"ABORIGINAL GOVERNMENT THROUGH THE NEGOTIATION OF PRACTICAL ARRANGEMENTS"[1]: INDIGENOUS–STATE RELATIONS IN 1990S NEW BRUNSWICK

Nicole O'Byrne and Karen McGill

Abstract

Indigenous leaders have long argued that meaningful self-government requires revenue from natural resources to fund public policy initiatives that address the needs of their people. In the *Marshall* decisions, the Supreme Court recognized the ongoing commercial aspect of the treaty relationship between the Crown and First Nations. In this paper, we argue that the New Brunswick tax revenue sharing agreements were a manifestation of an evolving and modern treaty relationship in which resources and revenue can be shared for the benefit of all people living in the territory. The decision to cancel the agreements signals that the provincial government fails to understand that its role in a treaty relationship requires equitable sharing of resources—a principle confirmed and amplified by the *Marshall* decisions.

Résumé

Les dirigeants autochtones soutiennent depuis longtemps qu'une autonomie réelle exige que les revenus tirés des ressources naturelles servent à financer des initiatives de politique publique qui répondent aux besoins de leur peuple. Dans les arrêts *Marshall*, la Cour suprême a reconnu l'aspect commercial permanent de la relation conventionnelle entre la Couronne et les Premières nations. Dans le présent document, nous soutenons que les ententes de partage des recettes fiscales du Nouveau-Brunswick étaient une manifestation d'une relation de traité évolutive et moderne dans laquelle les ressources et les recettes peuvent être partagées au profit de toutes les personnes vivant sur le territoire. La décision d'annuler les ententes indique que le gouvernement provincial ne comprend pas que son rôle dans une relation fondée sur un traité exige un partage équitable des ressources—un principe confirmé et amplifié par les décisions *Marshall*.

Introduction

When Donald Marshall Jr. went eel fishing in Nova Scotia in August 1993, few could have anticipated that this simple act would become the crux of two landmark Supreme Court of Canada cases recognizing Indigenous rights.[2] While the meaning of a "moderate livelihood" arising from the *Marshall* decisions remains a subject of intense debate, the cases illustrate how the assertion of Indigenous rights may be followed by formal recognition by the courts. However, Indigenous rights have sometimes been recognized by governments as a basis for the negotiations of financial agreements. While the *Marshall*

[1] Memorandum re Features of TRSAs, 1994, RS 1087 Records of the Aboriginal Affairs Secretariat Records, File 5800-9 Taxation, Provincial Archives of New Brunswick [PANB].

[2] *R v Marshall (1)*, [1999] 3 SCR 456; *R v Marshall (2)*, [1999] 3 SCR 533. This project has received University of New Brunswick Research Ethics Board approval (#2022-155).

decisions have greatly influenced the debate surrounding Indigenous rights in Canada, a uniquely pragmatic solution to the expression of these rights emerged in 1990s New Brunswick—a series of tax revenue sharing agreements (TRSAs) in which a First Nation received 95 per cent of funds collected from provincial sales, tobacco, and fuel taxes along with on-reserve gaming revenues.[3] This paper offers a different perspective on reconciling the assertion of Indigenous rights with public policy objectives and illustrates some of the Indigenous–non-Indigenous debates and negotiations that were occurring in another part of Wabanaki territory.

In contrast to the *Marshall* case, the parallel struggle for the recognition and implementation of Indigenous rights that unfolded in New Brunswick during the 1990s focused less on traditional economies such as fishing and more about how Indigenous peoples could meaningfully engage with the modern provincial economy while preserving their Indigenous rights. Historically, Indigenous participation in the provincial economy was intrinsically and explicitly linked to enfranchisement and assimilation.[4] That is, one could not be a tax-paying Canadian citizen and a status Indian. However, following the *Constitution Act, 1982*, demands for clearly defined and constitutionally enshrined Indigenous rights to be incorporated into public policy dominated Indigenous–state relations, such as with First Nations leadership and the provincial government in New Brunswick.

The complex and often fraught relationship between First Nation leadership and the New Brunswick government in the 1990s may have reflected similar patterns in Nova Scotia and elsewhere in Canada; however, the practical revenue sharing solution that emerged transcended the discourse of assertion versus recognition and the reliance on courts to define the nature and scope of Indigenous rights. In many respects the TRSAs represented a mutually satisfactory solution that addressed to an extent the need for recognition and assertion of Indigenous rights without explicitly enshrining such rights in law or undermining provincial policy objectives. The revenue provided by the TRSAs were used by First Nations to fund education, health, infrastructure, economic development, governance, and other initiatives without federal oversight or management. These funds made a significant contribution to improving education and employment rates, the standard of living, and quality of life for First Nations communities.[5] While the TRSAs are notable as a revenue sharing scheme, their significance lies in their function as a means to incorporate the Indigenous right to an economic livelihood by providing both a method of on-reserve taxation and a source of revenue for First Nation governments without derogating from Indigenous rights or undermining the provincial jurisdiction. The history of Indigenous–state relations and the broader issues addressed by the negotiations leading up to the TRSAs, sheds light on the ways in which the expression of Indigenous rights may be navigated outside of the courtroom. This study also illustrates that First Nations have used various methods to actively assert their rights to participate in society and the economy.

[3] New Brunswick, Department of Finance, "Agreement on the Collection of Provincial: Tobacco Tax, Gasoline Tax, Sales Tax and Self-Licensing Relations to Gambling between the Madawaska Maliseet First Nation and the Province of New Brunswick," 1995.

[4] "Enfranchisement" refers to the historical process by which Indigenous people lost their Indian status in exchange for Canadian citizenship rights, including the right to vote.

[5] Patricia Bernard, interview with the authors, November 1, 2022, Madawaska Maliseet First Nation Reserve.

Part I: The Political Climate

Indigenous–non-Indigenous relations in New Brunswick from the election of Frank McKenna as premier in 1987 through the mid-1990s centred around two seemingly unrelated issues: (1) the nationwide constitutional question of Indigenous self-government and (2) the provincial budget deficits faced by the McKenna administration. Both these issues, however, speak to the complex tensions between the federal, provincial, and First Nation governments of the time.

In 1987, the Liberal party, led by Frank McKenna, swept the New Brunswick provincial election, winning all fifty-eight seats in the Legislative Assembly. At the time, the federal-provincial negotiations surrounding the interpretation of section 35 of the *Constitution Act, 1982*, in which the "existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed," had reached an impasse. Despite this breakdown in dialogue between leaders, the provincial Liberal platform included support for Indigenous self-government and returned the issue back to the constitutional table for formal negotiation, emphasizing on-reserve economic development as a top priority rather than constitutional change.

At the time, the province sought to increase Indigenous participation in the provincial economy through economic development initiatives, such as tax-sharing revenue agreements. It focused narrowly on practical economic development initiatives aimed at reducing the number of Indigenous people on social assistance and otherwise promoting Indigenous participation in the provincial economy.[6] The belief was that constitutional rights and the promotion of Indigenous self-government could be best achieved through the negotiation of these practical arrangements.

In 1989, the McKenna government set out its policy ideas, stating that "provincial participation in aboriginal affairs will be aimed at helping to strengthen [Mi'kmaq] and [Wolastoqey][7] societies in order to promote their greater economic and social self-reliance."[8] This policy framework clearly stated that Indigenous self-government does not preclude the provincial or federal government from playing an active role:

> Removing Indian bands from the strait-jacket of the past does not mean going to the opposite extreme of sovereign or independent Indian governments. From the perspective of the Province, self-government means that aboriginal people will have responsibilities and opportunities comparable to other Canadians within a context that will promote their ability to maintain and promote their cultures.[9]

This pragmatic approach was denounced by Indigenous leaders.[10] In a formal response, the Union of New Brunswick Indians (UNBI)[11] stated that the policy preserved the status quo and "relegates us to the

[6] Greg Byrne, interview with Nicole O'Byrne, January 13, 2023, Fredericton, NB.

[7] We have chosen to use the modern terms "Mi'kmaq" and "Wolastoqey" in place of the historical usage of "Micmac" and "Maliseet."

[8] New Brunswick, "A Provincial Policy Framework" (Fredericton: Government of New Brunswick, November 1989), 4.

[9] *Ibid.*, 10.

[10] David Milne, *The Case of New Brunswick-Aboriginal Relations*. Ottawa: Royal Commission of Aboriginal Peoples, 1995, p. 32.

[11] The UNBI represented all band councils in the province.

status of federal orphans who only have permission to come out and play in the provincial schoolyard if the federal government first feeds us, clothes us and pays the provincial schoolmaster a fat reward for the privilege of letting us visit the property we once owned outright."[12]

Further, the UNBI accused the province of trying to abdicate its responsibilities as a treaty partner by focusing on economic partnerships. They declared that the province could not sidestep constitutional and treaty issues since the reserves were established by the self-governing colony of New Brunswick before Confederation, indicating a direct role and responsibility for the Indigenous communities:

> Believe us when we tell you that there is a whole barrel-full of unresolved issues between our side and yours over off-reserve claims, the provincial reserve lands, the application of sale proceeds, and the construction of provincial works on Indian reserve land in return for little or no compensation. Our trust relationship with Ottawa does not mean that you are "off the hook."[13]

Thus, the McKenna administration's pragmatic and present-minded approach to economic development clashed sharply with the UNBI's commitment to finding redress for historical and constitutional claims. In response, the province quickly withdrew the paper and rethought its pragmatic approach to Indigenous–non-Indigenous relations.[14]

In 1991, the McKenna Liberals were re-elected with a sizable majority and promised to recognize constitutional rights such as treaty rights and the inherent right to Indigenous self-government. A new rights-based framework was developed with provincial Indigenous leaders.[15] During negotiations leading up to the Charlottetown Accord,[16] a report of the New Brunswick Commission on Canadian Federalism affirmed that the province should be committed "to building a new relationship between Aboriginal and other Canadians, a relationship found on mutual respect and equality."[17] Specifically, the commission recommended several measures intended to strengthen Indigenous self-government aspirations, among them recognizing the inherent right and granting constitutional protection to Indigenous self-government, defining and implementing treaty rights, and resolving land claims in the province.[18] Chief Roger Augustine, President of the UNBI, endorsed these recommendations and urged Premier McKenna to move swiftly, stating: "We've waited a long time for the province to even acknowledge our rights. How long will we have to wait to get them?"[19]

On October 26, 1992, the Charlottetown Accord was rejected by Canadians in a national referendum, despite widespread public support in New Brunswick (61.8 per cent), leaving questions of Indigenous self-government unresolved. Chief Roger Augustine expressed his disappointment with the referendum results:

---

[12] UNBI, *Response to Provincial Policy Framework on Aboriginal Affairs*, July 9, 1990, 1–2.

[13] *Ibid.*

[14] Milne, *New Brunswick-Aboriginal Relations*, 34.

[15] *Ibid.,* 39.

[16] The 1992 Charlottetown Accord proposed several constitutional amendments including the recognition of Indigenous self-government as a third order of government.

[17] Milne, *New Brunswick-Aboriginal Relations*, 42.

[18] *Ibid.*

[19] *Ibid*., 45.

> We were back in a flash to being lowly Indians again, as the civil servants knew we had lost the potential power to some day control our destiny. Our hopes for the constitutionalized form of self-government have been hopelessly lost....We entered the Charlottetown arena with open hearts and open minds….Now that we have been rejected in the area of compromise, we now take the next and perhaps more hazardous step. We shall act without the permission of the Constitution of this country.[20]

This response was echoed in a presentation to the provincial government by Elsipogtog Chief Albert Levi where he stated that it was clear that "all non-Indian governments have moved the issue of Indian self-government off their political agendas."[21]

When Frank McKenna was elected premier in 1987, his administration inherited a precarious financial situation. As a cost-cutting measure, the McKenna administration cut more than thirteen hundred civil service positions.[22] To improve financial planning and oversight, McKenna established a cabinet Policy and Priorities Committee chaired by provincial Finance Minister Allan Maher with instructions to control government spending and to focus on job creation.[23] Even so, the 1992–93 provincial budget had been exceeded by $200 million due to overspending by government departments and lower than predicted revenues.[24] As a consequence, the provincial net debt had risen by 8.3 per cent or nearly $300 million and despite the drastic measures already taken, the province was heading toward bankruptcy. [25]

In response to continued overspending, the 1993–94 provincial budget included a series of spending cuts and tax increases.[26] This included the revocation of a sales tax exemption that applied to First Nations people. As Maher claimed, "We needed to find ways to reduce expenditures and increase revenues without drastic new tax increases" and that it "was just part of a total picture of trying to deal with a serious financial problem. We were looking at any loopholes we could find or measures we could take that secured or tightened up loopholes."[27]

From the government's perspective, the province's dire financial situation required major changes to the tax system to continue to fund government programs and services.[28] However, from the perspective of the First Nations, the elimination of the tax exemption was yet another example of government betrayal. Chief Ben Paul of Pabineau First Nation claimed that the measure was unfair because there were no stores on reserve and that 90 per cent of the residents of his reserve were on social assistance. Paul further stated that tax laws should not apply to First Nations unless they are given an opportunity to become "viable business people." He summed up his reaction to the provincial government's cost-cutting measure:

---

[20] Roger Augustine, "Public Hearings: Overview of the Second Round," in *Public Hearings: Overview of the Second Round*, prepared by Michael Cassidy and the Ginger Group Consultants for the Royal Commission on Aboriginal People (RCAP), April 1993, 5–6.

[21] "Presentation to Tripartite Forum on Self-Government Arrangements for Big Cove First Nation," March 31, 1993, cited in Milne, *New Brunswick-Aboriginal Relations*, 49.

[22] Richard Wilbur, "New Brunswick," *Canadian Annual Review 1993*, 177.

[23] Philip Lee, *Frank: The Life and Politics of Frank McKenna* (Fredericton: Goose Lane Editions, 2001), 215.

[24] "Province Sinks Deeper into Red Ink," *Daily Gleaner*, January 15, 1993.

[25] Wilbur, 183.

[26] Wilbur, 177.

[27] Allan Maher, interview with Nicole O'Byrne, January 5, 2023, Fredericton, NB.

[28] Maher, "Economic and Fiscal," 305.

> This is a very drastic measure. Where is the money going to come from? How are people going to live, going to survive, unless the government raises social assistance? The aboriginal people were the first people in the country, and we should be exempted from sales tax. After all, we are still the original owners of the land.[29]

Part II: The Origins of Tax Exemptions

The provincial sales tax exemption for status Indians eliminated by the McKenna administration in their 1993 budget has historical roots that pre-date Confederation. This provincial decision had implications not only for Indigenous–non-Indigenous relations within New Brunswick but also for the broader question of Indigenous self-government and its practical application within Canadian law. Beyond the question of a pragmatic needs-based versus a rights-based approach, the realization of each strategy in 1990s New Brunswick is particularly evident in the handling of tax exemptions and on-reserve gaming. Negotiations surrounding these two issues led to the tax revenue sharing agreements; however, they also highlight efforts to integrate Indigenous self-government and First Nation economic development into the provincial economy. As we see in the *Marshall* decisions, questions surrounding economic and commercial rights go back to the original eighteenth-century Peace and Friendship Treaties. The specific question of special tax arrangements for First Nations may be found as early as the first legislation purportedly passed for the protection of Indigenous peoples in 1850. This statutory right to be exempt from taxation reads as follows,

> That no taxes shall be levied or assessed upon any person intermarried with any Indian for or in respect of any of the said Indian lands, nor shall any taxes or assessments whatsoever be levied or imposed upon any Indian or any person intermarried with any Indian so long as he, she or they shall reside on Indian lands not ceded to the Crown, or which have been so ceded may have been again set apart by the Crown for the occupation of Indians.[30]

The separate taxation regime was constitutionalized in section 125 of the *Constitution Act, 1867*, which exempted federal and provincially owned lands from taxation. By extension, this applies to federal reserve lands set aside for Indigenous people.[31]

In the 1876 *Indian Act*, the federal government recognized a tax exemption for property located on reserve. Variations of this provision can be found in all versions of the *Indian Act* until 1951 when the current wording was enacted: "The following property is exempt from taxation, namely: (a) the interest of an Indian or a band in reserve lands or surrendered lands; and (b) the personal property of an Indian or a band situated on a reserve."[32] Therefore, the tax exemption of status Indians and reserves flows from pre-Confederation statutes through constitutional provisions in 1867 to the *Indian Act.* Thus,

[29] "Taxation Measures 'Drastic' Says Pabineau Band Chief," *Northern Light*, April 7, 1993.

[30] *An Act for the Protection of the Indians in Upper Canada from Imposition, and the Property Occupied or Enjoyed by Them from Trespass or Injury*, 13 & 14 Vict., c 74, § IV.

[31] See section 125 of the *Constitution Act*, *1867* (UK), 30 & 31 Vict, c 3, s 125: "No lands or Property belonging to Canada or any Province shall be liable to Taxable."

[32] See, for example, *Indian Act*, 1951, c 29, s 86(1).

since the nineteenth century, the tax exemption provisions of the *Indian Act* have been a key component of the relationship between the Crown and Indigenous peoples.[33]

The Social Services and Education Tax

In 1950, the New Brunswick government introduced the Social Services and Education Tax (SSET).[34] The tax applied to all citizens of the province including Indigenous peoples and ran contrary to the well-established practice of exempting status Indians from the application of provincial tax. However, with the election of the 1970 Richard Hatfield Progressive Conservative government and their platform to work with Indigenous people through representative organizations such as the Union of New Brunswick Indians, meetings with First Nations chiefs ensued. Hatfield recognized Indigenous rights stating, "I believe and believe very strongly that there are provincial people who have special rights, and as far as possible, those rights should be protected," and further stated that federal responsibility for Indigenous people in the *Constitution Act, 1867,* does not preclude the provincial government from working with Indigenous peoples.[35]

In August 1972, the UNBI responded to Hatfield's invitation to work together by submitting a request for an exemption to the SSET for all five thousand registered status Indians living on fifteen reserves located in the province. Essentially, the UNBI argued that since the federal government was responsible for paying for services for status Indians, they should not have to pay provincial tax when they received few provincial benefits. The UNBI argued that status-based exemptions already existed for farmers, miners, and fishers, so the change would not be breaking new ground. In a detailed legal memo, the UNBI quoted the wording of section 87 of the *Indian Act*: "No Indian is subject to taxation in respect of the ownership, occupation, possession or use of any property."[36] They argued that an exemption that only applied to goods purchased on reserve would be meaningless since the vast majority of goods were purchased off reserve due to the lack of on reserve stores. The UNBI also included draft regulations to implement the exemption and ended its submission with an exhortation: "Taxation without representation is a most awkward and dangerous situation. But taxation without benefits is illegal and immoral."[37]

In a confidential review of proposed changes to the 1974–75 budget, the provincial Department of Finance confirmed the validity of UNBI's arguments. Regarding the issue of consumption, the authors wrote that it would be "virtually unenforceable" to monitor whether the goods consumed were used on reserve and recommended that all goods purchased on- or off-reserve should be exempt. The estimated cost of administering the tax exemption for the approximately five thousand status Indians in the province was deemed to be $120,000.[38] In 1974, an amendment was made to the *Social Services and Education Tax Act* that provided a point-of-sale tax exemption for all goods purchased by status Indians

[33] Alan Pratt, "Federalism in the Era of Aboriginal Self-Government," in *Aboriginal Peoples and Government Responsibility—Exploring Federal and Provincial Roles,* ed. David C. Hawkes (Ottawa: Carleton University Press, 1989), 49.

[34] Somewhat misleadingly named, the SSET was a provincial tax established to fund the costs of social services and education.

[35] Minutes, Chiefs Meeting, Edmundston, November 29, 1970, RS 417 Records of the Office of Premier Richard B. Hatfield, File Indian Affairs, PANB.

[36] *Ibid.*

[37] *Ibid.*

[38] *Taxation and Fiscal Policy Review of the 1974–75 Budget and Recommended Revenue Changes*, RS 417 Records of the Office of Premier Richard B. Hatfield, File Provincial Secretary Tax Administration, 1974, PANB.

under $300, and for all goods delivered to a reserve.[39] This statutory tax exemption by the Hatfield administration helped resolve the conflict between the SSET and the historical rights-based tax exemptions for Indigenous peoples.

In April 1974, UNBI President Anthony Francis wrote Premier Hatfield to express his appreciation:

> Thank you and your Government for the recognition of our rights in removing the Sales Tax from all items purchased in New Brunswick by Status Indians. The recognition of our rights fulfills the promise you made to the Indian people in your speech in Edmundston four years ago. You and your Government's positive action has certainly gained the respect of all the Indians [sic] people of New Brunswick and will never be forgotten.[40]

This letter is notable because Francis refers to Hatfield as Chief Rolling Thunder in recognition of his commitment to work with the Indigenous population of the province and commends Hatfield's recognition of the rights underlying the request for tax exemption.[41]

Imposition of the GST and Revocation of the Tax Exemption

For nearly twenty years thereafter, status Indians in New Brunswick did not have to pay provincial sales tax on most consumer goods, excluding liquor, tobacco, accommodations, and prepared meals. However, as previously discussed, the bleak financial situation the province was facing in the early 1990s compelled the Department of Finance to revisit all such tax arrangements.[42] The Department of Finance studied the issue thoroughly prior to announcing the revocation of the tax exemption in the 1993 provincial budget. Additionally, they were aware that the revocation of the provincial sales tax exemption ran contrary to federal Liberal policy and the history of tax exemptions under the *Indian Act*.[43]

At the time, much discussion surrounded applying consumption taxes to Indigenous people regarding the new federal Goods and Services Tax (GST). These concerns surrounding tax exemptions for Indigenous peoples were outlined in a 1993 letter from Jean Chretien, former federal Indian Affairs minister and future Liberal prime minister to the federal minister of finance. Chretien asked the minister to review the plan to impose the GST on off-reserve purchases because it would effectively "deny a tax exemption guaranteed by the Indian Act."[44] As Chretien stated,

> Many aboriginal organizations have long argued that they, as nations, never surrendered their aboriginal right, whether by treaty or otherwise, to immunity from taxation by the British Crown and later Canada. At its 1992 Biennial Convention, the Liberal Party of Canada passed a priority resolution which "categorically rejects the imposition of the

[39] *An Act to Amend the Social Services and Education Tax Act*, 1974, SNB, c 47 (supp).

[40] Letter from Anthony Francis to Premier Hatfield (Chief Rolling Thunder), April 4, 1974, RS 417 Records of the Office of Premier Richard B. Hatfield, File UNBI, PANB.

[41] *Ibid.*

[42] Maher, interview with O'Byrne.

[43] Letter from Bruce Judah, Solicitor, to Paul LeBreton, Deputy Minister of Justice, plus attached memorandum March 29, 1992, RS 738 Records of the Office of Premier Frank McKenna, File 3900 Native Taxation, PANB.

[44] Letter from Jean Chretien, M.P. to Don Mazankowksi, Minister of Finance, April 9, 1993, File 3900-1 Taxation General, PANB.

> G.S.T. to First Nations and their citizens throughout Canada on the grounds that it is in violation of their aboriginal and treaty rights which are recognized and affirmed in the Constitution, and is inconsistent with the principle of self-government." [45]

However, the stricter construction of section 87 of the *Indian Act* meant that status Indians would have to pay provincial tax on goods unless they were purchased on reserve or delivered to a reserve. Indeed, provincial Finance Minister Allan Maher stated that the provincial sales tax exemption had been "a very broad sales tax exemption for purchases made by status Indians which goes beyond the provision of Section 87 of the *Indian Act*."[46] Therefore, the federal government's imposition of the GST on all off-reserve purchases gave licence to the provincial government to follow the same course of action and motivated the decision to align the provincial sales tax exemption with the application of the federal GST.

As tensions mounted, McKenna defended the decision to restrict the tax exemption during question period at the Legislative Assembly on the basis that First Nations people benefited from many provincial services and, therefore, should be paying their fair share of provincial tax:

> The aboriginals, as all taxpayers and citizens of New Brunswick, have access to the services that are given in the province. There are some circumstances in which the aboriginals receive services directly from the government of Canada, but there are other services which are very much the responsibility of the government of New Brunswick....Madam Speaker, our intention is not to be unfair here, it is to point out the facts. The facts are that a similar tax is operational in the provinces of Nova Scotia, Newfoundland, Quebec, Manitoba and British Columbia. It seems to me that it is not unreasonable for us, a small, somewhat disadvantaged province, to carry on a tax regime which is not in conformity with the taxing policy in the rest of Canada. At a time when sacrifice and contribution are being demanded from all—and I do mean all—I think it only fair that we ask for that modest contribution from our native people. In turn, I hope we can end up respecting and working with them on their very legitimate aspiration toward self-government.[47]

Premier McKenna's assessment of the provincial services provided to all citizens resident in the province, including status Indians, was correct; however, his public speech did little to soothe tensions as he headed into a meeting with Indigenous leaders later that same day. In a memo prepared for the meeting, Don Dennison, Executive Cabinet Secretary, stressed that the province needed to convince the chiefs of its "willingness to support development efforts for native people" and that if the government was going to tax status Indians, then it needed to do more to show that the money was going to promote their interests such as a job creation or environmental trust fund. Provincial officials knew that communications between the government and First Nations were tenuous and that both sides were approaching the issues from very different perspectives.[48]

[45] *Ibid.*

[46] "1993 Budget Speech," RS 738 Records of the Office of the Premier Frank McKenna, File 3900 Native Taxation, PANB.

[47] Speech in the Legislative Assembly, April 7, 1993, RS 738 Records of the Office of Premier Frank McKenna, File 3900 Native Taxation, PANB.

[48] Memorandum from Don Dennison, Deputy Minister of Intergovernmental Affairs and Executive Cabinet Secretary, to Max Lewis, Finance, April 7, 1993, RS 738 Records of the Office of Premier Frank McKenna, File 3900 Native Taxation, PANB.

Chiefs Seek Way Forward with Gaming

While the McKenna administration looked to remove First Nation tax exemptions to address their fiscal imbalance, the question of economic development for Indigenous communities remained a pressing concern. The defeat of the Charlottetown Accord marked the end of constitutional negotiations as a means of recognizing and implementing Indigenous rights. However, constitutional solutions were not the only avenue First Nations were exploring regarding self-determination and nation-building—on-reserve gaming was emerging as an alternative way forward.

Since the mid-1980s, various First Nations across the country, such as Six Nations in Ontario and the White Bear First Nation in Saskatchewan, had been expanding on-reserve bingos and other gambling activities.[49] While on-reserve gaming was long established in the U.S.,[50] a framework for it was not yet established in Canada, and laws prohibiting gambling remained an obstacle. Indigenous leaders saw gaming revenue as a way to diminish dependence on federal government funding and a path toward more autonomous decision making.[51] Revenues were used to improve water and sewage systems, roads and communication infrastructure, schools and libraries, medical centres, and other such services.[52] Thus, by 1992, some chiefs were willing to defy laws prohibiting gambling given the failure of constitutional negotiations, few other economic development options, the slow and expensive land claims processes, and given questions of sovereignty.[53]

In August 1992, Chief Leonard Tomah of Woodstock First Nation announced that the band had lined up $10 million from Minnesota-based private investors and developers with experience in on-reserve gaming enterprises. As Chief Tomah stated, the band needed the casino to address the 85–90 per cent on-reserve unemployment rate: "My original intent and my only intent is to create economic stability for our band, job creation for our people and long-term employment."[54] At the time, both the local provincial MLA and the Solicitor General of Canada, Bruce Smith, confirmed that the band did not need provincial approval to build an on-reserve casino. The proposed site, along the Trans-Canada highway near the United States border with Maine, was projected to attract up to 160,000 visitors per year with a potential annual revenue of $3.25 million and create nearly six hundred jobs—a significant number for a First Nation with an on-reserve population of 597.[55]

By mid-September 1992, the legality of gambling on reserve would again be brought to Solicitor General Bruce Smith's attention by New Brunswick RCMP Chief Superintendent Beaulac. Beaulac directly challenged the Solicitor General's opinion that the *Criminal Code* provisions prohibiting gaming did not

[49] See Yale Belanger, "First Nations Gaming in Canada: Gauging Past and Ongoing Development," *Journal of Law and Social Policy* 30 (2018): 175–184.

[50] David Desbrisay, *The Gaming Industry in Aboriginal Communities*. Prepared for the Royal Commission on Aboriginal Peoples, 1994, Government of Canada Publications, 22.

[51] Yale Belanger, "Toward an Innovative Understanding of North American Indigenous Gaming in Historical Perspective," in *First Nations Gaming in Canada,* ed. Yale Belanger (Winnipeg: University of Manitoba Press), 15.

[52] Robert J. Williams, Rhys M.G. Stevens, and Gary Nixon, "Gambling and Problem Gambling in North American Aboriginal Peoples," in *First Nations Gaming in Canada,* ed. Yale Belanger (Winnipeg: University of Manitoba Press), 170.

[53] See Daniel Rück, *The Laws and the Land—The Settler Colonial Invasion of Kahnawā:ke in Nineteenth Century Canada* (Vancouver: University of British Columbia Press, 2021); and, Susan Lazaruk, "Gambling Seen as Key to Self-Sufficiency," *Windspeaker* 10, no. 19 (1992): 3.

[54] "Woodstock Band Building Casino," *Daily Gleaner*, August 7, 1992.

[55] *Ibid.*

apply to reserves. Further, he stated that enforcement had been relaxed to help promote a negotiated settlement between the Woodstock First Nation and the provincial government; however, off-reserve establishments that were following the law began to complain that they were losing business to First Nations. Beaulac also stated that First Nation chiefs did not recognize the application of provincial legislation such as the *Lotteries Act* on reserve land and questioned the need for a review of the RCMP's enforcement policy of the *Criminal Code*.[56] Soon after, the Solicitor General agreed that the situation warranted study by the provincial offices of the attorney and solicitor general and the Department of Finance.[57]

Provincial Casino Prohibitions and Reactions

After studying the issue of on-reserve gaming regulation for several weeks and consulting with the UNBI, provincial Finance Minister Allan Maher informed UNBI President Chief Roger Augustine that the "casino concept sought by some bands may not be resolved to their satisfaction" and that "no casinos would be built in the province on or off-reserve."[58] Maher later explained the rationale for the decision:

> Quite simply, casino gambling has not been part of our economic strategy to date and is not essential to future economic prosperity. We prefer an economic base that can be driven and sustained by more positive and productive economic activity….In the meantime, however, because of our respect for the desire of native groups to achieve greater independence, we are prepared to consider other options.[59]

The other options suggested by the finance minister included the negotiated self-licensing agreements for on-reserve bingos and video lottery terminals (VLTs). At the time, the province's position reflected public concern over the negative impacts of casinos.[60] Brad Woodside, Mayor of Fredericton, publicly supported the province's position and shared his concern that casinos were known to attract organized crime.[61] The RCMP was also motivated by rumours of organized crime infiltrating Indian gaming.[62] However, fifteen years later, the province would rethink its opposition to casinos and open the provincially operated Casino New Brunswick in Moncton.

Reaction to Maher's announcement by First Nations leaders was swift. Chief Steve Sacobie of Kingsclear First Nation vowed that his community would set up a casino the following year with or without approval by the provincial government.[63] Solicitor General Bruce Smith said he would wait to hear from more First Nations leaders before deciding whether to lay charges under the *Criminal Code*:

---

[56] Letter from Bruce Smith, Solicitor General, to Chief Superintendent Beaulac, September 15, 1992. RS 715 Records of the Department of the Solicitor General, File 92-2000 Policing General—Gambling—Natives, PANB.

[57] Letter from William Connor, Deputy Solicitor General, to Max Lewis, Deputy Minister of Finance, September 21, 1992, RS 715 Records of the Department of the Solicitor General, File 92-2000 Policing General—Gambling—Natives, PANB.

[58] Letter from Allan Maher, Finance Minister, to Roger Augustine, UNBI President, December 8, 1992, RS 715 Records of the Department of the Solicitor General, File 92-2000 Policing General—Gambling—Natives, PANB.

[59] Statement by the Minister of Finance, Allan Maher, re Casinos, December 9, 1992, RS 715 Records of the Department of the Solicitor General, File 92-2000 Policing General—Gambling—Natives, PANB.

[60] "N.B. Says No to Casinos—Not Appropriate Economic Stimulus," *Daily Gleaner,* December 9, 1992.

[61] "Mayor Says Casino Could Attract Organized Crime," *Daily Gleaner*, January 15, 1993.

[62] Bradford Morse, "Permafrost Rights: Aboriginal Self-Government and the Supreme Court in R v Pamajewon," *McGill Law Journal* 42, no. 4 (September 1997): 1021.

[63] "N.B. Says No to Casinos."

"We will try in all cases to avoid any confrontation, to try to work something out."[64] Over subsequent months, several obstacles arose, including the *Criminal Code* prohibition on unlicensed gaming and the provincial government's refusal to permit the construction of casinos. Another serious challenge to finding a resolution was a widely held belief by First Nations people that the regulation of gaming on reserve is "based on their claim to sovereignty over tribal lands and the historical autonomy that first peoples have had from provincial authority."[65]

There were several impediments to resolving the issue of on-reserve gaming. The most pressing was an amendment to the 1985 *Criminal Code* that gave exclusive jurisdiction over gambling to provincial governments.[66] First Nations were neither consulted about the change nor mentioned in the legislative amendment.[67] As a result, provincial governments had the exclusive legal authority to choose which gaming activities were allowed, set prize limits, control the number and frequency of events, and set conditions for revenue allocation and financial reporting. Under section 207 of the *Criminal Code,* First Nations must obtain a licence from a designated provincial authority, such as a lottery commission, to conduct any form of gaming on reserve.[68] To do otherwise would trigger police investigations and potential criminal charges.

During the 1980s, several New Brunswick First Nations did challenge the province's exclusive regulatory authority over gaming. One such attempt was to assert their own gaming regulations pursuant to section 81 of the *Indian Act*, which provides for the control of public games, sports, athletic contests, and other forms of entertainment. Nevertheless, the minister of Indian Affairs disallowed these regulations on the grounds the *Criminal Code* took precedence over bylaws constituted under the *Indian Act*.[69] Wet'suwet'en First Nation challenged the provincial monopoly over gaming by claiming that the right to gamble was an aboriginal right protected by section 35 of the *Constitution Act, 1982*, in *R v Jim*.[70] The court, however, found that there was no aboriginal right to gamble.[71] In another challenge heard at the Supreme Court of Canada, First Nations contested the federal government's right to delegate authority over gaming to provincial governments. In *R v Furtney*, the court held that the federal government could not delegate law-making powers to another level of government; however, it could delegate regulatory authority and incorporate provincial gaming legislation by reference.[72] Thus, by leaving the regulation of gaming up to provincial governments, the federal government also assigned the provinces "the task of assuming a more significant role in meeting social and economic needs" of First Nations.[73]

---

[64] *Ibid.*

[65] Colin Campbell and Garry Smith, "Canadian Gambling: Trends and Public Policy Issues," *Annals of the American Academy of Political and Social Science* 556 (1998): 26–27.

[66] Colin Campbell, Timothy Harthagel, and Garry Smith, *The Legalization of Gambling in Canada*. Prepared for the Law Commission of Canada, 2005, p. 17.

[67] Murray Marshall, "First Nations Gaming in Canada: Navigating the Labyrinth," *Gaming Law Review* 8 (2019): 559.

[68] Desbrisay, *The Gaming Industry,* 7–8.

[69] See *St. Mary's Indian Band v Canada,* [1995] 3 FC 46; affirmed on appeal [1997] 1 CNLR 206.

[70] *R v Jim* (26 November 1992), BC Provincial Court, found in RS 715 Records of the Department of the Solicitor General, File 92-2000 Policing General—Gambling—Natives, PANB.

[71] Ibid. See also *R v Pamajewon*, [1996] 2 SCR 821.

[72] *R v Furtney,* [1991] 3 SCR 89.

[73] Ken Hatt, Tullio Caputo, and Barbara Perry, "Criminal Justice Policy under Mulroney, 1984–90: Neo-Conservatism, Eh?" *Canadian Public Policy* 18, no. 3 (September 1992): 247.

The Manitoba Model of Self-Licensing

As Indigenous groups throughout the country were challenging the provincial regulatory monopoly, relations between First Nations and the provincial government of New Brunswick were quickly deteriorating. Indigenous leaders believed that gaming regulation should be an expression of their inherent right to self-government. The RCMP was pressing the provincial government to enforce the *Criminal Code* and crack down on unlicensed gambling. Throughout this period, officials in the Ministry of Finance and the Office of Intergovernmental Affairs struggled to find a new approach to on-reserve gaming in the province. They would eventually propose a self-licensing model first introduced in Manitoba.[74]

The Manitoba Model, originally suggested by the RCMP in 1992, was a delegated model of governmental authority that had been replicated in several Canadian provinces. The delegated authority model authorized First Nation gaming commissions to administer laws and procedures on behalf of provincial authority through jointly negotiated self-licensing agreements.[75] The agreements enabled the creation of Indigenous gaming commissions with the exclusive authority to license gaming events on reserve and to receive 90 per cent of the revenue with 10 per cent of the revenue going to the province to cover administrative costs.[76]

The Manitoba Model was initially developed by a retired RCMP staff sergeant, Chuck Koppang. Koppang had spent several years policing isolated reserves in Manitoba and Northwestern Ontario. After retiring, he joined the Manitoba Lotteries Foundation as a casino investigator and later became responsible for licensing and Indigenous gaming. He worked with the Opaskwayak Cree Nation to develop the first Native Gaming Commission and the first VLT agreement in Canada.[77] In 1979, Opaskwayak Cree Nation had passed a bylaw under section 81(m) of the *Indian Act* to regulate gaming on reserve. However, in 1986 the RCMP raided the reserve, seized lottery tickets and records, and made several arrests. Shortly afterwards, the province of Manitoba entered negotiations with five Indigenous organizations representing all First Nations in the province. By 1992, seven gaming commissions representing fourteen bands had been established.[78]

The Manitoba Model was attractive to provincial governments such as New Brunswick because it created a level playing field for on-reserve and off-reserve vendors and created a new revenue stream for First Nations with limited economic development opportunities.[79] It also did not prejudice ongoing treaty and aboriginal negotiations. The agreements provided "a practical, interim solution, which addresses law enforcement concerns about illegal gaming and Aboriginal interests in providing gaming opportunities on reserve lands."[80] After the failure of the constitutional negotiations on Aboriginal rights, provincial

[74] Maher, interview with O'Byrne.

[75] Sharon Taylor-Henley, and Peter Hudson, "Aboriginal Self-Government and Social Services: First Nations-Provincial Relationships," *Canadian Public Policy* 18, no. 1 (1992): 13.

[76] Marshall, "First Nations Gaming," 51.

[77] Chuck Kappong, "Establishing an Effective Regulatory Framework: Ensuring the Integrity of Gaming Operations," *Proceedings of the Successful First Nations Gaming in Canada Conference*. Native Investment and Trade Association, Vancouver, BC, 10–11 December 1992, 43.

[78] Marshall, "First Nations Gaming," 560.

[79] Revenue Division Gaming and Taxation Agreements, RS 9 Records of the Executive Council, Meeting of 1996-06-26 Meeting of Executive Cabinet, PANB.

[80] Kappong, "Establishing an Effective," 1–2.

governments like New Brunswick looked to negotiate practical agreements that would address concerns such as law enforcement and provide opportunities for economic development on reserve as most revenues from gaming would stay on reserve.[81] New Brunswick was advised by Manitoba civil servants that self-licensing agreements also had the potential to lessen potential conflict while the parties sought more fundamental and long-term solutions to jurisdictional and constitutional disputes.[82]

Tripartite Meeting

In the wake of Finance Minister Allan Maher's announcement in December 1992 that no casinos would be built in the province, on or off reserve, First Nations leaders called for meetings with provincial officials. Maher stated that he wanted to find some accommodation with First Nations but that the government had no plans to legalize casinos. As a compromise, he suggested that he would be willing to discuss some form of self-licensing agreement for high-stakes bingo and VLTs.[83] Chief Sacobie rejected Maher's offer and claimed that his community would be going ahead with its plans to build a casino based on an "inherent right to self-government." He then accused the provincial government of using their monopoly over the regulation of gaming to cut First Nations out of the gaming industry altogether: "They want to get their (casinos) off the ground first…and then leave the scraps to the Indians as usual."[84] Chief Sacobie also rejected the offer of VLTs: "No one is receptive to the idea about video machines….Who could play the machines on the reserve? Just the reserve residents spending their welfare cheques!" Sacobie and the other chiefs were interested in casinos to attract revenue from non-reserve residents. The options that Maher suggested, such as larger bingos and VLTs, would not bring in dollars from the wider population beyond the reserve.[85]

The ongoing tensions over casino development during 1992–93 incentivized the government to design and implement jointly negotiated self-licensing regulations over on-reserve gaming. The political and economic stakes over the gaming issue were high. In 1993–94, the Atlantic Lottery Corporation reported $197 million in revenues.[86] In the 1993 Speech from the Throne, the provincial government committed to "renew its efforts to assist in the development of Aboriginal communities and remains committed to working with them and the federal government toward their well-being and self-reliance….These commitments will require new approaches to our relationship with the Aboriginal people of New Brunswick."[87] Ironically, the same provincial government that sought to negotiate gaming agreements with First Nations would introduce a series of austerity measures in the 1993 budget that would set Indigenous–non-Indigenous relations back significantly.

[81] Byrne, interview with O'Byrne.

[82] Kappong Memorandum RS 715 Records of the Department of the Solicitor General, File 92-2000 Policing General—Gambling—Natives, PANB.

[83] "Frustrated Natives Vow to Proceed," *Daily Gleaner*, January 14, 1993.

[84] "Kingsclear Won't Back Down from Casino," *Daily Gleaner*, January 14, 1993.

[85] *Ibid.*

[86] Desbrisay, "*The Gaming Industry,"* 11. For comparison, Ontario reported $602 million.

[87] "Speech from the Throne," *Journals of the Legislative Assembly of the Province of New Brunswick*. 52nd Ass., 2nd sess. March 16, 1993: 8.

Part III: Civil Disobedience

As tensions between First Nations and the New Brunswick government escalated in the wake of the 1993 Speech from the Throne, Indigenous–non-Indigenous relations in the province deteriorated even further. This conflict grew from the provincial government's unwavering commitment to rescind the tax exemptions for First Nations to help address its budget deficit and its refusal to allow casinos that could have alleviated economic pressure and improved social conditions for First Nations. These circumstances led to volatile, even violent, protests and additional court actions, reaching as high as the Supreme Court of Canada. Conflicts that were once confined to boardrooms and meeting halls spilled into the streets where the political climate of the day fuelled anger, frustration, and, ultimately, a resolution.

When the provincial budget was tabled in March 1993, with the provision to remove the provincial tax exemption for off-reserve purchases, First Nations throughout the province reacted swiftly and negatively. On April 3, 1993, blockades were constructed at Ugpi'ganjig First Nation (Eel River Bar) near Dalhousie.[88] All the New Brunswick chiefs met in Fredericton to limit the tax exemption and warned the public to expect widespread civil disobedience. Chief Len Tomah of Woodstock First Nation clearly stated the chiefs' position: "The way we see it, the government doesn't have a legal leg to stand on."[89] A few days later, the UNBI voted to push ahead with a land claim to the entire province of New Brunswick.[90] At the same meeting, the fifteen chiefs pledged to make it cost the province more to tax First Nations than it would collect in revenue. The chiefs threatened to use federal funding for the education of First Nations children in the provincial school system as a lever. The federal government was scheduled to send approximately $5.4 million ($4,550.50 × 1,200 students/year) to the bands to pay for students who attended school off reserve. UNBI President Roger Augustine warned the government that the anticipated increase in revenue of $1 million is a paltry sum compared to the over $5 million the band could withhold in retaliation.[91]

Premier McKenna met with First Nation leaders on April 7, 1993. During the meeting, the premier stated that Indigenous people had a responsibility to contribute their fair share for the use of provincial services such as roads. He made it clear that the province would not back down from its decision to collect 11 per cent sales tax for items bought off reserve.[92] McKenna reported that he had been "emotionally touched" by the stories of hardship he heard from the chiefs; however, he said he was not "financially touched," and that the tax would stay unless it could be proved illegal.[93] That same day more highway blockades were erected throughout the province including Esgenoôpetitj First Nation where protester Miigam'agan voiced her concerns: "They're imposing their citizenship on us…they're violating our rights. We are not citizens of New Brunswick, we're talking about our aboriginal rights. They're taking their laws and putting right over our laws—that's an act of war. What we're all witnessing is another form of genocide."[94]

[88] "Micmacs Hope Meeting with McKenna Resolves Tax Dispute," *Telegraph Journal*, April 7, 1993.

[89] "N.B. Chiefs Meet on Tax," *Globe and Mail*, April 3, 1993.

[90] "Indians Will Press Land Claim," *Telegraph Journal*, April 7, 1993.

[91] "Natives Pledge to Fight," *Daily Gleaner*, April 7, 1993.

[92] "Indians Must Pay PST, McKenna Declares," *Ottawa Citizen*, April 8, 1993.

[93] "New Roadblocks Set Up," *Telegraph Journal*, April 9, 1993.

[94] "Micmac Protesters Maintain Blockade," *Telegraph Journal*, April 8, 2023. Miigam'agan currently serves as the Elder-in-Residence at St. Thomas University.

As protests mounted, McKenna voiced his hope that further confrontation could be avoided but stated, "We cannot decide public policy on the basis of who erects the most blockades."[95] Many of the chiefs publicly stated that they wanted the blockades to come down but that there was little they could do to stop the spread of widespread civil disobedience.[96] For the most part, the various highway blockades and protest sites throughout the province were peaceful. However, the protest at the Metepenagiag First Nation escalated when three hundred non-Indigenous people set up a counter-protest at the end of the Red Bank Bridge and a non-Indigenous man set a car owned by an Indigenous person on fire. At one point, twenty police officers were caught on the bridge between the two sets of protesters.[97]

At Kingsclear First Nation, located approximately 15 km west of Fredericton, protesters blocked the Trans-Canada highway, forcing a significant detour. There, police arrested and charged approximately two dozen people, including three children, with mischief.[98] That evening, an RCMP tactical squad moved in on the remaining protesters, using seventy cans of tear gas to disperse the remaining crowd.[99] Chief Roger Augustine would later make a complaint to the RCMP Public Complaints Commission on behalf of the New Brunswick chiefs alleging an "over-zealous show of force" at Kingsclear. In response, the RCMP defended the actions of the uniformed officers and the tactical squad: "In times of civil disobedience it sometimes becomes necessary to make a show of force to curtail future similar incidents. This is what took place here as it was felt the large number of police present would prevent violence and as far as I can determined this method was successful."[100] The chair of the RCMP commission found that the police planned and carried out their duty to clear the blockade in a safe and efficient manner.[101] The internal investigation found that the RCMP acted within acceptable parameters in such an operation; however, historian Greg Marquis claims that it was an overreaction[102] and the court cases that resulted from the arrests suggest a different conclusion.[103]

In *R v Colford*, the police operation was reviewed in some detail.[104] At the Solicitor General's request to open the highway, the RCMP had put together a plan that included two helicopters, two borrowed police vans, a bus containing a fully equipped thirty-two member tactical squad, forty-four uniformed officers, two identification specialists, and approximately thirty marked police vehicles assembled and proceeded to Kingsclear First Nation.[105] Prior to their departure from Fredericton, Superintendent Wayne Wawryk briefed the officers on the crowd dispersal plan. Upon arrival, Wawryk was to speak with Chief Steve Sacobie and request that the barricade be removed. If it was not removed,

[95] "New Roadblocks Set Up."

[96] *Ibid.*

[97] "Unruly Crowd Dispersed," *Daily Gleaner*, April 10, 1993.

[98] "N.B. Quiet After Tax Policy 'Clarified'," *Globe and Mail*, April 12, 1993; *R v Colford (L.G.) et al.* 1993 CanLII 15355 (NBProvCt).

[99] RCMP Public Complaints Commission, Chairman's Final Report, October 4, 1995, File No. 2000-PCC-930796/0.

[100] *Ibid.*

[101] *Ibid.*

[102] Gregory Marquis, "Public Order Policing in New Brunswick: 1972–2013," Unpublished conference paper. Atlantic Canada Studies Conference, 2016, 20.

[103] See *R v Paul*, 1994 CanLII 6421 NBCA.

[104] *R v Colford (L.G.) et al.* 1993 CanLII 15355 (NBProvCt).

[105] *Ibid.,* para 3.

then he would arrest the chief, and this would signal the uniformed officers to start making arrests using whatever force was required.[106]

All went according to plan; however, the court found that failure to use a loudspeaker to inform the protesters that they may be arrested if they did not disperse, along with the failure to fully advise the twenty-eight or twenty-nine people arrested of their Charter rights, was problematic. Judge Harper found that the protest centred around a ceremonial drum set up in the middle of the highway; that the people gathered around were "extremely peaceful"; and that all the arrests were made without resistance within five to ten minutes.[107] Significantly, Judge Harper recognized that "none of the aboriginals living in New Brunswick have ever made a general release of their lands to the Queen as have the tribes west of the Quebec border."[108]

In the decision, Judge Harper emphasized the peaceful nature of the protest, the problematic nature of the arrests, and the failure to fully warn people of their Charter rights. He still, however, found several of the defendants guilty of mischief including David Paul, who was arrested while carrying an instrument and "chanting" near the ceremonial drum circle and found guilty of mischief.[109] Even though the judge had some degree of sympathy for Paul and the other protesters, he found no reason to acquit them of criminal charges.

It took several months for the mischief trials of the Kingsclear protesters to wind their way through the court system. However, the arrests and the subsequent use of tear gas by the tactical squad on the remaining protesters on Good Friday triggered an emergency meeting between a delegation of chiefs led by UNBI President Roger Augustine and Edmond Blanchard, Minister of Intergovernmental Affairs, aimed at drafting a framework agreement to end the blockades still occurring throughout the province.[110] Over subsequent days, the barricades would come down, and First Nations leaders and provincial officials, including Finance Minister Allan Maher, sought to find a resolution at the bargaining table.[111] First Nation leaders such as Chief Leonard Tomah of Woodstock First Nation continued to voice their concerns in the media: "Our people are calm people, they are not violent people. They were reacting to having something taken away from them." Chief Steve Sacobie of Kingsclear First Nation, who had had the mischief charges against him dropped, implored the government to "just go to the way it was—no taxes for any of our people."[112] Public reaction to the protests was mixed. However, the editor of the *Campbellton Tribune* strongly criticized the government's decision to limit the tax exemption:

> The McKenna government has pulled a political boner of historic proportions by imposing the provincial sales tax on Native Indians. Surely someone in Fredericton has enough sensitivity to the Native community at large to realize that a move like this would be opening a Pandora's box. This is just plain stupid political strategy. While some Ministers of the McKenna government are slowly building contacts and establishing trust

[106] *Ibid.,* para 5.

[107] *Ibid.*, para 8.

[108] *Ibid.*, para 13.

[109] *Ibid.*, para 65.

[110] "Unruly Crowd Dispersed," *Daily Gleaner*, April 10, 1993.

[111] "N.B. Natives Trying to Resolve Tax Dispute," *Evening Times Globe*, April 15, 1993.

[112] *Ibid.*

> with Native First Nations, the government's Finance Committee is hatching a tax grab that will undo their good efforts….Why, when the McKenna government is supposedly set to discuss self-government, insult Natives this way by surprising them with a tax measure that hits the skimpy pocketbooks of every single band member?... Lest anyone think that the matter is not vitally important and that we are over-dramatizing the situation, consider this: When is the last time a government error has led to the use of tear gas in New Brunswick?[113]

The use of tear gas and mass arrests over the Easter weekend drew national attention to the state of Indigenous–non-Indigenous relations in New Brunswick. The blockades were a reminder that dialogue was needed between First Nations and the government about the larger constitutional issues at stake.[114] For example, the *Globe and Mail* reported:

> The New Brunswick dispute may look like nothing more than a group of people hoping to avoid a tax, there are larger, constitutional questions at issue. When Canadians consider the possibility of native self-government, it is these questions—questions of who has the power to tax whom, the practice of governing—that will have to be sorted out. Here is one more complex, pressing issue with which the Royal Commission on Aboriginal Peoples will have to grapple.[115]

If the protests were an emanation of larger constitutional issues simmering in the background, the McKenna government refused to retreat from its position on the tax exemption in the days following the protests. In his notes of the April 9 emergency meeting, Minister of Intergovernmental Affairs Edmond Blanchard reported that while the First Nations may see "the sales tax measure in a different way than other New Brunswickers," the province must continue to respect section 87 of the *Indian Act* in the application of the provincial sales tax. He told the chiefs that the previous tax exemption introduced by the Hatfield government had been too generous and that the government would be prepared "to enter into agreements with Band governments concerning the provincial tobacco, gasoline and motive fuel taxes for sales on reserves."[116] These negotiations evolved into the formalized tax revenue sharing agreements discussed later in the paper. Blanchard also reported that he and the premier had asked the chiefs to work with the province "in moving toward greater self-government, toward achieving greater control for Aboriginal people over their lives."[117] In the Legislative Assembly, Premier McKenna said he was saddened by the arrests and the blockades. However, he reiterated the rationale behind the decision to limit the tax exemption and repeated his assertion that "we cannot develop fiscal policy on the basis of roadblocks."[118] As for the protests, Finance Minister Allan Maher

[113] "A Colossal Blunder," *Tribune*, April 14, 1993.

[114] Yale Belanger and P. Whitney Lackenbauer, "Introduction," in *Blockades or Breakthroughs? Aboriginal Peoples Confront the Canadian State*, ed. Yale Belanger and P. Whitney Lackenbauer (Montreal & Kingston: McGill-Queen's University Press, 2014), 18.

[115] "Taxes and Native Roadblocks," *Globe and Mail*, April 15, 1993.

[116] Meeting notes Intergovernmental Affairs re 31 March 1993 budget, 9 April 1993, RS 738 Records of the Office of the Premier Frank McKenna, File 3900 File Taxation—General, PANB.

[117] *Ibid.*

[118] Frank McKenna, Speech in the Legislative Assembly, April 13, 1993 RS 738 3900 File Taxation—General, PANB.

has stated, "I thought it was an overreaction to the action we had taken which was perfectly in our right to do and did not violate any constitutional rights of the Native community."[119]

Union of New Brunswick Indians v New Brunswick (The Tomah Case)

It may have been clear to the premier and his cabinet that the limitation of the tax exemption was legal and within the purview of the government's legislative authority. However, First Nation leaders fundamentally disagreed with this assessment and hired legal counsel to pursue their claims in court.[120] As part of the negotiations, Premier McKenna offered to pay the UNBI's legal fees to determine the issue.[121] According to Roger Augustine, the UNBI chiefs hoped that a court case would help diffuse anger over the tax dispute and avoid future roadblocks: "Our single objective now is to act in good faith and to place our fate in the hands of both the New Brunswick and Canadian judicial systems."[122] In September, the parties filed affidavits at the Court of Queen's Bench. In the press, a UNBI spokesperson outlined the basis of their claim:

> There has never been any treaty signed or any land acquisition made by any parties in this country or any other country. There was never any conquest and there was never any relinquishing of lands. So that means, technically, we would suppose, that all the lands encompassing New Brunswick are still native land and there can still be considered a reserve. That means there can be no taxation of native people.[123]

The case may have been rooted in a larger historical and constitutional framework; however, Justice Roger Savoie clarified in his written decision that "this court is not faced with the philosophical question: Should status Indians and Indian bands be required to pay sales tax in New Brunswick?" and limited his analysis to determining the scope of the exemption stipulated under section 87 of the *Indian Act*.[124] Justice Savoie followed existing jurisprudence and found that property must be situated on reserve to be exempt from point-of-sale provincial sales tax.[125]

Soon after the decision was released, Chief Leonard Tomah expressed his disappointment and stated that he would discuss pursuing an appeal with the other chiefs.[126] The New Brunswick Court of Appeal heard the appeal and set aside the trial decision. In his decision, Justice Bastarache ruled that a literal interpretation of section 87 of the *Indian Act* leads to an erosion of rights. Justice Bastarache's reasons rely on the fact that the protections granted in the *Indian Act* predated the introduction of the sales tax and were intended to permit status Indians the right to use or consume personal property on reserve free from taxation by another level of government.[127] The intention of the tax exemption is to protect the Indian way of life by allowing status Indians to take full advantage of the protected reserve

[119] Maher, interview with O'Byrne.

[120] "Natives Continue Tax Fight," *Daily Gleaner*, May 14, 1993.

[121] "Natives Taking N.B. to Court," *Telegraph Journal*, May 14, 1993.

[122] "Natives Want SCOC Decision," *Times-Transcript*, May 15, 1993.

[123] "Natives Take Tax Fight to Court," *Telegraph Journal*, September 22, 1993.

[124] *Union of New Brunswick Indians and Tomah v New Brunswick (Minister of Finance)* 1994 CanLII 10043 NBQB, 25.

[125] *Ibid.*

[126] "Natives Not Through with Sales Tax Issue," *The Bugle*, June 1, 1994.

[127] *Union of New Brunswick of Indians and Tomah v New Brunswick (Minister of Finance)* 1996 CanLII 4806 NBCA, para 26.

system.[128] His decision also takes into account the original purpose of section 87 and finds that all property ultimately destined for consumption on reserve should be exempt from provincial taxation.[129] The implications of the Court of Appeal's decision compelled the province to appeal the case to the Supreme Court of Canada. In 1998, the court rendered its decision in favour of the provincial government. In her reasons, Justice McLachlin supported a narrow approach by finding that the section 87 exemption applies only to property physically located on a reserve at the time of taxation. She found that the point of sale was a key determination and that the application of provincial sales tax to off-reserve purchases would provide an economic incentive to develop on-reserve businesses. In dissent, Justices Binnie and Gonthier followed the reasoning set out by the majority of the New Brunswick Court of Appeal and found that narrowing the exemption would defeat the original purpose of the exemption in the *Indian Act*.[130]

The legal arguments at the various levels of court were complex. The different statutory interpretations regarding the purpose and intent of the tax exemption reflected varying interpretations of the historical purpose of the *Indian Act*.[131] The UNBI had high hopes that the Supreme Court would recognize a broad exemption from provincial sales tax. Recourse to the courts on the issue did move the dispute from the barricades and roadblocks. However, it was a high-risk strategy because litigation is a zero-sum game. The decision to pursue a litigation strategy is understandable given the setback over taxation, the failure of the constitutional negotiations such as the Charlottetown Accord, the provincial government's position on casino development, and the failure to make any significant progress on land agreements and treaty rights.[132] The loss at the Supreme Court of Canada in the Tomah case marked yet another fruitless avenue for the pursuit of Indigenous claims in New Brunswick during the 1990s.

As the Tomah case wound its way through the courts, First Nations and the provincial government continued to negotiate other issues such as the tax revenue sharing agreements for gaming, tobacco tax, and gasoline and motive tax.[133] In early May 1994, Woodstock First Nation announced that it would be building a 1,200-seat gaming hall offering high-stakes bingo with prizes up to $75,000. The band would operate the facility under the newly established Woodstock Band Licensing Commission. The province would collect licensing fees, but the revenues would stay with the band.[134] At the press conference announcing the new Woodstock bingo, Finance Minister Allan Maher again made it clear that "a casino is not in the cards."[135]

[128] *Ibid*., para 16.

[129] *Ibid.*, para 34.

[130] *Union of New Brunswick Indians v New Brunswick (Minister of Finance)*, [1998] 1 SCR 1161, 1187.

[131] J.P. McEvoy and R.W. Bird, "Case Comment on *Union of New Brunswick Indians v New Brunswick,*" *National Journal of Constitutional Law* 10 (1999): 241.

[132] Milne, *New Brunswick-Aboriginal Relations*, 65.

[133] Status Report—Meeting of the Ministerial Committee on Aboriginal Affairs, March 5, 1994, RS 1087 Records of the Aboriginal Affairs Secretariat, File 5800-9 Taxation, PANB.

[134] "NB Natives Get High-Stakes Bingo," *Telegraph Journal*, 7 May 1994.

[135] "Maher Isn't Showing His Casino Cards—Yet," *Telegraph Journal*, May 10, 1994.

Part IV: The Tax Revenue Sharing Agreements (TRSAs)

Despite the litigation over the tax exemption and the province's persistent opposition to casino development, the First Nations and the provincial government continued their negotiations. These discussions eventually led to the establishment of the tax revenue sharing agreements, which emerged as a groundbreaking solution. These pragmatic agreements circumvented the constraints of zero-sum litigation and furnished First Nations in New Brunswick with a substantial new revenue source to foster economic development in their communities, while yielding to provincial government policies. Furthermore, these agreements heralded improved Indigenous–non-Indigenous relations during an especially challenging time.[136]

By late May 1994, the government had drafted shared revenue agreements for review by interested First Nations.[137] The first tax revenue sharing agreement was signed by Chief Dave Thomas of the Fort Folly First Nation, located 45 km southeast of Moncton. Fort Folly First Nation was interested in setting up a bingo and wanted a share of the tax revenues collected on gas, diesel, and tobacco sales.[138] To help negotiate the deal with the province, the Fort Folly First Nation brought in Chief C.T. (Manny) Jules of the Tk'emlups te Secwepemc First Nation and chair of the Indian Taxation Advisory Board. Chief Jules suggested that the terms of the tax revenue sharing agreement should be split 95 per cent to the First Nation and 5 per cent to the province to cover administrative costs. There was nothing close to this level of revenue sharing with First Nations anywhere else in the country.[139]

Over the next several years, other First Nations in the province would negotiate similar revenue sharing agreements. The money stayed in the community and was used to improve local services.[140] Significantly, this revenue was not tied to any conditions from the province and could be used for any projects deemed to be a priority by the First Nation. From the province's perspective, the agreements levelled the playing field for non-Indigenous and Indigenous vendors and ensured that all gaming on reserve was compliant with provincial regulation.[141] So, despite litigation, roadblocks, and hard feelings, First Nations and the provincial government were able to negotiate and implement tax revenue sharing agreements to their mutual benefit.

A government memo from the mid-1990s outlined the features of the tax revenue sharing agreements: (1) government-to-government relationship fostered; (2) permitted collection of provincial tax from non-Indigenous people buying goods on reserve; (3) provides exemptions for status Indians on reserve for gasoline and tobacco tax; (4) 95 per cent of the taxes collected from non-Indians refunded to First Nation to be used at their discretion; (5) creation of First Nation gaming commissions; (6) no derogation of aboriginal or provincial rights that may be resolved in one day in court; (7) the agreements

[136] Advantages of TRSAs, RS 1087 Records of the Aboriginal Affairs Secretariat Records, File 5800-9 Taxation, PANB.

[137] Draft Agreement, May 26, 1994, Records of the Aboriginal Affairs Secretariat Records, File 5800-9 Taxation, PANB.

[138] Memorandum re Bingo, Self-Licensing and Tax Administration Agreements, September 9, 1994, RS 1087 Records of the Aboriginal Affairs Secretariat Records, File 5800-9 Taxation, PANB.

[139] Manny Jules and Andre le Desbrissay, interview with the authors via Zoom, January 5, 2023.

[140] Bernard, interview with the authors, November 1, 2022. By 2008, the majority of First Nations located in New Brunswick negotiated TRSAs with the provincial government. Elsipogtog (Big Cove) and Indian Island did not sign TRSAs. Source: Madawaska Maliseet First Nation internal files.

[141] Memorandum re Features of TRSAs.

provided for a dispute resolution mechanism.[142] The agreements addressed many of the problems identified by the provincial government and, in many respects, represented the purported goal of the McKenna government: "Aboriginal government through the negotiation of practical arrangements."[143] The agreements avoided the quagmire of litigation and permitted First Nations to use the revenue to fund their priorities. Unfortunately, as commercial agreements with no constitutional aspect, such as the constitutional protection afforded by the recognition of a moderate livelihood right in the *Marshall* decisions, these pragmatic agreements were dependent on the good will of the contracted parties.

Conclusion

The history of Indigenous–state relations in New Brunswick during the 1990s offers a perspective on the intricate interplay between the assertion of Indigenous rights and the creation of pragmatic economic development mechanisms. The political climate of the period was marked by debates surrounding Indigenous self-government and economic growth in First Nation communities. These discussions were influenced by national constitutional questions, provincial budgetary constraints, and the needs of Indigenous and non-Indigenous communities. These tensions manifested in the handling of long-established provincial tax exemptions and the emergence of on-reserve gaming. The inherent challenges of integrating Indigenous self-government and First Nation economic development into the provincial economy underscores the importance of striking a balance between respecting, protecting, and advancing constitutionally enshrined rights and addressing practical concerns such as economic development.

The TRSAs emerged during a tumultuous period marked by unsuccessful litigation by New Brunswick First Nations to assert their constitutional rights. Negotiated at the same time as the Tomah case wound its way slowly through the courts, the TRSA negotiations reflected a political will to move forward from the mistrust and failed communications that resulted in blockades and widespread unrest throughout the province. The escalating tensions between First Nations and the New Brunswick provincial authorities reveal the complexities and challenges of navigating these complex legal, constitutional, and political issues. Remarkably, however, First Nation and provincial leaders reached a groundbreaking solution that facilitated positive change for First Nations communities. The agreements also addressed, at least to a degree, the government's goal to improve the economic situation on reserves. As pragmatic commercial agreements focused on revenue sharing, the TRSAs did not resolve outstanding constitutional issues, implement Indigenous self-government, or address systemic or structural provincial budgetary concerns. However, they did provide immediate financial stimulus to communities while avoiding more challenging questions about the scope and nature of self-government and treaty rights. The *Marshall* decisions may have ultimately confirmed the right to a "moderate livelihood"; however, the decisions did nothing to address the immediate financial needs of the First Nations. The TRSAs represented the willingness of First Nations and the province to participate in innovative policy solutions as opposed to letting the courts decide what rights deserve recognition.

The expiry of the TRSAs in 2023, however, has introduced an element of uncertainty over the future of Indigenous–state relations in the province.[144] If we look to the past for guidance, it becomes

[142] *Ibid.*

[143] *Ibid.*

[144] "Wolastoqey Chief Predicts 'Chaotic' Expiry to Tax Agreements," *CBC News*, January 9, 2023.

clear that Indigenous constitutional rights are inextricably linked and should be addressed simultaneously with pragmatic economic development. The need for, and assertion of, Indigenous rights plays a pivotal role in Indigenous–state relations, and these relations have the power to give effect to such rights, even if they remain undefined and unresolved.

In conclusion, this study underscores the importance of contextualizing the history of Indigenous–state relations, the implications of which continue to inform current policy decisions, negotiations, and agreements. The study of the political context surrounding the negotiation and introduction of the TRSAs illustrate the importance of collaboration, mutual understanding, and innovative approaches when engaging with the issues Indigenous communities and governments often face together. In learning from the past, a path forward is forged, one that can uphold the rights of Indigenous peoples while fostering sustainable and equitable economic development for all communities.

To comment on this article, please write to editorjnbs@stu.ca. Veuillez transmettre vos commentaires sur cet article à editorjnbs@stu.ca.

Nicole O'Byrne is an Associate Professor in the Faculty of Law at the University of New Brunswick. She teaches Indigenous–non-Indigenous Relations and Canadian Legal History. Her LL.M. thesis (McGill) and Ph.D. dissertation (UVic) focused on Indigenous–state relations, natural resources, and intergovernmental agreements.

Karen McGill is the Acting Lands Director and Legal Research Specialist with the Madawaska Maliseet First Nation. She is a recent graduate of the Faculty of Law, University of New Brunswick, and is a member of the Manitoba Métis Federation.

Bibliography

"1993 Budget Speech." RS 738 Records of the Office of the Premier Frank McKenna, File 3900 Native Taxation, PANB.

Advantages of TRSAs, RS 1087 Records of the Aboriginal Affairs Secretariat Records, File 5800-9 Taxation, PANB.

"A Colossal Blunder." *Tribune*, April 14, 1993.

An Act for the Protection of the Indians in Upper Canada from Imposition, and the Property Occupied or Enjoyed by Them from Trespass or Injury, 13 & 14 Vict., c 74, § IV.

An Act to Amend the Social Services and Education Tax Act, 1974, SNB, c 47 (supp).

Augustine, Roger. "Public Hearings: Overview of the Second Round." In *Public Hearings: Overview of the Second Round* prepared by Michael Cassidy and the Ginger Group Consultants for the Royal Commission on Aboriginal People (RCAP), April 1993.

Belanger, Yale. "Toward an Innovative Understanding of North American Indigenous Gaming in Historical Perspective." In *First Nations Gaming in Canada,* edited by Yale Belanger, 10–34. Winnipeg: University of Manitoba Press.

---, and P. Whitney Lackenbauer. "Introduction." In *Blockades or Breakthroughs? Aboriginal Peoples Confront the Canadian State,* edited by Yale Belanger and P. Whitney Lackenbauer, 3–50. Montreal & Kingston: McGill-Queen's University Press, 2014.

Campbell, Colin, and Garry Smith. "Canadian Gambling: Trends and Public Policy Issues." *Annals of the American Academy of Political and Social Science* 556 (1998): 22–35.

Campbell, Colin, Timothy Harthagel, and Garry Smith. *The Legalization of Gambling in Canada*. Prepared for the Law Commission of Canada, 2005.

Constitution Act, 1867 (UK), 30 & 31 Vict, c 3, s 125.

Desbrisay, David. *The Gaming Industry in Aboriginal Communities*. Prepared for the Royal Commission on Aboriginal Peoples, 1994, Government of Canada Publications.

Draft Agreement, May 26, 1994, Records of the Aboriginal Affairs Secretariat Records, File 5800-9 Taxation, PANB.

"Frustrated Natives Vow to Proceed." *Daily Gleaner*, January 14, 1993.

Hatt, Ken, Tullio Caputo, and Barbara Perry. "Criminal Justice Policy under Mulroney, 1984–90: Neo-Conservatism, Eh?" *Canadian Public Policy* 18, no. 3 (September 1992): 245–260.

Indian Act, 1951, c 29, s 86(1).

"Indians Must Pay PST, McKenna Declares." *Ottawa Citizen*, April 8, 1993.

"Indians Will Press Land Claim." *Telegraph Journal*, April 7, 1993.

Kappong, Chuck. "Establishing an Effective Regulatory Framework: Ensuring the Integrity of Gaming Operations." *Proceedings of the Successful First Nations Gaming in Canada Conference*. Native Investment and Trade Association, Vancouver, BC, 10–11 December 1992, 43.

"Kingsclear Won't Back Down from Casino." *Daily Gleaner*, January 14, 1993.

Lazaruk, Susan. "Gambling seen as key to self-sufficiency." *Windspeaker* 10, no. 19 (1992): 3.

Lee, Philip. *Frank: The Life and Politics of Frank McKenna.* Fredericton: Goose Lane Editions, 2001.

Letter from Allan Maher, Finance Minister, to Roger Augustine, UNBI President, December 8, 1992, RS 715 Records of the Department of the Solicitor General, File 92-2000 Policing General—Gambling—Natives, PANB.

Letter from Anthony Francis to Premier Hatfield (Chief Rolling Thunder), 4 April 1974, RS 417 Records of the Office of Premier Richard B. Hatfield, File UNBI, PANB.

Letter from Bruce Judah, Solicitor, to Paul LeBreton, Deputy Minister of Justice, plus attached memorandum March 29, 1992, RS 738 Records of the Office of Premier Frank McKenna, File 3900 Native Taxation, PANB.

Letter from Bruce Smith, Solicitor General to Chief Superintendent Beaulac, September 15, 1992. RS 715 Records of the Department of the Solicitor General, File 92-2000 Policing General—Gambling—Natives, PANB.

Letter from Jean Chretien, M.P., to Don Mazankowksi, Minister of Finance, April 9, 1993, File 3900-1 Taxation General, PANB.

Letter from William Connor, Deputy Solicitor General, to Max Lewis, Deputy Minister of Finance, September 21, 1992, RS 715 Records of the Department of the Solicitor General, File 92-2000 Policing General—Gambling—Natives, PANB.

"Maher Isn't Showing His Casino Cards—Yet." *Telegraph Journal*, May 10, 1994.

Marquis, Gregory. "Public Order Policing in New Brunswick: 1972–2013." Unpublished conference paper. Atlantic Canada Studies Conference, 2016, 20.

Marshall, Murray. "First Nations Gaming in Canada: Navigating the Labyrinth." *Gaming Law Review* 8 (2019): 559–571.

"Mayor Says Casino Could Attract Organized Crime." *Daily Gleaner*, January 15, 1993.

McEvoy, J.P., and R.W. Bird. "Case Comment on *Union of New Brunswick Indians v New Brunswick.*" *National Journal of Constitutional Law* 10 (1999).

McKenna, Frank. Speech in the Legislative Assembly. April 13, 1993, RS 738 3900 File—General, PANB.

Meeting notes Intergovernmental Affairs re 31 March 1993 budget, 9 April 1993, RS 738 Records of the Office of the Premier Frank McKenna, File 3900 File Taxation—General, PANB.

Memorandum from Don Dennison, Deputy Minister of Intergovernmental Affairs and Executive Cabinet Secretary, to Max Lewis, Finance, April 7, 1993, RS 738 Records of the Office of Premier Frank McKenna, File 3900 Native Taxation, PANB.

Memorandum Re Bingo, Self-Licensing and Tax Administration Agreements. September 9, 1994, RS 1087 Records of the Aboriginal Affairs Secretariat Records, File 5800-9 Taxation, PANB.

"Micmacs Hope Meeting with McKenna Resolves Tax Dispute." *Telegraph Journal*, April 7, 1993.

"Micmac Protesters Maintain Blockade." *Telegraph Journal*, April 8, 2023.

Milne, David. *The Case of New Brunswick-Aboriginal Relations*. Ottawa: Royal Commission of Aboriginal Peoples, 1995.

Minutes, Chiefs Meeting, Edmundston, November 29, 1970, RS 417 Records of the Office of Premier Richard B. Hatfield, File Indian Affairs, PANB.

Morse, Bradford. "Permafrost Rights: Aboriginal Self-Government and the Supreme Court in R. v. Pamajewon." *McGill Law Journal* 42, no. 4 (September 1997): 1011–1042.

"Natives Continue Tax Fight." *Daily Gleaner*, May 14, 1993.

"Natives Not Through with Sales Tax Issue." *The Bugle*, June 1, 1994.

"Natives Pledge to Fight." *Daily Gleaner*, April 7, 1993.

"Natives Take Tax Fight to Court." *Telegraph Journal*, September 22, 1993.

"Natives Taking N.B. to Court." *Telegraph Journal*, May 14, 1993.

"Natives Want SCOC Decision." *Times-Transcript*, May 15, 1993.

"NB Natives Get High-Stakes Bingo." *Telegraph Journal*, 7 May 1994.

"N.B. Chiefs Meet on Tax." *Globe and Mail*, April 3, 1993.

"N.B. Natives Trying to Resolve Tax Dispute." *Evening Times Globe*, April 15, 1993.

"N.B. Quiet After Tax Policy 'Clarified'." *Globe and Mail*, April 12, 1993.

"N.B. Says No to Casinos—Not Appropriate Economic Stimulus." *Daily Gleaner*, December 9, 1992.

New Brunswick. "A Provincial Policy Framework." Fredericton: Government of New Brunswick, November 1989.

New Brunswick. Department of Finance. "Agreement on the Collection of Provincial: Tobacco Tax, Gasoline Tax, Sales Tax and Self-Licensing Relations to Gambling between the Madawaska Maliseet First Nation and the Province of New Brunswick." 1995.

"New Roadblocks Set Up." *Telegraph Journal*, April 9, 1993.

Pratt, Alan. "Federalism in the Era of Aboriginal Self-Government." In *Aboriginal Peoples and Government Responsibility—Exploring Federal and Provincial Roles*, edited by David C. Hawkes, 19–57. Ottawa: Carleton University Press, 1989.

"Presentation to Tripartite Forum on Self-Government Arrangements for Big Cove First Nation." March 31, 1993, 49. Quotes in David Milne, *The Case of New Brunswick-Aboriginal Relations*. Ottawa: Royal Commission of Aboriginal Peoples, 1995.

"Province Sinks Deeper into Red Ink." *Daily Gleaner*, January 15, 1993.

Taxation and Fiscal Policy Review of the 1974–75 Budget and Recommended Revenue Changes, RS 417 Records of the Office of Premier Richard B. Hatfield, File Provincial Secretary Tax Administration, 1974, PANB.

"Taxation Measures 'Drastic' Says Pabineau Band Chief." *Northern Light*, April 7, 1993.

R v Colford (L.G.) et al 1993 CanLII 15355 (NB Prov Ct).

R v Furtney, [1991] 3 SCR 89.

R v Jim (26 November 1992), BC Prov Ct.

R v Marshall (#1), [1999] 3 SCR 456.

R v Marshall (#2), [1999] 3 SCR 533.

R v Paul, 1994 CanLII 6421 NBCA.

RCMP Public Complaints Commission. Chairman's Final Report. October 4, 1995, File No. 2000-PCC-930796/0.

Revenue Division Gaming and Taxation Agreements, RS 9 Records of the Executive Council, Meeting of 1996-06-26 Meeting of Executive Cabinet, PANB.

Rück, Daniel. *The Laws and the Land—The Settler Colonial Invasion of Kahnawā:ke in Nineteenth Century Canada.* Vancouver: University of British Columbia Press, 2021.

"Speech from the Throne," *Journals of the Legislative Assembly of the Province of New Brunswick*. 52nd Ass., 2nd sess. 16 March 1993.

Speech in the Legislative Assembly, April 7, 1993 RS 738 Records of the Office of Premier Frank McKenna, File 3900 Native Taxation, PANB.

St. Mary's Indian Band v Canada, [1995] 3 FC 46.

Statement by the Minister of Finance Hon. Allan Maher re Casinos, December 9, 1992, RS 715 Records of the Department of the Solicitor General, File 92-2000 Policing General—Gambling—Natives, PANB.

Status Report—Meeting of the Ministerial Committee on Aboriginal Affairs, March 5, 1994, RS 1087 Records of the Aboriginal Affairs Secretariat, File 5800-9 Taxation, PANB.

"Taxes and Native Roadblocks." *Globe and Mail,* April 15, 1993.

Taylor-Henley, Sharon, and Peter Hudson. "Aboriginal Self-Government and Social Services: First Nations-Provincial Relationships." *Canadian Public Policy* 18, no. 1 (1992): 13–26.

UNBI. *Response to Provincial Policy Framework on Aboriginal Affairs*, July 9, 1990.

Union of New Brunswick Indians and Tomah v New Brunswick (Minister of Finance) 1994 CanLII 10043 NBQB.

Union of New Brunswick of Indians and Tomah v New Brunswick (Minister of Finance) 1996 CanLII 4806 NBCA.

Union of New Brunswick Indians v New Brunswick (Minister of Finance), [1998] 1 SCR.

"Unruly Crowd Dispersed." *Daily Gleaner*, April 10, 1993.

Wilbur, Richard. "New Brunswick." *Canadian Annual Review 1993*, 175–185.

Williams, Robert J., Rhys M.G. Stevens, and Gary Nixon. "Gambling and Problem Gambling in North American Aboriginal Peoples." In *First Nations Gaming in Canada*, edited by Yale Belanger, 166–194. Winnipeg: University of Manitoba Press.

"Wolastoqey Chief Predicts 'Chaotic' Expiry to Tax Agreements." *CBC News*, January 9, 2023.

"Woodstock Band Building Casino." *Daily Gleaner*, August 7, 1992.