 1867)

*1876 in the Indian Act,*

wards of the state under federal guardianship.

*1935: in a Supreme Court Judgement,*

the “Inuit” are “Indians.” The Supreme Court of Canada rules that the Inuit fall under federal jurisdiction but the Canadian government will expressly exclude them from the application of the *Indian Act*.



At a press conference in Montreal in 2000, are Matthew Coon-Come, National Chief of the Assembly of First Nations, Michèle Audette, president of the Quebec Native Women’s Association, Ghislain Picard, Regional Chief of the Assembly of First Nations of Quebec and Labrador, and Darliea Dorey, president of the Native Women’s Association of Canada.

Collection of Michèle Audette

*1982: in the Canadian Constitution and the Canadian Charter of Rights and Freedoms,*

“the Indians, Inuit and Métis” are “aboriginal peoples” with “aboriginal and treaty rights.”

(Section 35 of the Constitution Act, 1982 and section 25 of the Canadian Charter of Rights and Freedoms)



Self-government asserts itself through both actions and symbols, as this Listuguj Micmac poster makes clear.

Photo: Pierre Lepage

## INTERNATIONAL RECOGNITION OF THE RIGHTS OF ABORIGINAL PEOPLES

UNESCO gives the world's Aboriginal population as 350 million persons, living in more than seventy countries; this represents more than 5,000 languages and cultures. In spite of their numbers and rich diversity, Aboriginal peoples have seen their most basic human rights denied. They were the "forgotten figures" of international law. However, the situation began to change quickly in the 1980s.



*Cree chief Ted Moses was the first Aboriginal person in the history of the United Nations to occupy the prestigious function of rapporteur of a conference of the Human Rights Commission. Here he is being presented the medal of the Société québécoise de droit international by Jacques Lachapelle, then president of the Commission des droits de la personne du Québec.*

*Photo: Félix Atencio-Gonzales, CDPDJ*

The attempts of the Aboriginal peoples of the Americas to obtain justice through international legal proceedings is not new. Their first efforts took the form of appeals, petitions, and requests to the imperial authorities of the various colonizing countries; from the eighteenth century onwards, Aboriginal delegations and ambassadors regularly travelled to London. One of these trips occurred in 1825, when the great Huron chief Nicolas Vincent and three other chiefs from Jeune-Lorette met with King George IV in the hope of winning their case in a dispute over the lands of the Seigneurie de Sillery; unfortunately, the responsibility for settling the dispute was sent back to the local authorities. The creation of the League of Nations, in 1919, appeared to offer a way forward, but as we saw in the preceding chapter, the Iroquois chief Deskaheh's attempts to have the case of his tiny nation heard met with no success.

The creation of the United Nations, in 1945, gave rise to new hope. The U.N.'s Charter clearly stated the right to the equality and freedom that was to be enjoyed by all peoples and nations both large and small as well as its firm commitment to put an end to colonialism in all of its forms. The United Nations regularly received complaints from Aboriginal individuals

and groups that alleged the violation of basic rights. Until the 1970s, however, such complaints achieved little. The decolonization process that the U.N. embarked upon at the beginning of the 1960s was restricted to overseas territories (that is, ones that were geographically separate from the colonizing country) and protectorates only. This meant that the situation of many Aboriginal peoples—nations within nation-states—would fall between the cracks of international control and remain within the exclusive domain of the internal affairs of those individual states (see Lepage 1994).

It would only be at the beginning of the 1970s that the United Nations began to show a real interest in Aboriginal questions. The Sub Commission on Prevention of Discrimination and Protection of Minorities produced a massive study into the discrimination faced by Aboriginal peoples. Its report, which was the result of ten years of work, is both impressive and forceful, as this extract shows:

Much of their land has been taken away and whatever land is left to them is subject to constant encroachment. Their culture and their social and legal institutions and systems

have been constantly under attack at all levels, through the media, the law and the public educational systems. It is only natural, therefore, that there should be resistance to further loss of their land and rejection of the distortion or denial of their history and culture and defensive/offensive reaction to the continual linguistic and cultural aggressions and attacks on their way of life, their social and cultural integrity and their very physical existence. They have a right to continue to exist, to defend their lands, to keep and to transmit their culture, their language, their social and legal institutions and systems and their way of life, which have been illegally and unjustifiably attacked (Martínez Cobo 1987, 29).

The creation of the Working Group on Indigenous Populations, in 1982, is the most significant element in the U.N.'s interest in the situation of these populations. The Working Group quickly set to work on a project for international standards, and in 1993 a draft version of the *Declaration on the Rights of Indigenous Peoples* was finished and will be submitted to the U.N.'s General Assembly for adoption. In the interim, the General Assembly proclaimed 1993 the International Year of the World's Indigenous People and 1994–2003 the International Decade of the World's Indigenous People. It also approved the idea of creating the Permanent Forum on Indigenous Issues within the United Nations.

Thirty years of sustained effort to obtain international recognition deservedly led to a positive outcome on September 15, 2007, when the United Nations General Assembly passed the *Declaration on the Rights of Indigenous Peoples*. The stakes were high, because the Declaration recognizes that indigenous peoples and individuals are not part of a racial, ethnic, religious or linguistic minority, but free and equal to all other peoples and individuals, with the "right to self-determination" (Article 3). With respect to resource development on indigenous lands, the Declaration is intended to end unilateral government policies. Article 32, in particular, specifies that States must consult and cooperate with the indigenous peoples concerned "to obtain their free and informed consent prior to the approval of any project affecting their lands or territories" (United Nations 2007).

In an article that appeared in the *Revue générale de droit*, the Cree lawyer Roméo Saganash explains what the recognition of the right to self-determination means for Aboriginal peoples: [TRANSLATION] "You do not have to be an expert in international law to determine what a people's right to self-determination means. Fundamentally, it is the right to exist, to flourish as a

people, and to be respected as such by other peoples. It is the collectivity's equivalent of the individual's right to equality, dignity, and freedom. Seen from this perspective, the right to self-determination is an inalienable, indivisible, and universal right" (Saganash 1993, 87).



A group of non-government organizations presses the Canadian government to support the adoption of the United Nations proposal for a Declaration on the rights of indigenous peoples. Invited to speak at the press conference held in Montreal on 21 June 2001, Kenneth Deer (in the photograph above) explains the significance of the Two-Row Wampum Belt, a powerful symbol of mutual respect and equality between peoples. The strands of wampum represents the two peoples accepting to live side by side, in peace and harmony, and without interference in the activities of the other.

Photo: Pierre Lepage



Rigoberta Menchu Tum, a Native person from Guatemala (in the centre of the photograph), received the 1993 Nobel Peace Prize. This photograph was taken during her trip to Montreal June 2001.

Photo: Pierre Lepage

## FOR FURTHER INFORMATION

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Chief Deskaneh, seen here during his stay in Geneva in 1923-24, poses with members of the Iroquois Commission, a network that supported his cause. At the right, a member of the organization holds the Two Row Wampum Belt that symbolizes the 1634 treaty between the Mohawks and the Dutch in the Hudson River valley.

Photo: Bibliothèque publique et universitaire, Genève.  
Photograph by F. Martin

