

## **The Legislative Connection with Aboriginal Peoples: Issues of Representation**

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Paper presented at the 2010 annual meeting of the Canadian Political Science Association, Wilfred Laurier University.

Wednesday May 18<sup>th</sup>, 2011.

### **Abstract**

Aboriginal peoples do not appear to have a strong presence in the Ontario Legislature, without any members self-declaring indigeneous origins, coupled electorally with very low voter turnout and no politically designated role for Ontario aboriginal leaders. Other jurisdictions have allocated indigeneous seats. Still other Canadian jurisdictions have legislatures with strong traditions of aboriginal representation. There has been very little examination of the issues of representation of First Nations in Ontario. Thus, this paper should begin to remedy this scholarly gap. Interviews will be conducted with MPPs and Aboriginal leaders.

## Introduction

Ontario-Aboriginal relations have undergone profound transformations in recent decades, with new developments in provincial aboriginal affairs policy and the acceptance of the goals of self-government. This progress in provincial policy is not, however, reflected in all areas, as aboriginal representatives continue to be marginal to the mainstream political and legislative process. Leaders from band and regional councils, as well as provincial territorial organizations, are active in having their voices heard through media, consultations and committees where accessible. They are, however, noticeably absent in one part of the legislative process in Ontario, and that is in the House. Members of Provincial Parliament (MPPs) that are sympathetic to their causes deliver messages on behalf of this political leadership often by quotation.

For Members, the matter of representing the interests of aboriginal communities, with their unique structures of political leadership, diversity of indigenous cultures, and unresolved jurisdictional matters, places them in an unparalleled, challenging position. Moreover, aboriginal leaders have the feat of working outside of these ‘shared’ institutions, while Ontario legislation critically affects their livelihoods and lands. This study presents a unique opportunity to assess both MPPs’ and aboriginal leaders’ view of direct representation through interviews. Many of the issues affecting aboriginal populations in Ontario are under provincial purview including lands and resources, yet there is little history of provincial review for guaranteed aboriginal representation.

Participation in the Ontario Legislature for the province’s aboriginal peoples can be characterized by a lack of direct representation, no indigenous members self-identifying in history, and significantly lower voter turnout. The central research question is whether proposed methods of guaranteed aboriginal representation are suitable for Ontario? Several related questions are also addressed: is direct representation meaningful for aboriginal leaders? What are the factors discouraging involvement in Provincial Parliament?

There is a significant body of academic literature in Canada analyzing the merits and methods of greater aboriginal representation in the House of Commons and the Senate. For the provinces, there is less literature and less provincial review, especially for the case of Ontario. For that reason, the general proposed recommendations to remedy “underrepresentation” may be based on assumptions that are not applicable to Ontario. This paper finds proposals from other jurisdictions, like aboriginal electoral districts, have critical limitations for Ontario’s aboriginal peoples and instead urges the Province to review alternatives.

This paper’s purpose is three-fold: first, to establish the need for greater representation of the provinces’ Aboriginal peoples in the Ontario legislature; second, to consider the motivational deterrents to aboriginal participation; and third, to discuss the methods for improving representation and develop province-specific recommendations. With the understanding that that guaranteeing representation needs much aboriginal consultation, and the diversity of aboriginal cultures and opinions that span the province, this study offers a preliminary analysis of the contemporary provincial issues surrounding aboriginal representation.

## Research Strategy and Limitations

This study undertakes a review of the literature regarding aboriginal participation in Canadian legislatures as comparative research for the analysis of Ontario. Federal review was conducted in the 1990s, as fallout of the constitutional negotiations, as well as affirmation of aboriginal rights and self-government. Three bodies assessed the question of guaranteed aboriginal representation nationally: the Committee on Elections and Party Financing, the Aboriginal Committee for Electoral Reform, and the Royal Commission on Aboriginal Peoples<sup>1</sup>. The proposed recommendations from other jurisdictions are evaluated for their appropriateness in the Ontario context, with commentary from interviews.

The interviews, with MPPs and aboriginal leaders, were conducted by phone and in person. Different questions were used for these two sets of interviews, but some were designed to provide responses for comparison. There are some limitations to information gathered during interviews. The identities of those interviewed are withheld in this initial draft given the sensitive nature of some lines of questioning and the preliminary nature of this discussion for participants. One qualitative note to these interviews is the contrast in interview styles between MPPs and aboriginal: MPPs generally provided concise constituency-focussed or legislative procedural answers, while aboriginal leaders, often contributed knowledge of the broader, historical context of aboriginal representation. The commentary from MPPs and aboriginal leaders, although not exhaustive and from a small sample size (8 MPPs and 8 aboriginal leaders) supplements the literature and provides useful, contemporary perspectives on aboriginal representation in Ontario.

## Background Information

Ontario is home to Status, and non-Status, Inuit and Métis aboriginal peoples, where the *Indian Act* still determines these categories. In Canadian literature, the terms ‘legal’, ‘registered’, and ‘status’ are used to identify aboriginal peoples of federal concern who are defined as Status Indians under the *Indian Act*<sup>2</sup>. In the 2006 Census<sup>3</sup>, 242,495 people, or 2% of the province’s population, self-identified as Aboriginal persons (First Nations, Métis or Inuit) in Ontario. The idea of aboriginal self-identification is pertinent to this discussion because other jurisdictions that have guaranteed representation often apply the principle self-identification to participate as an aboriginal elector<sup>4</sup>.

From 2001 and 2006, the province’s aboriginal population grew faster (28.3%) than the non-aboriginal population (only 6.2% growth). Ontario is also the province with the largest aboriginal population, with 21% of the country’s aboriginal peoples. Other provinces have higher

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<sup>1</sup> Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy: Final Report*, 1991. Committee for Aboriginal Electoral Reform, *The Path to Electoral Equality*, 1991. Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*, Vol. 2, Part 1, 1996.

<sup>2</sup> James S. Frideres and Rene R Gadacz, *Aboriginal peoples in Canada, Contemporary Conflicts*, Sixth Edition (Toronto: Prentice-Hall Canada, 2001), 26.

<sup>3</sup> Ontario, Ministry of Finance, *2006 Census Highlights: Factsheet 9*, 2006 <http://www.fin.gov.on.ca/en/economy/demographics/census/cenhi06-9.html>.

<sup>4</sup> It should be noted the Aboriginal citizenry, based on the idea of self-identification was a contentious idea during some interviews. This principle would have to be fully reviewed by the Legislature and Ontario’s aboriginal groups, whether status, non-status, or Métis, to develop an appropriate means of determining aboriginal electors.

concentrations than Ontario's 2%; including Manitoba (15.5%) and Saskatchewan (14.9%). In 2006, 20% of Ontario's aboriginal peoples lived on reserves, with another 18.3% in rural areas.

Aboriginal rights were frequently noted during interviews and the literature review in relation to this study as background information. In 1982, the *Canadian Charter of Rights and Freedoms* were entrenched in the Canadian Constitution, but it was not until 1983 that the *Constitutional Accord on Aboriginal Rights* made amendments to address particular rights of aboriginal peoples. Section 35 of the *Constitution Act* was amended in subsection 4 to state "the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons"<sup>5</sup>. In 1985, Bill C-31, *An Act to Amend the Indian Act* was passed to extend the *Canadian Charter of Rights and Freedoms* to indigenous peoples<sup>6</sup>. Aboriginal rights are discussed separately in section 25, which guarantees rights and freedoms both set out in the Royal Proclamation of 1763 and those existing currently, or forthcoming, by land claims agreements<sup>7</sup>. It must also be noted that outstanding constitutional, jurisdictional issues were the pressing concern of aboriginal leaders interviewed, before consideration of the idea of guaranteed representation in shared institutions.

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<sup>5</sup> Canada, Parliament, *Constitutional Accord on Aboriginal Rights*, 1983.

<sup>6</sup> Mary C. Hurley, *The Indian Act*, (Ottawa, Parliamentary Research Branch, Law and Government Division, 2009), <http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0912-e.htm>.

<sup>7</sup> Canada, Parliament, *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act* (29 March 1982).

## Section 1: Understanding Representation and the Role of the Member of Provincial Parliament

Understanding the issue of the underrepresentation of Ontario's aboriginal peoples requires an analysis of the complex relationship between aboriginal leaders and MPPs, who both represent aboriginal populations but in different political frameworks. The interviews revealed a difference of opinion between MPPs who believe greater aboriginal representation is necessary by some special arrangement, and the minority, who do not see the current system as problematic. Aboriginal leaders also had different views. Most recognized the need to remedy the problem of underrepresentation by some means, while a few leaders did not seek direct representation in the Legislature, but did acknowledge the need to define new relations with the Province.

The existing form of representation for aboriginal peoples in the Provincial Parliament is through their elected Members, among ridings where aboriginal peoples are dispersed. Nowhere in the province do they constitute an electoral majority. This form of representation is described as "virtual", where diligent Members will bring aboriginal concerns to the Legislature<sup>8</sup>. "Virtual" representation, in both urban and rural ridings across the province, has limitations expressed in frustration by both MPPs and aboriginal leaders alike during the primary interviews.

One such challenge for an MPP is to assume both the role of a delegate on occasion, by conveying their aboriginal communities' concerns and messages, and as a trustee, by formulating their own judgement and acting on behalf of all of their constituents. A study of the Northwest Territories comparing views of representation among Members of the Legislative Assembly, found that aboriginal MLAs thought of themselves more as delegates, by acting at the constituents' direction, while non-aboriginal MLAs tended to view themselves as trustees by using their own judgement even this was different than that of their constituents<sup>9</sup>. MPPs in Ontario often described a dual role where they had to sometimes act as a delegate and in other situations as a trustee, to help aboriginal groups navigate legislative and policy circles. This dual role can be well understood by an experienced MPP; one Member referred to the need to "sometimes be their voice on issues that matter to them, but that other times this requires one's own judgement of the political system to offer advice"<sup>10</sup>. If, however, an MPP is unwilling to act as a delegate on occasion, then aboriginal leaders can be excluded from having their voices heard in the decision-making process, which is a severe limitation to the "virtual representation" model.

MPPs are responsible to the constituents that elected them, but also to the Legislature and their party; for MPPs representing diverse aboriginal populations this complexity is two-fold. Melissa Williams describes that "political representation is intrinsically a 'two-level game' in which the representative performs a dual role of communication and negotiation: within the

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<sup>8</sup>Roger Gibbins, "Electoral Reform and Canada's Aboriginal Population: An Assessment of Aboriginal Electoral Districts", Vol. 9 of the Research Studies, in *Aboriginal Peoples and Electoral Reform in Canada*, ed. Robert A. Milen (Toronto: Dundurn, 1991), 155.

<sup>9</sup> Jonathan Malloy and Graham White, "Aboriginal Participation in Canadian Legislatures", in *Fleming's Canadian Legislatures 1997*, ed. Robert J. Fleming and J. E. Glenn, 60-72 (Toronto: University of Toronto, 1997), 67.

<sup>10</sup> Personal Communication, April 2011.

broader representative institution to which she has been elected, and within the constituency from which she has been elected”<sup>11</sup>. Aboriginal leaders tended to point out that while constituency work and some issue-specific advocacy was helpful, some MPPs would not speak to Legislation of great importance to their communities, or could not, given their party’s perspectives.

Another argument is that MPPs may face the risk of alienating non-aboriginal constituents and must approach issues from a pluralist basis, rather than the distinct representation that an aboriginal member could provide. Jonathan Malloy (2003) makes a similar argument for the bureaucracy. He describes that economic and resource policy ministries are “likely to approach aboriginal issues from a more pluralist basis –balancing aboriginal demands and concerns with those of non-aboriginals, often under media and public attention”<sup>12</sup>. Most MPPs fall into this category of approaching aboriginal issues from a pluralist basis; balancing interests with non-aboriginal electors is another constraint of ‘virtual representation’.

Aboriginal and provincial leaders have different views of representing the communities from which one is elected, as evidenced during interviews. An MPP distinguished that the aboriginal peoples of his constituency had very different worldviews and relations with their elected leaders. He claimed their leadership to have “a different way of governing and approaching its peoples”, and explained it as “an inverted pyramid, where the Chief, at the bottom, is representative of the words of the people”<sup>13</sup>. The Member also contrasted the provincial system as a pyramid and described the challenge of working between these two perspectives. Styles of governance are discussed more in Section 2, and appear to be a significant difference that discourages involvement with the shared institution of the Ontario Legislature. Section 3 reviews recommendations that could allow the Legislature to embrace alternatives.

Many Members reflected on the idea that the legislature should represent the diversity of the Province’s population, but in Ontario’s history there has never been a member who has self-identified as being aboriginal. There are, however, members who have indicated some aboriginal heritage. In the most recent session of parliament, MPP Jerry Ouellette commented on his background in the Legislature<sup>14</sup>. Another MPP, Dave Levac, had his Métis heritage mentioned by a fellow member of caucus<sup>15</sup>. These examples do not however meet the self-identification criteria nor do they satisfy direct representation. Given the lack of aboriginal involvement in the Province’s history, direct representation could present new opportunities for participation in the legislative process.

Direct representation is having aboriginal Members of Provincial Parliament participating on behalf of aboriginal electors and directly accountable to these constituents, by some form of special designation<sup>16</sup>. The federal Committee for Aboriginal Electoral Reform claims that “direct

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<sup>11</sup> Melissa S Williams, "Sharing the River: Aboriginal Representation in Canadian Political Institutions", in *Representation and Democratic Theory*, 93-118, ed. David Laycock (Vancouver: UBC Press, 2004), 113.

<sup>12</sup> Jonathan Malloy, *Between Colliding Worlds, the Ambiguous Existence of Government Agencies for Aboriginal and Women's Policy*, (Toronto: University of Toronto, 2003), 115.

<sup>13</sup> Personal Communication, April 2011.

<sup>14</sup> Ontario, Hansard, “Ukrainian Heritage Day Act, 2011”, *Petitions*, Speaker Jerry J. Ouellette, March 3, 2011.

<sup>15</sup> Ontario, Hansard, “Year of the Metis”, *Introduction of Bills*, Speaker David Oraziotti, April 19, 2010.

<sup>16</sup> Gibbins, “Electoral Reform and Canada’s Aboriginal Population”, 155.

representation of Aboriginal people would help to overcome long-standing concerns that the electoral process has not accommodated the Aboriginal community of interest and identity”<sup>17</sup>. During interviews, many Chiefs described the distinct legal positions of the people they represent, which is unparalleled by any other community of interest<sup>18</sup>. The Royal Commission’s *Final Report* affirms this perspective:

Only the Aboriginal Peoples have a historical and constitutional basis for a claim to direct representation. Only the Aboriginal peoples have a pressing political claim to such representation. Only Aboriginal peoples can make the claim that they are the First Peoples with an unbroken and continuous link to this land<sup>19</sup>.

While direct representation continues to be desirable for many of the same reasons that the Royal Commission cites, the “pressing political claim”, may be different given the current political climate.

The definitions of representation in shared Canadian institutions alone do not portray the complex representational regime of aboriginal leadership and their multiple interactions with MPPs and the bureaucracy. This was especially apparent during interviews with aboriginal leaders who detailed their relations with the Ontario’s Ministries and political leadership. In David Laycock’s *Representation and Democratic Theory* (2004), he provides a definition particularly useful for understanding the complexity of aboriginal peoples’ representation in the province. He describes, “a representational regime includes not just the participants in and structures of elections and legislative activities or decisions, but also... not so obviously, the activities of various organized interests in deliberations within various associations and organizations in public dialogue within the often ‘nested’ spheres of civil society”<sup>20</sup>. The aboriginal representational regime in Ontario is constituted by community-level band councils, regional councils, provincial territorial organizations, and MPPs who liaise with legislative and policy circles. During interviews, MPPs identified that aboriginal constituents had the closest relationships with their aboriginal political leadership, and that even in urban settings, would be less likely to access an MPP’s constituency services.

Analysis of this complex regime is a notable gap in the literature, and only partially addressed by this paper, which gives some supplementary analysis from interviews. Studies proposing measures such as aboriginal electoral districts, describe the diversity of aboriginal cultures in the province, but often overlook the potential for involving structures of aboriginal governance that are in place in some meaningful capacity. Primary interviews also illustrate that the assumptions of “underrepresentation” fail to account for this aboriginal political leadership, who MPPs suggest constituents look to even when dealing with provincial issues. Section 3 attempts to assert the role for these aboriginal organizations within a model of direct representation.

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<sup>17</sup> Committee for Aboriginal Electoral Reform, *The Path to Electoral Equality*, 14.

<sup>18</sup> Personal Communications, April 2011.

<sup>19</sup> Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy: Final Report*, 183.

<sup>20</sup> David Laycock, “Introduction”, in *Representation and Democratic Theory*, ed. David Laycock, vii-xxii. (Vancouver: UBC Press, 2004), xi.

An argument in favour of direct representation is that aboriginal Members could potentially engage more aboriginal constituents in the political process. Jennifer Dalton illustrates,

“the rationale behind improving Aboriginal voter turnout, through increased numbers of Aboriginal representatives, is based on the idea that Aboriginal peoples may be more likely to participate in Canadian electoral politics if there are candidates with whom they can relate, both politically and culturally; these candidates are also considered potentially more effective in advancing community interests”<sup>21</sup>.

In addition, a study by Roger Gibbins (1991) finds that Aboriginal candidates in ridings that are predominantly aboriginal have increased voted turnout rates among indigenous populations<sup>22</sup>. Section 2 discusses some of the factors affecting aboriginal leader’s motivations to be involved in Ontario’s political process. Many of these reasons also extend to aboriginal constituents and the inclusion of aboriginal leadership in the legislative process would almost certainly have a trickle down affect for constituents.

Much of the literature from the 1990s about federal aboriginal representation operates on the assumption that greater representation would serve the aboriginal community of interest and that this representation was a “pressing political need”<sup>23</sup>. Since this time, however, in Canada, and especially Ontario, there has not been popular momentum for these types of changes from the aboriginal community. In Ontario, several other recent trends in aboriginal affairs may offer indication of new conditions for the debate regarding direct representation.

In *Between Colliding Worlds* (2003) Jonathan Malloy details the rise in provincial policy in the area of aboriginal affairs. He argues that “provincial interest in aboriginal affairs has greatly increased because of the strengthening of aboriginal collective identities and increased militancy among many aboriginals, growing non-aboriginal support in the 1970s and 1980s for aboriginal rights, and the effect of court decisions and land claims on provincial natural resources”<sup>24</sup>. These processes have also deeply affected aboriginal relations with Provincial Legislatures. The Ipperwash crisis, and subsequent inquiry, played out in the Ontario Legislature contributing to the development of the Ministry of Aboriginal Affairs. The recognition of aboriginal rights, land claims and landmark court cases were also referred to by many aboriginal leaders and MPPs for influencing the current climate of aboriginal affairs in Provincial Parliament.

Strengthening aboriginal leadership and coordination were also topics of commentary during many interviews. One aboriginal leader described that “First Nations governance is stronger than ever”<sup>25</sup>. A Member also made a compelling argument for addressing aboriginal representation in Ontario, when he considered the need as “inevitable” given the well-

<sup>21</sup> Jennifer Dalton, "Alienation and Nationalism: Is it Possible to Increase First Nations Voter Turnout in Ontario", *The Canadian Journal of Native Studies* 27 (2007): 259.

<sup>22</sup> Gibbins, "Electoral Reform and Canada's Aboriginal Population", 160.

<sup>23</sup> Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy: Final Report*, 183.

<sup>24</sup> Malloy, *Between Colliding Worlds*, 113.

<sup>25</sup> Personal Communication, April 2011



documented aboriginal population growth rate, as well as the increasing sophistication and coordination of aboriginal leadership<sup>26</sup>. While the collective voices of aboriginal leadership may be gaining strength, if this leadership is not integrated into the Legislature in some meaningful way then they may continue to be marginal to the legislative process. One MPP discussed speaking on their behalf to legislation in the house saying, “if I don’t voice their issues here they may not be heard at all”<sup>27</sup>. This is perhaps the most persuasive reason for guaranteeing representation of aboriginal peoples; the absence of their voices in the Legislature marginalizes their concerns. An opportunity to have representatives in the Legislative, while still respecting their own aboriginal structures of governance and quest for self-government, could be a useful avenue for voicing concerns in the decision-making process. Section 2 explores the congruency of greater influence in shared institutions with the pursuit of self-government.

The opportunity for aboriginal MPPs to affect legislation was a much discussed issue with aboriginal leaders. Again, the legal jurisdictional issues that are unresolved, and require extensive constitutional review, were a part of these conversations. There was, however, interest in being able to affect legislation through Committee and in the House. One MPP argued that with greater aboriginal involvement in the legislature, whether it is through aboriginal involvement in the party system or in some sort of aboriginal ‘cabinet’, they could potentially affect legislation at early stages of development<sup>28</sup>. Several aboriginal leaders also referred the value of an aboriginal Member being able to participate in Committees that review legislation, representing aboriginal interests and views.

Other jurisdictions’ of models of aboriginal representation were often brought up during interviews by MPPs and aboriginal leaders for some of their merits. One frequently discussed example is New Zealand since they have had guaranteed representation for the Maori people since the 1867 *Maori Representation Act*. In 1993, the country’s electoral law was changed to make the number Maori Electoral Seats be flexible to the proportion of electoral population they constitute. In 2008, seven Maori representatives were elected (an increase from the previous five) for electoral districts that are super-imposed over other national ridings, where registered Maori are able to vote<sup>29</sup>.

A sub-national example is the State of Maine, where there are Penobscot and Passamaquoddy members of the State Legislature. They are elected by aboriginal residents, who are able to vote for both these members and regular members of the Legislature in the same election. As a result, the Penobscot and Passamaquoddy members are not able to vote or introduce legislation, but can speak on legislation and have all the other rights and privileges of a member<sup>30</sup>. Interviewees alluded to other Canadian jurisdictions that have a history of aboriginal members, such as Manitoba and the Northwest Territories. Both of these examples have constituencies with aboriginal majorities. Aboriginal leaders and Members’ analysis of these models of direct representation suggested that some of these ideas are feasible at the provincial level, after extensive review involving both the Legislature and aboriginal organizations.

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<sup>26</sup> Personal Communication, April 2011

<sup>27</sup> Personal Communication, April 2011

<sup>28</sup> Personal Communication, April 2011

<sup>29</sup> Peter Niemczak and Celia Jutras, *Aboriginal Political Representation: A Review of Several Jurisdictions*, Library of Parliament, Parliamentary Information and Research Service, 2008, 5-6, <http://www.parl.gc.ca/Content/LOP/ResearchPublications/bp359-e.htm>

<sup>30</sup> Niemczak and Jutras, “Aboriginal Political Representation”, 9.

Affirming greater representation of aboriginal peoples in shared institutions, such as the Ontario legislature, will face a myriad of challenges and criticism. On the other hand, the interviews and literature review indicate a critical set of limitations to the current representational regime. Many benefits of direct representation are also apparent including aboriginal constituents' engagement and potential impact in the legislative process.

## **Section 2: Motivational factors for aboriginal participation in the Ontario Legislature**

Canadian literature makes a strong case for the historical exclusion of aboriginal peoples from the institutions of government and party structures, as well as arguing continued marginalization given our structures of governance<sup>31</sup>. This paper aims to make a different contribution because of the perspectives collected during primary interviews. Instead, Section 2 explores indigenous agency in involvement with the Ontario Legislature, and motivational factors of aboriginal leaders, rather than operating on a marginalization assumption.

The party system and style of legislature can be motivational deterrents for aboriginal peoples, because they question the legitimacy and efficacy of the Ontario Legislature for responding to aboriginal issues. Another set of reasons for aboriginal leaders' lack of involvement with Legislatures are based on the historical and jurisdictional conditions of aboriginal peoples, alienation from political institutions and the desire to maintain autonomy are discussed.

### **Party Politics and Style of Legislature**

The argument that the party system of politics has little appeal to many aboriginal people in Canada is well-established in the literature, while some nuances to this argument are exposed by primary interviews. Malloy and White's study of the Northwest Territories (1997) describes political parties as representing "an alien and divisive, adversarial concept" in their political culture. There are, however, certainly many people of aboriginal heritage involved in party politics in the province. Other literature characterizes aboriginal ideologies on various points in the political spectrum, which this paper does not have the scope to analyze. Although an interesting area of inquiry, given the utilitarian arguments of those interviewed only the concept of political parties will be addressed.

Members expressed differing opinions on whether their political party and partisanship had any effect on building relationships with aboriginal organizations and leadership in their riding. Some Members saw party politics as irrelevant since constituency work requires cooperation with all constituents, whether they are supportive of their party or not. Others shared the frustration of working within the party system to address sometimes urgent needs of aboriginal communities of interest. One Chief asked "is the political level ever going to be there for deal with some of these issues?" and claimed that because of the party system, with whipped votes and majority decision-making, that the Legislature houses a "disenchanted group that are not a part of the solution"<sup>32</sup>. An MPP expressed a similar view that "our politics are not a part of their solution"<sup>33</sup>. Literature also echoes this sentiment; Malloy and White suggest that in the Northwest Territories political parties have been rejected because "structuring politics along

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<sup>31</sup> Trevor Knight, "Electoral Justice for Aboriginal People in Canada", *McGill Law Journal* 46 (2001): 1064-1116.

<sup>32</sup> Personal Communication, April 2011.

<sup>33</sup> Personal Communication, April 2011.

lines demarcating the national parties would impede progress on the issues crucial to Aboriginal Peoples, such as self-government, land claims, and treaty rights”<sup>34</sup>.

Several aboriginal leaders also described that they had been approached by one or more of Ontario’s political parties for candidacy or membership during their careers. One leader said that this proposal had been considered by his community, but their advice was that he should not become involved in the provincial legislature. Instead, his role was to continue involvement at the community and regional level to advance the interests of his people<sup>35</sup>. Some of Ontario’s aboriginal leaders were more supportive of the party system (even holding party membership themselves), and they indicated that people in their community who are “politically minded” would be willing to run as elected members.

If representation was guaranteed, many shared the belief that independent aboriginal members would be more desirable. The Northwest Territories Legislature, has all Members of the Legislative Assembly as independents, and also has a long history of aboriginal membership<sup>36</sup>. All aboriginal leaders interviewed identified limitations to the efficacy of political parties for responding to aboriginal peoples’ interests.

Not only the party system, but also the style of legislature generated a lot of commentary from aboriginal leaders as problematic for indigenous participation in Provincial Parliament. Graham White and Jonathan Malloy (1996) make the argument that “among the reasons why legislatures lack legitimacy in eye of Canada’s First Nations is their style of operation, rooted in adversarial, individualistic culture quite foreign to Aboriginal ways of conducting politics”<sup>37</sup>. The issue of the style of the Ontario Legislature is closely linked to party politics; both can discourage involvement within this institution.

A similar argument from aboriginal residents is that, as Tim Schouls discusses, witnesses participating in the Royal Commission on Aboriginal Peoples pointed out “the contrast that they see between Western political authority based on legislative supremacy, centralized decision-making power, and majoritarianism and Aboriginal political authority based on a spiritual pact of communal belonging, consensual decision-making power, and direct participation”<sup>38</sup>. Decision-making by consensus style was described by a Grand Chief as a system where leaders are able to “try to find some middle ground” and that “harmony can be achieved in legislatures”<sup>39</sup>. The adversarial political culture of the legislature has little appeal for many aboriginal leaders and constituents, because aboriginal methods of governance, including consensus building, are viewed as more effective ways of advancing issues.

Party politics emerged as one of the central concerns many aboriginal leaders had with Provincial Parliament, more on the basis of their inability to cooperate and antics in the House and Committees, than any rejection of specific ideologies. On the other hand, MPPs were prone to viewing the influence of their political party as negligible to building relationships with

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<sup>34</sup> Malloy and White, "Aboriginal Participation in Canadian Legislatures", 68.

<sup>35</sup> Personal Communication, April 2011.

<sup>36</sup> Malloy and White, "Aboriginal Participation in Canadian Legislatures", 68.

<sup>37</sup> Malloy and White, "Aboriginal Participation in Canadian Legislatures", 70.

<sup>38</sup> Tim Schouls, *Shifting Boundaries; Aboriginal Identity, Pluralist Theory, and the Politics of Self-Government* (Vancouver: UBC Press, 2003), 66.

<sup>39</sup> Personal Communication, April 2011.

aboriginal groups. A few MPPs were adamant however that too often the urgent needs of aboriginal communities, such as clean water or fire services, are subjected to partisan debate. While many aboriginal leaders saw the utility of having greater representation at Queen's Park, they often also pointed to the futility of party politics for dealing with some of their greatest concerns; a contradiction that any measure to improve aboriginal participation will have to address.

### **Alienation from Political Processes**

Lower than average aboriginal voter turnout in Canadian legislatures is well-documented. Jennifer Dalton's recent study (2007) of voter turnout in Ontario illuminates several aspects of the voter turnout of Ontario's aboriginal populations in both provincial and aboriginal community elections. Finding participation in Ontario and federal elections to be lesser than community level elections, she argues that "low rates of voter turnout are symptomatic of distress within the political process and/or political community" and "a low rate of participation suggests a significant degree of alienation and disaffection"<sup>40</sup>. Kiera Ladner explains aboriginal peoples as occupying quite a different space than an alienated "community of interest"; instead, "they form 'nations within'; nations with distinct political cultures, political systems, political traditions, histories of colonization, [and] relationships with other nations (such as Canada)"<sup>41</sup>. Interviews with aboriginal leaders reveal alienation from the political process, based on their political cultures that have little recognition in the Legislature, as well as historic and legal conditions.

First Nations populations of Ontario were denied electoral participation until 1954. For federal elections, aboriginal peoples first gained the right to vote in 1960. Several factors influenced the restriction of voting rights including distinct legal status under the Indian Act and treaties, treaties and annuities, and exemption from taxation<sup>42</sup>. Participating in the electoral system was synonymous with assimilation because giving up "status" or engaging in property ownership off-reserve enabled an indigenous person to vote prior to 1960. Furthermore, the belief that aboriginal peoples' claims for sovereignty were incompatible with participation in Canadian institutions was also present in Canada and Ontario.

One cannot underestimate the burden of history affecting the electoral participation of both aboriginal peoples and leadership. This theme became apparent in interviews with most aboriginal leaders as they stressed the importance of understanding the historical context such as treaty rights, the notion of collective rights and the outstanding jurisdictional constraints. The Committee for Aboriginal Electoral Reform described "the failure of the Canadian government to work out constitutional accommodations recognizing inherent collective Aboriginal and treaty rights, coupled with Canada's history of assimilationist policies have had an adverse impact on Aboriginal perceptions of Parliament and the value of participating in it"<sup>43</sup>. Several underlying constitutional issues were apparent throughout the interview process, and while giving them sufficient analysis is beyond the purview of this paper, they coloured the perspectives of those being interviewed. The predominant opinion of aboriginal leaders was that constitutional level

<sup>40</sup> Dalton, "Alienation and Nationalism: Is it Possible to Increase First Nations Voter Turnout in Ontario", 253.

<sup>41</sup> Kiera L. Ladner, "The Alienation of Nation, Understanding Aboriginal Electoral Participation", *Electoral Insight*, (2003), [http://www.elections.ca/res/eim/article\\_search/article.asp?id=24&lang=e&frmPageSize=](http://www.elections.ca/res/eim/article_search/article.asp?id=24&lang=e&frmPageSize=)

<sup>42</sup> Committee for Aboriginal Electoral Reform, *The Path to Electoral Equality*, 9.

<sup>43</sup> Committee for Aboriginal Electoral Reform, *The Path to Electoral Equality*, 9.

discussions would need to be reviewed by the Province before enacting any mechanism for improving aboriginal representation.

Confrontations over constitutional and the collective treaty rights of aboriginal peoples are evident in Ontario, and many aboriginal leaders, and a few MPPs, have argued that these conflicts are on the rise. A recent example is the passage of Bill 191, the *Far North Act 2010*, which is a provincial piece of legislation affecting much Northern Crown land, and has caused much indigenous activism. The Nishnawbe Aski Nation (NAN) refuses to recognize this legislation on the belief that it is in violation of their treaty rights, which are entrenched in the constitution<sup>44</sup>. Deputy Grand Chief Mike Metatawabin issued this statement after the Third Reading of Bill 191: “NAN First Nations and Tribal Councils do not and will not recognize this legislation on our homelands. We will continue to uphold our Aboriginal and Treaty rights and jurisdiction over our land. The real fight is just beginning”. During interviews, another Chief identified the unresolved issue of Crown land in Ontario warranting tripartite discussions, between federal, provincial, and aboriginal governments<sup>45</sup>. As evidenced in Section 1, the perceived ineffectiveness of Canadian institutions and party politics to address these greater constitutional and treaty issues, undermines the legitimacy of the Legislature. The danger for Ontario is that these confrontations may continue or worsen. Meaningful involvement in the legislative process by aboriginal representative could mitigate some of the risks for confrontation and reduce alienation from decision-making.

### **Political Autonomy and Greater Representation**

The desire to maintain autonomy from shared Canadian institutions in order to achieve the greater goal of self-government is explored at length in both legislative review and academic literature. A useful definition of self-government, as proposed by Schouls is as follows:

Self-government is fundamentally about Aboriginal communities gradually building capacity to exercise control at a local level over a range of jurisdictions that they consider essential to their community identities. Viewed thus, self-government is a relational process with long-term implications for the transfer of power from Canadian to Aboriginal governments. The relational dimensions of this process are revealed in the steady but often slow movement that accompanies Aboriginal nations’ work to resolve how powers and jurisdictions will be divided and/or shared between federal, provincial, and Aboriginal governments<sup>46</sup>.

While the right to self-government has been acknowledged by Ontario, the belief that involvement with the provincial government could derogate from the self-government goal is still prevalent.

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<sup>44</sup> Nishnawbe Aski Nation, “NAN Releases Statement on the Passing of Third Reading of Bill 191, the Far North Act”, *News Release* (September 23, 2010), <http://www.nan.on.ca/article/nan-releases-statement-on-the-passing-of-third-reading-of-bill-191--the-far-north-act-638.asp>.

<sup>45</sup> Personal Communication, April 2011.

<sup>46</sup> Schouls, *Shifting Boundaries*, 180.

New Brunswick's Representation and Electoral Boundaries Commission reviewed the idea of guaranteed aboriginal representation in the early 1990s and recommended a model similar to the aboriginal members in Maine. In 1999 the issue again came to the forefront, but the proposal for guaranteed was ultimately rejected by Aboriginal leaders who felt this could undermine their claims for political autonomy and self-government<sup>47</sup>. In Melissa Williams' article, *Sharing the River* (2003), she asks the question "how can it be possible to insist upon an inherent right of Aboriginal self-government, grounded in a 'nation-to-nation' relationship with the Canadian government, while also laying claim to full participation in that government's legislative institutions?"<sup>48</sup>. If guaranteed representation is intended only to channel attention away from the goal of self-government, than aboriginal groups in Ontario would likely reject the proposal as the New Brunswick example illustrates. On the other hand, if self-government is acknowledged as the greater goal than the idea of guaranteed representation need not be controversial.

In federal review, the Royal Commission for Electoral Reform and Party Financing proposed that the idea of greater representation in shared institutions was not antithetical to self-government. Commentary included in the Commission's report from aboriginal leaders such as Phil Fontaine, and then National Chief of the Assembly of First Nations, George Erasmus, also supported the idea that aboriginal electoral reform need not conflict with self-government. This attitude was reflected by many of the interviewees although there were still some strong opinions from a minority of aboriginal leaders who believed involvement with shared institutions can inhibit the journey to self-government. MPPs described this perspective as being in decline, because of the closer relationship many aboriginal groups have with the provincial government and increased involvement with several ministries<sup>49</sup>.

Self-government is in the forefront before direct aboriginal representation in Ontario is strongly advocated for by aboriginal leadership, as described by aboriginal leaders themselves. There was not opposition to the idea of greater representation in the Legislature, but openness to the discussion, given preconditions of respect for aboriginal nationhood and willingness to tackle issues such as treaty and constitutional rights. One aboriginal leader described it best as he said that if the long-term vision is self-government, than greater influence and efficacy within Provincial Parliament can be beneficial<sup>50</sup>.

### **Section 3: Reviews and Recommendations**

Federal reviews formulated many recommendations for the pursuit of guaranteed representation, some of which are pertinent for this study of Ontario. An additional submission, by the Anishinabek Nation to the Standing Committee of the Legislative Assembly in 1989, provides some province-specific recommendations<sup>51</sup>. Aboriginal leaders and MPPs also provided several suggestions that are incorporated into analysis.

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<sup>47</sup> Niemczak and Jutras, *Aboriginal Political Representation: A Review of Several Jurisdictions*, 20.

<sup>48</sup> Williams, "Sharing the River: Aboriginal Representation in Canadian Political Institutions", 94.

<sup>49</sup> Personal Communication, April 2011.

<sup>50</sup> Personal Communication, April 2011.

<sup>51</sup> Anishinabek Nation, "The Provincial Electoral Process: Indian Political Representation," a Submission by the Anishinabek Nation to the Standing Committee of the Legislative Assembly, Government of Ontario, 24 April 1989.

In 1991, the Royal Commission on Electoral Reform and Party Financing, after initial hearings and determining the question of aboriginal representation needed thorough review, established the Committee for Aboriginal Electoral Reform chaired by Senator Len Marchand. Their *Final Report* recommends aboriginal electoral seats in the House of Commons that are split up among provinces based on the aggregate number of aboriginal peoples and similar to the federal formula for seats<sup>52</sup>. This would have Ontario with two guaranteed aboriginal representatives in the House of Commons. Electors could self-identify to vote in aboriginal electoral districts. The Final Report of the Royal Commission on Electoral Reform and Party Financing incorporated suggestions from the Aboriginal Electoral Committee and determined conditions to be met before the creation of aboriginal electoral districts. Key conditions included: aboriginal peoples' consensus in favour of AEDs, compatibility with Canadian parliamentary system and traditions, and support from non-Aboriginal Canadians. Three main points of agreement between the Committee and Commission included the need for Aboriginal electoral districts, self-identification for eligibility to vote in an AED, and that this would in no way substitute aboriginal self-government<sup>53</sup>.

To determine the aboriginal electoral districts, the Committee recommended treaty boundaries, regional council boundaries, population and historical ties to the land be considered by electoral boundary commissions that have aboriginal peoples involved<sup>54</sup>. This recommendation of electoral boundary commissions involving aboriginal persons with knowledge of treaties and regional councils would also be necessary for an Ontario review. The idea of aboriginal electoral districts (AEDs) in the Province, however, presents several challenges. Due to the large off-reserve aboriginal population the Committee for Aboriginal Electoral Reform argued that "improvements in northern areas might help, but they would still not address the needs of the majority of Aboriginal voters living in southern Canada and in urban centres"<sup>55</sup>. In 2006, 20% of Ontario's aboriginal peoples lived on reserves, with another 18.3% in rural areas<sup>56</sup>.

One MPP recognized that there are some areas in Ontario it would be "entirely appropriate to have ridings with aboriginal representatives", while he also stressed the need for aboriginal agency in determining where and how these types of electoral districts are determined<sup>57</sup>. The two members for Ontario based on the electoral quotient would be inadequate in terms of representing both northern and southern aboriginal peoples, and the diversity of aboriginal cultures. A northern riding appears to be the most immediate solution in terms of redrawing electoral boundaries, but alternatives other than AEDs must be explored. With only two aboriginal MPPs, many aboriginal peoples would still lack "direct" representation described in Section 1.

The boundaries of electoral districts in many Canadian ridings do not favour aboriginal electoral interests. The Committee for Aboriginal Electoral Reform's *Final Report* describes the north-south axis on which the boundaries of northern electoral districts have been drawn, which

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<sup>52</sup> Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy: Final Report*, Vol.4, 259-60.

<sup>53</sup> Niemczak and Jutras, *Aboriginal Political Representation: A Review of Several Jurisdictions*, 16.

<sup>54</sup> Committee for Aboriginal Electoral Reform, *The Path to Electoral Equality*, 31.

<sup>55</sup> The Committee for Aboriginal Electoral Reform, *The Path to Electoral Equality*, 2.

<sup>56</sup> Ontario, Ministry of Finance, *2006 Census Highlights: Factsheet 9*.

<sup>57</sup> Personal Communication, April 2011.

“allows the non-Aboriginal population in the more populous towns in the southern parts of a constituency to outvote the Aboriginal population forming a majority in the rest or most of the constituency”<sup>58</sup>. For northern Ontario, the ridings with the largest proportion of aboriginal populations are Kenora-Rainy River, Algoma-Manitoulin, and Timmins-James Bay<sup>59</sup>. In 2001, the percentage of aboriginal electors in each of these federal ridings was estimated as 25%, 14%, and 10% respectively. These ridings are in the situation where towns and cities such as Kenora and Timmins can outvote aboriginal populations<sup>60</sup>.

Discussion of the potential of these northern ridings for AEDs fuelled a lot of debate during interviews. These large geographic districts could be redrawn to house mainly aboriginal electors, which is a proposal that is less radical for the general public. The suggestions from members and aboriginal leaders for these northern ridings ranged from creating one to four aboriginal seats. One seat spanning the far north from James Bay to the Manitoba border would conceivably be unmanageable for an aboriginal MPP. Northern Members already expressed frustration of only being able to visit many of these isolated, fly-in communities only once a year because of the budgetary constraints for MPPs.

Another proposal, by aboriginal leaders, was to have four electoral seats covering the north. This idea was based on the idea of the existing representative regional councils that span the region. These groupings include the Matawa First Nations Tribal Council and Mushkegowuk Council, where elected Chiefs of communities sit on council, with a Grand Chief elected among the group. Their proposal was that an aboriginal MPP would be elected separate from these councils, but in the same communities they represent, since they already have an established collective identity. Kiera Ladner argues in favour of “nation-based” participation in electoral politics: “treaty representation would increase Aboriginal participation in electoral politics” and “providing for such representation would enable Aboriginal people to vote as, and for, citizens of their nations”<sup>61</sup>. The involvement of political regional and treaty-based groups, many of whom participated in this study, could help determine the feasibility of this proposal in the rest of the province and in urban settings. Legislative review would also be required since the number of seats would likely exceed the electoral quotient for the population, but perhaps accommodation in a non-voting aboriginal cabinet would be appropriate.

Section 2 exposes a strong aversion to party politics and style of legislature based on perceived ineffectiveness of the system, which may continue to discourage participation within AED model, as it has with current engagement. Participation in AEDs as independent members is one alternative, but then again involvement in the adversarial, party demarcated Legislature would still be inevitable. Other recommendations emphasize the need for flexibility and innovation for accommodating aboriginal aspirations of greater representation.

Another form proposed by an MPP was to have an Aboriginal cabinet, to allow for a great number of members and would not require party candidacy. While voting rights might be difficult to assure in this model, in an advisory role the cabinet could speak to legislation and

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<sup>58</sup> Committee for Aboriginal Electoral Reform, *The Path to Electoral Equality*, 10.

<sup>59</sup> Dalton, "Alienation and Nationalism", 256.

<sup>60</sup> A homogeneity assumption must be avoided while analyzing these ridings as there are often large urban aboriginal populations in cities like Timmins. The diversity of both political participation and views means that among the 10% of aboriginal electors there may be little congruence.

<sup>61</sup> Kiera L. Ladner, "Treaty Seven and Guaranteed Representation: How Treaty Rights Can Evolve into Parliamentary Seats", *Great Plains Quarterly* 17 (1997), 85–102.



participate in Committees (two interests described in Section 1). Jennifer Dalton describes an “overall lack of recognition of distinctive First Nations political and cultural practices in Canadian electoral politics”<sup>62</sup>, which must be broken down to allow for effective incorporation into shared institutions. Accommodation and some flexibility, involving extensive review by aboriginal organizations, could create meaningful participation, as well as improve long-standing alienation from the political process.

In Ontario, there has not been specific review of the issue of aboriginal representation by the Legislature, although a Committee submission from the Union of Ontario Indians made recommendations for the special arrangement of “Indian Representation”<sup>63</sup>. They recommended the Standing Committee conduct an in-depth review of special arrangement opportunities for special representation, with discussion of New Zealand as an example. Another recommendation from their report is that Ontario initiates constitutional discussion, especially relating to “First Nations Government”. The objectives of special representation, as described by Grand Council Chief Miskokomon include “countering institutional discrimination, increasing the sensitivity of the legislative process within Ontario to Indian issues and requirements; [and] achieving some minimal decision-making influence on the part of Indian people within the mainstream political process”<sup>64</sup>. Section 1 illustrated the need for direct representation in Ontario with many of the same reasons.

A critical recommendation from the Committee for Aboriginal Electoral Reform is that it must be “clear in federal legislation that the creation of AEDs does not abrogate or derogate from Aboriginal and treaty rights and other rights or freedoms of Aboriginal Peoples, including the inherent right of Aboriginal self-government”<sup>65</sup>. Section 2 explored the goals of greater participation and self-government, finding most aboriginal leaders and the literature did not consider these concepts as contradictory. For the province to move forward with any method of guaranteed representation they must do so with the long-term vision of aboriginal peoples’ aspirations for self-government.

The set of arguments explored in this paper, especially the motivational factors for involvement with the Legislature, expose the need to provide flexibility in accommodating aboriginal peoples’ interests in the legislative process, rather than reorganizing a few electoral boundaries. Jonathan Malloy offered the belief that “parallel institutions with ways of incorporating aboriginal identity into the Canadian system and flexibility in dual structures” are likely the way of broaching the aboriginal representation issue at the provincial level<sup>66</sup>. For the Ontario government, review of alternatives such as an aboriginal cabinet is required rather than establishing a Commission to only study the AED model.

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<sup>62</sup> Dalton, “Alienation and Nationalism”, 257.

<sup>63</sup> Anishinabek Nation, “The Provincial Electoral Process: Indian Political Representation”, 29.

<sup>64</sup> “The Provincial Electoral Process: Indian Political Representation,” a speech by R.K. Miskokomon, Grand Council Chief of the Anishinabek Nation, Presentation to the Standing Committee on the Legislative Assembly, June 21, 1989.

<sup>65</sup> Committee for Aboriginal Electoral Reform, *The Path to Electoral Equality*, 27.

<sup>66</sup> Personal Communication with Jonathan Malloy, April 11, 2011.

## **Conclusion**

Ontario's aboriginal peoples are in a unique moment in the province's history; with the building of provincial policy in aboriginal affairs this may also be an opportunity to seek new capacities in the Legislature. Absence in the Provincial Parliament appears to be to aboriginal organizations' detriment when MPPs will not speak to their concerns on issues critically affecting their communities and lands. MPPs are currently in challenging, complex relationships with aboriginal leadership, while also having to appease a non-aboriginal majority and their party. Several limitations to the current format, as well as benefits to direct representation, are evident throughout this study. In addition, the motivational factors explored in Section 2 expose limitations of the aboriginal electoral district model, and the need for further study of alternatives for greater representation. Section 3 provides an analysis of recommendations, with emphasis on the meaningful inclusion of aboriginal leadership, organizations and aspirations.

Underlying all of these discussions are the self-government ambitions of many aboriginal groups, which became palpable throughout the interview process. Direct representation appears to be meaningful, but only with commitment to address treaties and collective rights. For Ontario, a more comprehensive review of aboriginal involvement is desirable given the profound changes in aboriginal affairs in recent years, and aboriginal leaders appear to be ready to redefine relations with the Province.