

DEVOLUTION AND POST-SECONDARY EDUCATION: CHALLENGING
FIRST NATIONS GEO-LEGAL SPATIALITY

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ABSTRACT

This thesis challenges prevailing notions of First Nations spatiality through an analysis of First Nations post-secondary education. The central argument is that off- and non-reserve status First Nations post-secondary students face discrimination from policies and programs driven by outdated definitions of First Nations spatiality. Using theoretical insights from critical legal geography, the thesis documents the spatial implications of the devolution of post-secondary education that occurred beginning in the mid-1980s. It traces the spatial myopia entrenched in the *Indian Act* and analyzes the potential impact of the *Corbiere* decision to redress the spatial inequalities experienced by off-reserve First Nations post-secondary students. Methodologically, the thesis employs policy and snapshot analysis. The thesis concludes that the spatial bias embedded in the *Indian Act* and the commonly-used distinction between on- and off-reserve populations fails to reflect First Nations spatiality accurately, thus contributing to the continued discrimination of certain populations.

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I would like to thank my mother, Vivienne, for her unwavering support during this entire process. Many afternoon and evenings, a steaming cup of tea would appear on my desk to help me keep focused on the goal. It was my mother that instilled in me the value of hard work and the need to finish things once started.

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This thesis is dedicated to Nourma D. Watson.

"In spirit we shall continue to watch the tree grow."

Chapter One

Introduction: Geography, Law and the Spatiality of First Nations

“Where are you from?” asks the woman sitting beside me. This question makes me uncomfortable for a second. I know the implied meaning of this question; after all, we are both Native. When a Native person asks this question, she is not inquiring about what city I live in or where my house is located. She is asking which reserve I am from. Who are my people? An assumption exists in her question. The assumption that all First Nations people come from a reserve is a spatial irony.

I say to her that I don’t come from a reserve or First Nation community, but my father’s people come from a small reserve in northern Ontario. I am from Ottawa. I live in the forest of concrete and travel the rivers of asphalt. This is okay. The urban world is where my home has always been. It does not alter the fact that I am still Anishnawbe.

Research Impetus and Overview

Control over education by First Nations¹ as a means of furthering self-government has been on the political agenda since the 1960s (Graham, et al., 1996b, p. 272). The protracted and intense character of debates over the issue between First Nations and the federal government reflects recognition on the part of both parties that education represents a lasting investment in the future of a society as well as a self-empowering experience for the individual who attains it. With respect to First Nations post-secondary education, the 1996 Royal Commission on Aboriginal Peoples (RCAP) drew renewed attention to the benefits of First Nation-controlled education and offered alternatives for post-secondary education

¹ The term “First Nation” came into prominence in the 1970s to replace the word Indian, which is offensive to some. Although the term First Nation has no legal definition in Canada, it is used here to describe persons who are Indian without consideration of their legal status as Indians, unless

administration.² My interest in the area of post-secondary education for First Nations stems from a general academic curiosity about public policies relating to First Nations people in an ongoing devolutionary period, but also from a more specific desire to better understand my own experience of these educational policies. Through the example of the Post-Secondary Student Support Program (PSSSP),³ this thesis examines the broader context in which federal policy largely ignored the historical role of spatial dislocation and reorientation of First Nations. It considers the differences of the spatial reality for off-reserve status Indians, who until the April 1999 Supreme Court of Canada's ruling in the case of *Corbiere v. Canada and Batchawana Bay First Nations*, had no political influence at the First Nation community level. Of particular concern to this research is the experience of status First Nation students⁴ seeking university education who ordinarily reside off-reserve. The aim of this thesis is to explore the challenges facing status First Nations university students in relation to present-day, post-secondary educational policies and program administration from a geographic perspective.⁵

otherwise stated. First Nation has been widely adopted by reserve communities to replace terms such as Native or Indian or reserve.

² Federal Post-Secondary Education (PSE) funding is available only to Status Indians and Inuit. For further discussion of the benefits of First Nations controlled education, consult the Royal Commission on Aboriginal Peoples (1996), Volume 3, pp. 433-578.

³ PSSSP is the current program name for post-secondary student assistance program. Prior to 1989, the program was known as the Post-Secondary Education Assistance Program (PSEAP).

⁴ I have specified a legal definition of Indian status, sometimes referred to as Registered Indian. Status Indians (and Inuit) can pursue university education via the Department of Indian Affairs and Northern Development post-secondary education program. In the case of First Nations, students must be Registered Indians to be eligible.

⁵ While it is noted that nationally, post-secondary education has been under fiscal assault by various levels of government for decades, those students seeking PSSSP support fall outside the traditional arena of post-secondary policies. Post-secondary education is a treaty right for First Nations, something that the Non-First Nation Canadians are not privy to. First Nations have added bureaucracy created by the Department of Indian Affairs and Northern Development, its PSE programs and the *Indian Act*. PSE funding for status Indians is very specific with parameters that the general public does not have to address. Devolution is an added dimension that can directly impact how post-secondary education support is experience by both bands and their PSE eligible population.

Specifically, my research represents an attempt to provide some preliminary indications as to how devolution has affected post-secondary education for off-reserve status Indian students. I posit that *where* status First Nations students usually reside is critical to how they experience post-secondary education policies, their individual First Nation band's policies or federal government policies. I argue that the nature of the devolution process has not been as positive a course of action for off-reserve First Nations students as for those who reside on-reserve. This thesis seeks to contribute to a better understanding of the spatial actuality and fundamental role that spatial construction plays in the struggles faced by off-reserve status First Nations. It is through spatially outdated federal policies and legislation, which are intended to service mostly on-reserve residents, that off-reserve status First Nations are trapped in an eddy of inequitable and non-representative policies and programs related to areas such as post-secondary education, health, natural resources, finance and, ultimately, self-government.

As devolution can mean different things, it is important to understand and focus upon the geographic relevance of devolution for First Nations as we continue to challenge colonial-based policies and programs. First, devolution in the broadest sense has changed the physical *location* of administration from the Department of Indian Affairs and Northern Development (DIAND)⁶ in Ottawa, the federal department responsible for status Indians, to many First Nation communities and bands scattered across the country. Decision-making has not changed

⁶ Department of Indian Affairs and Northern Development (DIAND) is the legal name, as legislated by Parliament, of the department responsible for status Indians and Inuit in Canada. Although the department changed its corporate name to Indian and Northern Affairs Canada (INAC), this thesis uses both.

fundamentally in this relationship; rather the physical location of program administration has decentralized through devolution, re-establishing or forcing linkages between off-reserve status Indians and their band. Secondly, devolution stipulates a shift in the *scale* at which decisions are made. Prior to devolution, policy decisions made by INAC affected all First Nations students across the country, regardless of residential location, region or personal situation. This has gradually changed with the ongoing process of devolution. For post-secondary education, many First Nation bands now administer post-secondary programs directly to individual students, usually under the guidance of the PSSSP and their own post-secondary education guidelines⁷.

The federal government rationalizes devolution as increasing First Nations autonomy; however, there remains debate as to whose interests this process best serves. At this point in time devolution does not provide equal benefit to those First Nations members who do not ordinarily reside on the reserve. As a consequence of devolution, the spatial and political reality between on-reserve and off-reserve members continues to fracture First Nations.

Geography enters into this thesis as a lens of inquiry through which the spatial dichotomy of First Nations peoples' identity can be examined. In other words, the terms *on-reserve* and *off-reserve*, while describing a spatial relation to the reserve, also go beyond this and express a socio-political duality. Consequently, designation as an "Indian"⁸ does not provide explicit equality for all First Nations

⁷ Although First Nations bands and their education authority may have their "own" version of a post-secondary education policy, it must uphold the minimum requirements as stipulated by the PSSSP.

⁸ My usage of the term "Indian" highlights the legal definition to which First Nations people are subject under the *Indian Act*.

people despite the federal government's promise of the benefits that would ensue from devolution. For First Nations who ordinarily reside off reserve, being off/in a different geography⁹ provides for a different experience of band governance. This distinction between *on-reserve* and *off-reserve* is well anchored in public policy as it relates to First Nations and is often used to distinguish the federal government's fiduciary obligations. For example, federal departments and their programs and policies clearly make the distinction between on-reserve and off-reserve status Indians and administer programs accordingly.¹⁰ As a continuance of this federally created spatial duality, there remains a general and persistent assumption that most First Nations people in Canada reside on reserves or at least have strong ties to their community.¹¹ This is a misconception propagated via the many federal policies and legislation relating to all First Nations peoples. Off-reserve status Indians, particularly those who have never lived on their reserve, are rendered invisible as much of the legislation does not address the needs of this population adequately.

This thesis addresses elements of these spatial incongruities as embedded in the *Indian Act*, specifically as they relate to status First Nations university students. My objective is to examine the experiences of status First Nations students who ordinarily reside off-reserve but whose post-secondary education funding is administered from/by their respective bands. The topic originates from my personal experiences with the First Nations post-secondary education support program pre-

⁹ Often off-reserve geographies are thought to be urban centres but can include rural and northern locations as well.

¹⁰ While the majority of federal programs are directed at the status Indian population on-reserve, others are not residency specific and are open to all status Indians regardless of reserve residency status, while other federal programs are aimed at non-status Indian, Métis and Inuit populations.

¹¹ According to Statistics Canada, the most recent Census data from 2001 suggest that over 50% of Registered or Status Indians live off-reserve (Canada, Statistics Canada, 2003).

and post- the 1989 program devolvement. My initial experience with the Post-Secondary Education Assistance Program (PSEAP) during the late 1980s differed fundamentally from the revised Post-Secondary Student Support Program (PSSSP) implemented in 1989. The thesis attributes the variations I encountered to the shifting *location* of policy implementation that accompanied this devolution.

Devolving the PSEAP from the Department of Indian Affairs and Northern Development (DIAND) to First Nations bands changed the geographic location of program administration and, most significantly, required students that ordinarily resided off their reserve to enter into new and often complicated relationships with First Nations program administrators at the band level. I argue that the devolutionary process used to restructure post-secondary education policies, programs and their administration reflected and perpetuated spatial identities constructed as a consequence of the *Indian Act*. Additionally, I maintain that the imposed interaction between off-reserve status Indian students and band administrators now required under the PSSSP posed additional complications also rooted in the long standing spatial divide between on-reserve and off-reserve First Nations people. To frame these issues, the thesis employs a theoretical framework drawn from the intersection of geography and law to account for the complex nature of the spatial and legal identities at play in this program revision.

Reflections on My Own Experiences

My first exposure to post-secondary education policy as a status First Nation student was from 1986 to 1988 through the Department of Indian Affairs and Northern Development's Post-Secondary Education Assistance Program (PSEAP).

During this time, I attended university in Ottawa, a city I called home. At that time, First Nations post-secondary assistance and support (PSEAP) was administered from a federally independent office located in that city. I was required to come to this office to pick up my financial assistance and periodically talk with an education counselor who worked out of this office. I had no contact with my First Nation band throughout this period. Difficulties arising from post-secondary policy administration with DIAND and its agent offices were minimal. I was able to attain financial assistance, counselling and assistance readily without contacting my First Nations band. This was important because I had never lived in my First Nation community, nor was I born there; consequently, I was identified by my First Nation band and the federal government as off-reserve while I preferred the identity of “non-reserve.”^{12 13}

My second experience with the PSSSP occurred between 1995 and 1998. In the intervening years, the post-secondary assistance program underwent a significant program revision. The devolution that accompanied the shift from the PSEAP to the PSSSP resulted in the decentralization of power and administration from the federal government to First Nations bands. For example, my First Nation

¹² I use the term “non-reserve” to challenge conventional distinctions between “on-reserve” and “off-reserve” that permeates both the federal government’s and scholarly literature’s definition of First Nations’ spatial identities. Non-reserve is a First Nations specific term that refers to First Nations persons, such as myself, who neither live nor have lived on a reserve and who do not claim ties to such “traditional” or ancestral territories.

¹³ I would like to note that the federal government utilized this concept for categorizing the off-reserve population as non-reserve for the 2001 Census and the 2001 Aboriginal Peoples Survey (APS). The APS defines non-reserve as individuals that live outside most First Nations reserves and communities. The government’s definition is much broader in scope since it includes all of those that are living outside of the reserve (including Métis and Inuit). My definition of this term is specific to those First Nations that have no or little association with their ancestral reserve communities. The term non-reserve was used by Statistics Canada during my tenure at Statistics Canada. Off-reserve was deemed problematic since counts included Métis and Inuit persons, who are not associated with the reserve. It was erroneous to continue to use a dichotomous concept based upon reserve residency since these Aboriginal groups are not connected to reserves. As such the non-reserve concept employed by the federal government is quite different from my concept and definition. It is geographically-based while I use the term to describe a socio-spatial identity.

band became responsible for administering post-secondary educational funding directly to their students. This program and policy change altered my experience of educational assistance, not always in a positive manner. Difficulties quickly arose in contacting administrators and receiving funding on time. A geographical distance of nearly 1500 kilometres between the band and myself limited effective opportunities to express and resolve concerns regarding administrative issues in relation to post-secondary education administration. It was often cumbersome to seek clarification relating to band-administered funding issues because the distance between my First Nation band and myself was not only geographical but social. I was a stranger to the community and to those that administered the new program. My own identity as a First Nations person did not include a spatial connection to a reserve. Yet under the PSSSP, my First Nation reserve had greater authority to make discretionary decisions about my education, even though my connection to that reserve was, at best, tangential.¹⁴

Based upon my own experiences of on-going devolution of post-secondary education administration from INAC to First Nations, I began to wonder if the various incarnations of the First Nations post-secondary education program and policy were actually serving those for whom they were intended. With control over post-secondary administration being devolved, was it possible that the shifting location of program and policy implementation had transformed the way other off-reserve and non-reserve status Indian students experienced post-secondary education administration and support? I began to hypothesize that perhaps reserve residency

¹⁴ Entitlement to the PSSSP requires students to have Indian Status and, at the discretion of individual bands, students may have to have band membership.

and a student's spatial identification with their First Nation community would determine their experience with the PSSSP. Furthermore, there was little political accountability of First Nations community leaders to off-reserve status Indian students. Chief and Council could make local policy decisions regarding post-secondary funding through their administration of the post-secondary education program. This had the potential for making it more difficult for students who were administered the PSSSP to make demands for greater program accountability.

The Corbiere Decision: Addressing Spatial Discrimination

The 1999 Supreme Court decision in *Corbiere v. Canada and the Batchawana Band* (commonly referred to as the *Corbiere* decision) laid the groundwork for greater First Nations community-based political accountability by recognizing the rights of off-reserve members in First Nation Chief and Council electoral processes. The *Corbiere* case brought the issue of more equitable First Nations governance into the public sphere and challenged the application of the *Indian Act* over specific on- and off-reserve First Nations territories. The ruling challenged Section 77¹⁵ of the *Indian Act* and found that it violated equality provisions of Section 15 of the *Canadian Charter of Rights and Freedoms*. Encapsulated within the *Corbiere* decision are geo-legal insights that recognize this emerging spatiality of off-reserve and non-reserve residency and the changing demographic trend of the First Nations population, over half of whom reside off the reserve (See Appendix 1). This set the stage for permitting off-reserve First Nations

¹⁵ Section 77 outlines the voting eligibility criteria for First Nations members stipulating that they must "ordinarily" reside on the reserve. This will be further discussed in Chapter Four.

to participate in band elections and potentially opened the door for political accountability of Chiefs and Councils. In doing so, it diminished the prejudice of *place* in the *Indian Act* and allowed for First Nations and the federal government to question notions of political representation based on residence location and spatial identities.

The *Corbiere* decision is a landmark decision that terminated discriminatory sections of the *Indian Act* that required reserve residency in order to participate in band elections. But beyond this contribution, the *Corbiere* decision is important for this thesis because it acknowledged the spatial inequities of the *Indian Act* and simultaneously addressed the under-representation of eligible off-reserve members, including students, in band governance. In particular, the decision facilitated the participation of the off-reserve First Nations student population in band elections, thus opening the door for greater involvement in First Nations community politics.

Prior to the *Corbiere* decision, band Councils, as on-reserve, community-elected entities, did not necessarily serve well those First Nations people who resided off the reserve, ordinarily or otherwise. Because of the restrictions contained in s. 77 of the *Indian Act*, all First Nations members did not enjoy equal representation. This fact combined with the outdated spatial assumptions underpinning the *Indian Act* offered no consideration of the off-reserve population and exacerbated the representational concerns of those off-reserve First Nation persons. In the decade between 1989 and 1999, for example, band Councils were administering post-secondary educational programs for both on-reserve and off-reserve members without the political participation of off-reserve members in band governance.

Five years after the *Corbiere* decision, the implications of this watershed ruling are not yet fully understood and questions of political accountability still remain (Peters 2001, 1997, 1995; Assembly of First Nations, 2000). Despite this uncertainty, the *Corbiere* decision signals a critical recognition on the part of the Supreme Court of the inherent spatial inequality of the *Indian Act*, an inequality rooted in imposed and artificial spatial identities. Acknowledging the legal obligations associated with the spatial reality of over half the population of off-reserve First Nations members potentially has significant implications for many programs and policies. As I argue in subsequent chapters, this is certainly the case with respect to the administration of First Nations post-secondary educational policy.

The following outlines the agenda of subsequent chapters. In Chapter Two “Theoretical Framework: Rethinking First Nations’ Spatiality” I present my theoretical approach by offering a brief discussion on the concepts of space and place and role of scale and how each are socially produced and re-produced, with respect to First Nations. I then tender a review of the relatively new literature on the nexus of geography and law. I note the “spatial collisions” (Blomley, 1994) between those two disciplines and review the emergence of the field of critical legal-geography. I then examine the production of space by law and how that impacts First Nations specifically. Finally, I offer an overview of law and spaces of exclusion from a First Nations perspective briefly presenting some key historical context for this research.

In Chapter Three, I outline the methodology of my research on First Nation band post-secondary administrators and First Nation students in the province of Ontario. While the thesis concentrates on a literature-based analysis of the spatial

inequities of devolution based on a case study of post-secondary education administration, I also offer a small-scale study of individuals' experiences regarding devolution. Although not meant to be representative of all First Nations students and their experiences of PSEAP/PSSSP, the snapshot approach employed nevertheless enlightens this research with narrative inputs of some students' experiences. I also describe my choice of a qualitative approach to this thesis and overview the two specific techniques – policy analysis and questionnaire/interview sampling – used in this study.

In Chapter Four, I use the theoretical insights of Chapter Two to advance a spatial analysis of the interrelationship of the *Indian Act*, post-secondary educational policies and the *Corbiere* decision within the geo-legal framework. I review the extent to which the *Indian Act*, although seemingly aspatial in its application, differentiates between on-reserve and off-reserve members and creates spatial identities that are plagued by inequity. More specifically, this chapter treats those sections of the *Indian Act* that pertain to the off-reserve population, analyses the Post-Secondary Student Support Program (PSSSP), and discusses the impact of the *Corbiere* decision for off-reserve populations.

In Chapter Five, I present the data collected through questionnaires and interviews with off-reserve First Nations students and graduates of post-secondary educational institutions. The empirical data help identify the spatial challenges still facing off-reserve First Nations students with respect to post-secondary education and offer insights into the potential new directions that the *Corbiere* decision may have for off-reserve status First Nations populations in the field of post-secondary education. As control over education is realized increasingly as an integral

component of self-government, I offer my views on the long-term benefits for First Nations bands in recognizing and offering increased accountability to their off-reserve members as a result of *Corbiere*. Finally, the Conclusion summarizes my project and outlines the implications of this thesis. I also provide suggestions for future research in this area.

If this thesis represents research that informs my own personal struggle, it also represents a modest response to suggestions by geographer Evelyn Peters (2001, 1997, 1995) that further research needs to be conducted that considers off-reserve populations. This research also responds to calls in the academic geography community to consider law as a lens to incorporate into scholarly analysis. Blomley (1994) and Pue (1990), for example, have both stated that further co-operative work needs to be conducted within both disciplines. I hope that this research contributes to the limited scholarship on critical legal geography, and adds to the expanding interdisciplinary research currently conducted by Aboriginal scholars. More broadly, this research highlights the need for First Nations Chiefs and Councils and their off-reserve membership to begin a dialogue that can aid in directing social policy changes that reflect the shifting spatiality of First Nations in Canada.

As with all research, there are limits to such a study. I am not endeavouring to provide a comprehensive analysis of all devolution from the federal government to First Nations nor am I attempting to provide an in-depth policy analysis of the *Indian Act* or PSEAP/PSSSP; such a project would involve a far more extensive project than a Master's thesis permits. While the findings and conclusions presented are not meant to apply to all PSEAP/PSSSP cases for the off-reserve status Indian

university student population, I am proposing that the framework of analysis employed would be appropriate for investigation into other policy arenas (health, elementary and secondary education, etc.) and other provinces or territories. Too often, First Nations people are assumed to be a spatially homogeneous group. The (imposed) spatial identities of *on-reserve* and *off-reserve* is but one of many spatial dualities. The challenges facing off-reserve populations, however, are markedly different from those on reserves. Positioning off-reserve (and, in some cases, non-reserve) First Nations students at the centre of my research enables our specific concerns to be heard and initiates the long-overdue process of reconfiguring understandings of the spatial reality of many First Nations people who do not ordinarily reside on-reserve.

Additionally, it is important to acknowledge the significance of decolonization scholarship to this project. The volume of critical literature on colonialism and decolonization is extensive (Green, 2005, 2002; Henderson, 2000; Little Bear, 2000; Smith, 1999; Adams, 1995) and offers much to expanding Aboriginal research on devolution. Although I identify devolution as one mechanism of decolonization that the federal government has undertaken with regards to Aboriginal peoples generally, and, specifically, in the policy field of First Nations post-secondary education programs, I have chosen not to rely on decolonization scholarship for my theoretical approach. Instead, this thesis concentrates on exploring the spatial effects of devolution using the still-emerging geo-legal literature from which to construct a spatially-informed analytic lens. I regard such an approach as one that can, in turn, build on existing decolonization scholarship by offering a different interdisciplinary perspective.

Chapter Two

Rethinking First Nations' Spatiality: Theoretical Framework

"The spirits of our people are written on the land, our land. We cannot tell a story of somewhere else; we are of this place."

Ovide Mercredi & Mary Ellen Turpel
from *In the Rapids* (1993, p.191)

Introduction

The words of Ovide Mercredi and Mary Ellen Turpel resonate with the view that First Nations are very much apart of this territory, of this space/place called Canada. Nevertheless, legislation created by colonial and then Canadian governments produced, re-produced and dismantled First Nations' space as needed to meet the needs of urban and industrial growth since the arrival of Europeans. The *Indian Act* is the principal legislation, which for 129 years, has influenced and controlled the lives of all First Nations.¹⁶ As a result of the government-imposed *Indian Act*, First Nations were thrust into a new geo-legal landscape that extinguished their rights to ancestral lands, and created "Indian space" in the form of new reserve-based geo-legal identities.

This chapter introduces a theoretical framework that draws from the disciplines of law and geography. I construct an analytic framework at the

¹⁶ While the *Indian Act* is responsible for those First Nations that are registered Indian (status Indians), the very creation of this legal identity would mean there is a population of First Nations who are not registered under the terms of the *Indian Act* (non-status). By creating these legalized categories or identities, it affects all First Nations peoples regardless of their legal status as Indian under the *Indian Act*. Historically, the *Indian Act* controlled education, land tenure, economies, trade, cultural traditions and family relations and who was deemed an Indian. All of this was a means of assimilating First Nations by extinguishing our rights.

crossroads of both disciplines that illuminates the complexities of the legal and spatial situation of First Nations peoples. In this chapter, I review three critical components that inform my analytical framework. As this is very much an interdisciplinary project, it is crucial to begin by providing conceptual clarity on the key factors in the social production/construction of space. I offer a condensed discussion of the concepts of space and place, broadening the discussion to include the production of space and the influence of scale when considering First Nations spatiality. I then offer an examination of the difficulties involved in reconciling the disciplines of law and geography into an interdisciplinary approach. This includes a brief review of the emerging, but still limited, literature on *geojurisprudence* or legal geography (Easterly, 1977; Pue, 1990) and the role that law and policies play in constructing First Nations space. As a final element of my analytical framework, I discuss the power of law and policy to also exclude First Nations peoples from certain spaces.

Social Production of Space and the Influence of Scale

Although this thesis addresses the spatiality of First Nations peoples, this chapter does not engage exhaustively with spatial theory. Instead, I examine space and its social production and reproduction, highlighting the importance of space as a social construct. Clarifying my usage of space and place in this thesis illustrates first how I understand spatiality as critical to explaining First Nations reality. I also introduce my usage of scale as a related geographical concept relevant to my analysis of the relationship between law and geography and the creation of “Indian spaces” by the state which I discuss in the second section of this chapter.

Space

Many contemporary scholars (Massey, 2005, 1999, 1992; Agnew, 1993; Lefebvre, 1991) have advanced theoretical insights and interpretations of space and spatiality. While the definition of space remains a contested concept (Hubbard, Kitchin and Valentine, 2004), I draw on these scholars to furnish some fundamental ideas about space that are central to this thesis. The first concerns the social construction of space. Henri Lefebvre's *The Production of Space* offers a comprehensive discussion of how space is socially produced. Although this particular text concentrates on modes of production and the urban environment, it is his discussion of the meaning of social space in the context of the urban that is informative for this thesis. Lefebvre suggests that cities are constructed urban spaces that are "fashioned, shaped and invested by social activities" (1991, p. 73). These become sites where people shape the spatial fabric of their urban landscapes both directly and indirectly by interacting with their environment and producing space and reconfiguring spaces such as neighbourhoods or shopping malls. These processes of spatial reproduction can transform agricultural land into a suburban residential community, or convert green spaces into office parks.

Doreen Massey recognizes space as "the product of interrelations as constituted through interactions, from the immensity of the global to the intimately tiny" (2005, p. 9). She similarly identifies human interaction as critical to the production of space in that people are constantly constructing and reconstructing space. As I illustrate below, this idea is central to my discussion of the role of state institutions in constructing and reproducing "Indian spaces". Massey's work also notes the complexities of human interaction with space. Since space can be

considered as a medium through which people interact and experience their spatiality, then what is spatially represented by one individual may be quite different for another, even if the space is the same. If we shift our focus from the personal to the state, for example, then the same could be said of the role that state institutions play in producing and reproducing space. Lefebvre suggests:

The state and each of its constituent institutions call for spaces – but spaces which they can organize according to their specific requirement; so there is no sense in which space can be treated solely as an *a priori* condition of these institutions and the state which presides over them (1991, p. 85).

Lefebvre's concern is with the state's control and production over space in relation to land tenure and ownership of the land. In my research, the idea of reorganizing space to suit the needs of the state relates directly to the state's right to control the production of space vis-à-vis territory for certain groups of people in Canadian society. If we accept that human beings construct space and that often the state is the instrument of that production and reproduction, it is then fair to suggest that the state acts on behalf of society and, by and large, controls the production of space.

Lefebvre's discussion is also instructive in that he explicates the manner in which spaces are also produced and reproduced discursively. In other words, space is socially constructed through the ideas and ideologies of individuals, groups, communities and governments. This leads to the construction of "spatial codes" (1991, p. 17) that may be used to describe and demarcate space. It is this discussion of the codification of space which is relevant to this thesis in that such spatial codes are generally constructed by state institutions such as parliament or the courts. Lefebvre argues the need to examine the language used to produce and

reproduce space. I posit that the state can discursively produce and reproduce space through a lexicon of spatial language or identifiers.

Place

The concept of place is also central to this thesis. Although, like space, place remains a contested concept, I employ place to refer to a location of social interaction, where the production of space is represented either materially or immaterially. In other words, places are representations and understandings of a particular space. Lefebvre refers to *place* as a *space* that has been represented in such a way to distinguish one space from another where “a spatial practice [is] express[ed] and constitute[ed]” and “interrelationships are ordered in a specific way” (1991, p. 16). Massey suggests that places are like junctures “within the wider power geometries of space” (2005, p. 130). Certainly, it is difficult to tease out place from discussions of space because the concepts of space and place have an inherently reciprocal relationship and are highly interactive. Indeed, there is a duality or binary structure to the concept of space/place. Paul Cloke & Ron Johnston, for example, see space and place as a “binary geography” and part of a categorization process that we use to simplify the world in which we live (2005, pp. 2-3). Massey suggests that “[s]pace and place emerge through active material practices” (2005, p. 118). The dualism is related to the fact that place is the representational space that is socially constructed by humans.

Another important element of place surfaces in Massey’s discussion when she argues that places also consist of “non-meetings-up, the disconnections and the relations not established, the exclusions” of those in-between locales (Ibid, p.130).

This is important as these intersections and non-intersections of space/place exist because they are social constructions of being and not being, of location, yet more than just a physical place. In other words, we assign meaning to the spaces and thus they emerge as places or non-places that are spaces to yet be represented. There is potential for new productions of space and the emergence (or re-emergence) of places based upon these social interactions.

Scale

In addition to reflecting on space as socially produced and reproduced and the binary interaction of space and place, it is also beneficial to understand the role of scale in relation to space/place. At its root, scale refers to the impact of the geopolitical level at which space is imagined and experienced, such as municipal, provincial, national or trans-national. John Agnew summarizes scale and its relationship to space:

[S]pace is taken to refer to the presumed effect of location, or *where* social processes are taking place, upon those processes; scale refers to the spatial *level*, local, national, global at which the presumed effect of location is operative; and culture refers to the matrix of socially constructed practices and ideas that mediate between location and social processes (1993, p. 251).

Scale implies a relative dimension at various levels of geographic entities. Like space and place, “geographic scale is a social construct” (Silvern, 1999, p. 643). Agnew considers scale to be rooted in spatial representations of space and place but adds that it is through cultural practices that socially constructed notions of space are fully appreciated and understood (1993, p. 251). Recognizing the impact of socially and spatially constructed cultural practices such language, religion, customs and related institutions adds the dimension of the individual, the personal and the

private as these are often highly subjective components of one's own cultural identity. As they are often situated at the individual or smaller scale, they risk being disregarded when focus falls upon spatial identities at the national or sub-national level. To support this point, Cloke and Johnston's work stresses the "multiplicity of scales" (2005, pp. 2-3) and considers scale as integral to the spatial identities adopted by people (although not always adopted freely). These authors caution us to acknowledge that how we identify with places and at what relative dimension is often subjective; in turn, the scale at which we spatialize our individual identities influences our experience of space and place.

Massey broaches the issue of scale when she speaks of the relational politics of place in terms of globalization versus the local (2005, p. 181). Although her terminology is slightly different from Agnew, Massey suggests that space must be considered as part of the sphere of relational spatiality that is in constant scalar flux from the local to broader global topographies (2005, p.182). This point is important as it offers insight into the role of scale in terms of spatial identities. For some groups, their identity is directly linked to particular spatiality and at a particular scale such as the Canadian identity. At the national level, we may identify closely with a particular nation state. For sub-level identities it may be provincial or territorial while at a local scale a person may or may not identify with municipal or regional spatial identities. A municipal identity may be necessary to adopt when seeking better services from a municipal government in one of its wards. What is important, however, is the notion that our spatial identities can shift based upon scale and context.

Space, Place, Scale and First Nations

What insights from the previous discussion of space, place and scale can be applied to understanding First Nations spatiality? As discussed, space is socially produced and reproduced. This is acutely evident in terms of the historical experience of First Nations whose spaces were subject to re-production, reconstruction, and reconstitution under colonialism. Pre-contact, First Nations produced their own spaces and places. North America was not the *terra nullius* (land that is unused or claimed) that colonizing Europeans alleged (Venne, 1998, pp. 1-5). Native space dominated the landscape of this continent where distinct and independent nations controlled vast territories. The arrival of Europeans and the import of imperialistic notions of spatiality began the process of re-imagining and re-producing Native spaces/places. Even with arrival of explorers, fur traders and settlers, many First Nations attempted to maintain their distinct spatiality. Research by Susan Marsden and Robert Galois examining the geopolitics of Northwest Coast First Nations, for example, documents the efforts of Tsimshian tribal leaders to reconcile the foreign spatiality into their existing Tsimshian space (1995, pp. 169-170).

Since the late 19th century, the relationship between many First Nations and the new Dominion of Canada shifted to a less equitable and more paternalistic relationship. In Canada, the social and material reproduction of indigenous spaces manifested itself through the creation of treaties and the Indian reserve system. Cole Harris describes the impact of this re-construction by colonizing powers: "The allocation of reserves in British Columbia defined two primal spaces, one for Native people and the other for virtually everyone else" (2002, p.265). While he is referring

to British Columbia specifically, it is fair to suggest that this was true throughout Canada where reserves were set aside for Indians. Harris describes processes of power, dominance and dispossession when he speaks to the establishment of Indian reserves and the eventual spatial reorientation of First Nations by this colonial system. The term 'allocation' suggests there is authority involved, that indigenous territories were somehow in need of being assigned or reconfigured into an ordered binary spatiality, that of Native space and non-Native space.

Indian reserves harbour inherent binary social constructs of space/place. They are tangible, materially-demarcated lands that constitute First Nation space and by their very physical structure often define the spatiality of a First Nation person. This is to say that reserves are locales of interaction where Indian people are defined and assigned to a particular "Native space". Another element of the spatiality that First Nations have been fitted into is one that is state induced through government policy and legislation. Reserve spatiality is typically represented by two identities: on-reserve and off-reserve (and sometimes non-reserve). This becomes very important to keep in mind as it becomes the principal spatial identity afforded First Nations people. The Canadian government still categorizes the First Nations population empirically as both on-reserve and off-reserve and therefore continues to impose a binary spatiality on this population.

What can the concept of place offer this discussion about First Nations spatiality? To recall Agnew, cultural practices are integral to the idea of place. For First Nations, much of our contemporary spatiality is associated with Indian reserves, the spatial anchor for much of our identity as First Nations peoples (1993, p. 251). Historically, when Indian reserves were first created to provide Indian people with a

state-imposed space or territory, these became our Indian spaces. Reserves had a huge and enduring impact on the First Nation notion of place. As First Nation space steadily became reproduced as a reserve, and ultimately a community, these spaces transitioned into First Nation places. The reserve as a place is represented materially through houses, schools, churches, and infrastructure and discursively through distinct cultures, languages, education, traditions, beliefs and identities.

If we are to understand scale in relation to First Nations then we must consider this concept in terms of internal and external control over First Nations' spatial identities. Agnew suggests that, "scale is almost always treated in terms of either the fixed or the emerging dominance of one level" (1993, p. 252). Dominant scales (global/international/provincial) tend to eclipse smaller or 'residual' scales (local/national/municipal). If we continue to consider this binary structure of scales in terms of First Nations, then the dominant scale of control falls to the federal government vis-à-vis the Department of Indian Affairs and Northern Development (DIAND) with the residual scale falling to First Nations vis-à-vis Band Councils. This is only one possible scalar organization. In terms of spatial identities, the federal government controls who is defined as a legal Indian by way of the *Indian Act*. This *Act* creates a dichotomous Indian identity – that of status and non-status Indian. Inherent in these legal categories are legal rights, entitlements or lack thereof, which are imbued with power and authority. As Blomley and Pratt suggest, "rights are often about access to space or place" (2001, p. 154). In the case of First Nations, our spatiality is reoriented such that scales of geo-legal identities – status and non-status – describe a geo-legal spatiality unique to First Nations. Federal legislation (i.e., the *Indian Act*), stipulates and imposes a scale of space that is identity-based -

status or non-status, reserve or non-reserve. Blomley and Pratt explain that this can be characterized as an “ordering of rights” (2001, p.155), a scale of rights that is socially constructed but often opposed and disputed.

Law and Geography

As I have argued, space and place are socially constructed on an ongoing basis by a variety of agents. In this section, I outline the impact of law vis-à-vis legislation and policy, in producing an imposed First Nations spatiality. Recent work in the field of critical legal geography by scholars such as Delaney, Ford and Blomley, acknowledge the impact of law on space when they write: “As law and society; so space and society” (2001, p. xvi). Scholars of both law and geography observe that the distinct cultures of each academic discipline have long delayed any substantive cross-fertilization between geographic and legal traditions (Blomley and Clark, 1990; Pue, 1990; Blomley, Delaney and Ford, 2001; Blomley, 1994). Legal scholar Wesley Pue offers a description of law in legal scholarship as, “a ‘thing’ which stands apart from human society. It is portrayed as monolithic, nonplural, univocal, and -hence-uniformly good, bad, or something in the middle” (1990, p. 570). Pue supports Blomley and Clark by describing law as a “profoundly anti-geographical faith” (1990, p. 566) in which “contexts of all sorts-gender, class, religion, cultural, political, historical, or *spatial* [my emphasis] - are the enemies of Law” (1990, p.566). Pue personifies Law to be a social construct that, “is the antithesis of region, locality, place, community” (1990, p. 566). While wary of legal scholarship, Pue remains hopeful that new critical legal scholars can begin to bridge

the shortcomings of legal scholarship by incorporating geographical knowledge into legal discourses. Furthermore, recent insights from critical legal geography suggest:

[M]uch of the world we live in is shaped by and understood (by ordinary people as well as experts) in terms of law. Our everyday conceptions of authority, obligation, justice and rights, our dealings with others and our relations to collective institutions such as the state are all structured, in part by legal norms, discourses and practices (Delaney, Ford and Blomley, 2001, p. xiv).

Scholars working in this new field agree that conceptualizing space can significantly enrich the study of law and associated legislation and policy. Feminist geographer Audrey Kobayashi, for example, notes that the juncture of law and geography offers significant extensive research potential that only recently has been tapped by geographers and some legal scholars (1990, p. 448). As Blomley and Clark note, geography can offer the study of law “an extension [into the realm] of social theory,” thus exposing and challenging its inherently aspatial assumptions (1990, p. 442). Merging the two disciplines can map geographic scholarship onto the “larger debate concerning law and its social and political nature” (Ibid.).

Although still somewhat limited, *geojurisprudence* emanating from legal studies has developed in tandem with critical legal geography as an interdisciplinary approach to questions of how space, whether philosophical, socially produced or cosmic in nature, is fundamentally woven into our legal institutions. Blomley describes this as “an attempt to retheorize law as social and spatial...” (1994, p. 37). Nevertheless, legal scholars have been slow to embrace this multidisciplinary (Pue, 1990, p. 567). A multidisciplinary law requires a change in orientation, a redefining and redefinition that incorporates geographic scholarly discourse. Blomley, along with Pue, maintains that law has embraced interdisciplinary through geo-legal

scholarship only insofar as it utilizes concepts borrowed from other social science disciplines, while still remaining relatively resistant to outside influences that might fundamentally challenge the foundations of legal thought (1994, pp. 4-5).

Nevertheless, critical legal geography interrogates how law produces space, and, conversely, how space produces law. Blomley summarizes this point when he states:

These critical geographies are powerful and compelling. They seek to reconstruct the law-space nexus so as to accord proper recognition to both *and* to affirm the complex interplay of the two, evaluating the manner in which legal practice serves to produce space yet, in turn, is shaped by a sociospatial context. The 'geography' of law emerges as much more than the crude confrontation of 'law' and 'space' (1994, p 51).

It is clear that law and geography have an inextricable connection to each other which is not always easy but certainly essential for meaningful discourse.

Production of Space by Law

With a better understanding of the uneasy relationship between the disciplines of law and geography, I now turn to the specific ways in which law produces space and can be employed to construct place. Law is an unwilling actor in the discursive and material production of space. While there are many agents involved in the production of space, it is law and associated legislation and policies that are the dominant agents in this spatial production and the focus of this thesis. Law, as an institution, discursively produces and re-produces space through legal discourse (i.e. scholars, academics, judges, lawyers, students etc.) and the legal system (i.e., courts, legislatures, schools, associations etc.). Blomley states that "law has effects that are, quite often, spatial" (1993, p. 5). Bryant G. Garth and

Austin Sarat (1998) draw our attention to how the relevance of law is dependent upon its linkages to the economic, political and social institutions of a society, all of which rest upon the social production of space. Law, like space, is socially produced, although the spatiality of law is too often glossed over as legal scholars privilege the relationship of law to time, rather than space. Our understanding of the complex intersections between law and space in shaping social relations, therefore, requires the simultaneous conceptualization of legal and spatial theory. Blomley, Delaney and Ford and summarize this best when they state:

...social reality is shaped by and understood (or constituted) in terms of the legal, it is also shaped by and understood in terms of space and place. Consider our everyday life paths, the usually taken for granted experiences of access and exclusion, the more disruptive and disquieting experiences of access and expulsion. Consider the territorial bases of communities and states and their role in the complex processes of identity formation. (2001, p. xv)

Law affects our social lives by producing and reproducing our everyday spaces and places. The material production of space by law is represented by the very territories that are created by legislation. Confederation, for example, is based upon the material historical production of provincial and territorial space. The role of historical precedence as a cornerstone of our legal system, for example, negates the existence of law's spatiality by acknowledging only a temporal frame. Blomley agrees that in order for law to situate itself within society, legal scholars position law exclusively in its historical context and embrace historical critique in order to ascribe normative worth in a societal context (1994, p. 15). Blomley argues further that it is through the rigorous customary application of law and its enduring history (legal precedents, or historical legislation such as the *Constitution Act, 1867*), that law

provides society with a sustained sense of stability (1994, p. 17). In fact, the supremacy of law is maintained by a conceptualization of law as “a decontextualized, highly abstract and depersonalized rationality” (Pue, 1990 p.566). In this, there is a pervading belief of stability and insularity. However, since law is as much a social construct as space is socially produced, then it is fair to suggest that law and its associated legislation and policies are continually formed, contested, and revisited because law is neither static nor immutable.

Law, Geography and First Nations

Law and geography have influenced the enduring spatiality of First Nations since the arrival of Europeans to the shores of this continent. With foreign laws and abstract ideas of land tenure, the spatial identities of First Nations were socially constructed through the non-native, colonial imagination. Legislation challenged existing Indigenous space and imposed a new “Indian” space realized via the *Indian Act* and reserve system.

The experience of First Nations in Canada and our historical encounter with law as an instrument in the production and re-production of Indian space has gone largely unaddressed by geographers and legal scholars alike. However, critical legal geography can inform the discussion in relation to First Nations spatiality. This is a brief discussion and is intended to infuse the theoretical discussion with First Nations spatiality. Chapter Four will offer a more detailed analytical discussion regarding First Nations, the *Indian Act* and spatiality.

In relation to First Nations, the re-production of space is no more apparent than with the creation of Indian reserves by early Canadian federal legislation vis-à-vis the

Indian Act. Blomley suggests that “legal interpretation actively produces space” (1994, p. 45) but I would offer that in the case of First Nations in Canada, the very creation and enactment of statutes and legislation produced new colonial space. Reserves become places of isolation and segregation. They also served to impose an Indian-specific spatialized identity based upon colonial geo-legal territories. Blomley and Pratt argue that, “[s]pace also shapes the ways in which rights are constructed, contested and put to work because liberal rights help define, and operate within, sharply demarcated spaces” (2001, p. 155). This is certainly true for First Nations and our relationship with the reserve as many of our rights as status Indians are tied to our “ancestral” reserve.¹⁷ Furthermore, they explain that, “[t]he meanings and politics of rights, therefore, cannot be divorced from the spatial contexts that shape their meanings, and the spatialized politics that reveal their contestation” (ibid., p. 156). For First Nations, therefore, rights are inherently bound to the *Indian Act* which sets out to discursively re-produce First Nations space and reconstruct our sense of place, reorienting us to a reserve spatiality. It is the power of law and related legislation that can annihilate space as it produces others. Thus, Indigenous space was annihilated and reproduced as reserves were established across Canada.

Law and the Spaces of Exclusion

Finally, a brief overview of the historical geography of First Nations from a geo-legal perspective illustrates the extent to which law and policy produce space

¹⁷ The term “ancestral” reserve is used to describe the reserve which all First Nations who have

but, at the same time, exclude certain peoples and practices from particular spaces. Before the arrival of the first Europeans to North America, Indigenous peoples lived freely throughout the continent, exercising an intrinsic sovereignty over the lands. As Sharon Helen Venne explains, with the arrival of the Spanish to North American shores in 1492 and their embrace of the doctrine of *terra nullius*,¹⁸ came the general acceptance of a “doctrine of discovery” that permitted the “legal” colonization of North America by denying Indigenous peoples the legal status of person (1998, pp. 2-4). Integral to this doctrine was the acceptance and understanding that “Indian” peoples were less than human (i.e., not persons), thus facilitating the dispossession of our lands. Rapid dissemination of this doctrine in the “new” world encouraged a rupturing of the relationship between First Nations (people) and their territory (space). This sanctioned early colonial officials to assert authority over the lands that had been sovereign Aboriginal territories since time immemorial and to initiate a systematic process of ethnocide.

Denying First Nations peoples the status of persons justified the erasure of Indigenous concepts of space and territory. In turn, the imposition of European law further adversely affected the relationship of Aboriginal peoples to territory and, fundamentally, their belonging in this newly-reordered colonial space. Newcomers to North America declared the land empty and free for claims by their respective sovereigns, relying on a tenet of European land tenure that deemed it illegal to confer land ownership on “non-persons”. Legal doctrines and codes of the

Indian status are legally bound to or associated with by way of historical indications.

¹⁸ The concept of *terra nullius* is based upon the assumption that lands are uninhabited, uncultivated, and therefore not owned. This is the driving principle behind the doctrine of discovery. Indigenous peoples across the globe have faced this European doctrine and today, remain largely dispossessed of their traditional lands.

colonizers imposed this binding and exclusionary definition of Indians and, consequently, Aboriginal peoples in North America found themselves divorced from their traditional territory, both physically and conceptually.

The dispossession of First Nations peoples from our lands accelerated with the adoption of the reserve system (first in use as early as 1830) that established a dependency cycle for First Nations peoples that continues to dictate the spatiality of First Nations peoples to the present day (Gagné, 1994). Our identities as First Nations peoples were re-drawn and bound to small discontinuous tracts of land set aside by early colonial governments in peripheral regions deemed undesirable by the European settler population. The spatial re-organization of Indian populations onto reserves ensured the sedentarization of many traditionally nomadic First Nations peoples. With Indian peoples removed from their traditional territories and lifestyles, the reallocation of territory progressed swiftly throughout the new Dominion. The remoteness of many reserves was justified as essential so that Indian people could continue their traditional ways of life with little interference. The reality of reserve locations in peripheries of the new Dominion had multiple benefits for the dominant Euro-Canadian society. The reserve system freed desirable land for settler agricultural production and physically distanced Indian peoples from non-Indian populations. The creation of these “Indian spaces” eased the burden of providing state services to Indian populations, as well as facilitated surveillance and social control over Indians. Leslie Upton states that the rationale for the policy was the result of an acceptance “of sentiment and interest: the sentiment that a superior race (the British) had definite responsibility towards an inferior (the Indian) coincided

with the self-interest of the British government in cutting costs of colonial administration” (1973, p. 51).

In short, herding Indian peoples onto Cartesian-based, territorially-bounded, reserve lands administered under European-inspired colonial law, re-defined the spatial identities of First Nations peoples. The laws and policies “adopted” vis-à-vis Indians, marginalized them from mainstream Canadian society and enshrined the colonial definitions of what constituted “Indian” space.¹⁹

As living conditions on reserves became unbearable, migration of First Nations peoples from reserves became more common. Because “Indian” identity, however, was legally tied to spatially-based reserve residency,²⁰ First Nations peoples who sought better opportunities off-reserve found themselves dispossessed not only from their reserve lands, but severed from their culture and identities by their migration. Nevertheless, First Nations challenged those spaces allocated to them by relocating to ‘non-Indian’ spaces such as cities and towns, thus questioning accepted notions of *where* First Nations peoples belong. The increasing urbanization of First Nations peoples counters the pervasive stereotype that all First Nations peoples are from a reserve. According to the 2001 Census, just over 52% of the North American Indian identity population²¹ (608,850) resides in non-reserve urban and rural areas (Statistics Canada, 2001). Despite this reality, a number of

¹⁹ For further discussion on cartographic impacts of Indian spatiality see Sparke, 1998; Rundstrom, 1993, 1991; Brealey, 1995; Brody, 1988.

²⁰ Of particular mention are the exclusionary clauses in the *Indian Act* that have been excluding First Nations peoples based on identity/ethnicity and association with a reserve territory. See, for example, sections 2, 4, 6, 7, 18 and 7 of the *Indian Act*.

²¹ The Census definition for the identity concept is as follows: “Aboriginal Identity refers to those persons who reported identifying with at least one Aboriginal group, i.e. North American Indian, Métis or Inuit. Also included are individuals who did not report an Aboriginal identity, but did report themselves as a Registered or Treaty Indian, and/or band or First Nation membership.”

First Nations legal rights remain tied to spatial identities legally bound to the reserve system.

Conclusion

The contemporary dilemma remains that spatially incongruous laws and policies are out of step with the ever-changing spatial orientation of First Nations peoples in Canadian society. As I explore in Chapter Four, the *Indian Act* in its various manifestations continues to serve as the prime vehicle through which to cement the marginalization of First Nations peoples and determine our spatiality. In the case of education for First Nations peoples as outlined in the *Indian Act*, it too also served as an another pivotal tool of ethnocide and assimilation into Euro-Canadian society and continues to do so by ignoring First Nations spatiality.

Before exploring the spatial implications of the *Indian Act*, however, and analysing post-secondary education programs and the *Corbiere* decision using a geo-judicial framework, Chapter Three outlines the parameters of my methodological approach to this inquiry.

Chapter Three

Methodological Approaches

Introduction

As outlined in Chapter One, the initial impetus for this research was grounded in personal experiences with my First Nation band while receiving post-secondary education assistance. Access to, and support for, post-secondary education as a non-reserve First Nations person proved, at times, to be particularly challenging. I had little recourse, political or otherwise, when dealing with band administrators regarding issues related to financial assistance. Gradually, I realized that my band administrators, Councillors and Chief were not politically accountable to me or to other off-reserve/non-reserve First Nations people. Despite my growing dissatisfaction with the administration of the Post-Secondary Student Support Program (PSSSP), I had no political course of action due to an outdated and spatially discriminatory *Indian Act*. Because I have always lived off the reserve, I was ineligible to vote in band elections as outlined in *Section 77* of the *Indian Act* that made it a requirement that I '*ordinarily reside on reserve*' in order to vote for Chief and Council. Although devolution restored limited autonomy and power to the band, it also gave my band Council authority to decide upon issues concerning my life and well-being, particularly whether I would receive post-secondary sponsorship and eligible funds with amounts falling within PSSSP minimum requirements.

As I began to analyze post-secondary education assistance and question the validity of s. 77 of the *Indian Act*, my training as a geographer led me to see that the

reserve residency requirement discriminated against those who resided off the reserve. It was an inequality that was spatially-based, and thus potentially generalizable past my own experience. I became interested in collecting the stories of other post-secondary First Nation students in order to explore their experiences with their own First Nations band to see if this indeed was generalizable. As postulated in Chapter One and argued in Chapter Two, exploration of the critical legal geography literature confirmed for me that spatial and legal theories afford an appropriate theoretical framework with which to consider these issues.

In this chapter, I describe the research design developed to facilitate this study. At the centre of any research project is the primary research question that drives the generation of new knowledge. In the case of this thesis, my question is: To what extent do reserve residency and spatial identifiers influence a status First Nation university student's experience with the PSEAP/PSSSP as administered by First Nations bands? As I argued in the previous chapter, this question is best interrogated at a theoretical level through a geo-legal lens. The primary methodological approach chosen for this thesis is informed by qualitative research. I have chosen to rely on qualitative, rather than quantitative methodologies in order to emphasize the unique experiences of the students and graduates with devolution, post-secondary funding administration and the effects of the *Corbiere* decision on their lives.

Qualitative research utilizes a variety of methods such as deconstructionism, interviews, questionnaires and surveys, cultural studies, ethnographies, and participant observation (Denzin and Lincoln, 1994, p.3). Researchers relying on qualitative approaches often seek to understand human social processes in the

context of personal experience and historical events in an attempt to apply meaning to these events, situations and actions. It is the unstructured character of qualitative methods that allows for responsiveness by the researcher to the empirical data, thus providing opportunities to explore the unimagined. Qualitative methodologies are best suited for this thesis, therefore, because I wish to capture the experiences of First Nations university students in relation to post-secondary education policy and the PSEAP/PSSSP programs as well as their own spatial identities and those legal and socially imposed identities rooted in the *Indian Act*.

Research Design Model

In qualitative research, the design process is a progression of research model formulation. Joseph A. Maxwell notes that this is an interactive process in which balances between the design elements are tweaked until a successful constancy is struck (1996, p. 4). I have used a similar approach to Maxwell's model of qualitative design formulation (1996, p. 5), to guide my own research design. Given the numerous factors that could possibly influence this research and the data collected, such a model enables the framework to be attuned as required.

Maxwell suggests there is "no cookbook" for selecting the best methodological approach in qualitative analysis (1996, p. 63). I have selected two qualitative approaches to address my preference for a reflexive model. The first method employed is spatially-informed policy analysis which I use in Chapter Four to examine s. 77 of *Indian Act* in relation to reserve residency and the implementation of the Post-Secondary Student Support Program. Although policy analysis may not always be categorized as a form of qualitative research, scholars Katherine Graham,

Carolyn Dittburner and Frances Abele suggest that document-based research on policy is akin to taking a journey through time where policies lay like relics, indicators of the concepts and terminology used as well as providing a record of how policy has changed over time (1996a, p. 37). Following Graham's insight, I begin Chapter Four by tracing the emergence and implementation of the PSEAP/PSSSP programs, using insights from critical legal geography to analyze the strengths and weaknesses of both programs. I employ similar strategies to expose the spatial incongruities of the *Indian Act*, specifically s. 77. I offer a geo-legal analysis of the *Corbiere* case and evaluate the opportunities that decision opens to redressing some of the spatially-discriminatory elements of the *Indian Act*. The spatial analysis in this chapter is innovative in that it links the PSEAP/PSSSP, s. 77 of the *Indian Act* and the *Corbiere* decision in order to consider the potential impact that *Corbiere* provides with respect to the ending the discrimination experienced by off-reserve/non-reserve First Nations post-secondary students under the PSSSP.

The second methodological approach appears in Chapter Five where I utilize a Snapshot Analysis that employs a sample survey that involves administering questionnaires and conducting one-on-one interviews. It should be stressed at this juncture that this survey had a very small sample and was not intended to be representative of a larger population. Rather, it was used to provide a "snap-shot" and capture the experience of a small number of individuals. The survey is not critical to the study but does serve my research by giving voices to the first-hand experiences of both First Nation administrators and First Nation off-reserve university students. This approach was selected to test only whether my argument is generalizable beyond my personal experiences. This sample survey method

included a self-administered questionnaire to bands administrators responsible for PSEAP/PSSSP, and included questions specifically about the *Indian Act* and the potential impacts of the Supreme Court decision in the *Corbiere* case. The second half of this technique involved the administration of a face-to-face questionnaire with off-reserve/non-reserve First Nations university students or former students that included open-ended interview questions. The inherently reflexive nature of this technique afforded opportunities for participants to share their experiences of the PSEAP/PSSSP. Unstructured, open-ended interviews "...allow the researcher to focus on the particular phenomena studied; they trade generalizability and comparability for internal validity and contextual understanding and are particularly useful in understanding the processes that led to specific outcomes" (Maxwell, p. 64). In employing a sample survey methodology, this research gives voice to First Nation band administrators and university students and generates further understanding of spatial and legal incongruence of the *Indian Act* and how it perpetuates spatial-based discrimination of off-reserve First Nations people.

A final element of research design relates to validity. This refers to the "level of correctness or credibility of a description, conclusion, explanation, interpretation, or other sort of account" (Maxwell, p. 87). To be on the "wrong side" of validity as a researcher refers to the possibility that the questions posed by the researcher may be poorly formulated, thus the interpretations and findings may be questionable. Unlike in quantitative approaches, there are always threats to validity in qualitative research that cannot be controlled for, due to the fact that there are no statistical tests or control groups. Nevertheless, researchers may limit their deleterious effects. The description of the account must be as accurate as possible either through

rigorous note-taking or audio/video recordings and complete transcription of the participants' personal accounts. In order to achieve the most accurate representation of a participant's account of events, situations or actions, a researcher must be self-aware of her/his own biases. In this thesis, attention was given to ensuring that information was recorded properly and that the subsequent interpretations of participant personal accounts were conducted in a self-aware manner.

As a researcher who wears many caps – Anishnawbe woman, First Nations, non-reserve resident, and graduate student - I am keenly aware of my own biases and the impact of my personal history. Although my experiences with my own reserve administrators were not always positive, I am aware that much of this interaction was not within the administrators' control. Federal legislation and policy continues to have a tremendous impact on how First Nation reserves work with their reserve, off-reserve/non-reserve populations. Personal bias, however, does not prevent good research; rather, good research aims to make bias transparent so as to limit its impact on the research. I clearly have a personal bias in this area of research. Consequently, I did not undertake this thesis with any pretence of objectivity as I have been subject to the very policies and legislation that my research examines. During the interviewing process, I was an active participant, as the First Nation students with whom I spoke encouraged me to share my experiences as well. The exchange of experiences between participant and researcher created a comfortable atmosphere and decreased the formality of the interviews, as I was able to share my experiences with several participants who have resided off the reserve most of their lives. My identity as an Anishnawbe person was

made known to the interviewees and I self-identified as a First Nations person in my correspondence with band administrators.

Participatory Snapshots: Sample Survey Techniques

The participatory snapshot method required two groups of participants: post-secondary band administrators and off-reserve/non-reserve First Nations students or former students. Both parties were included to ensure a fuller understanding of the spatial issues facing off-reserve First Nation students versus those related to the administration of the post-secondary education program by First Nations bands. Separate questionnaires were developed for each group of participants. (See Appendices 3 and 4)

The post-secondary administrators surveyed were limited to members of First Nations bands located in Ontario (Appendix 1). I imposed this restriction due to time, financial and logistical constraints. Although the *Indian Act* and the Supreme Court ruling in *Corbiere* fall under federal jurisdiction, both apply to all First Nations members in all provinces and territories and therefore my exclusive focus on Ontario did not compromise the research findings.

To generate my sample of post-secondary administrators even though it was very small, a total of 10 First Nation reserves were randomly selected from throughout the province. The sample frame was DIAND's Community Profiles listing for the 139 reserves in the province. A systematic sampling method was used with a random start. Bands were listed alphabetically with every Kth reserve selected and

questionnaires mailed out, including a cover letter.²² Unfortunately, of the 10 questionnaires sent out, only 2 responded. This may be due to reluctance on the part of band administrators to participate in yet another research project (i.e., unwillingness, issues of autonomy, etc.) or simply insufficient resources (i.e., time, personnel, etc.). Because I took measures to encourage participation, the low response was disappointing.²³ Despite this low response rate, the returned questionnaires do provide some insight into First Nations band administrators' experiences of post-secondary educational policy, as I describe in Chapter Five.

I created a pool of First Nations university students by applying purposeful and snowball sampling strategies (Maxwell, 1996, p.70; Denscombe, 1998, p. 16; Heckathorn, 1997, p. 174). Purposeful sampling is a deliberate and directed approach that seeks out persons or events that will provide the information needed given that a specific population is sought (Maxwell, 1996, p. 47). I began with respondents chosen based on my prior knowledge of their attendance at university. They then identified other prospective respondents. In snowball sampling, respondents offer the researcher names of other potential participants. Douglas Heckathorn suggests that snowball sampling works best when the population is largely "hidden" or where privacy and confidentiality concerns are relevant (1997, p. 174). In this research, sampling had to be sensitive to the reality that some First Nation reserves administer their post-secondary education assistance to a small number of students; therefore, although confidentiality was assured, respondents

²² This means, for example, that every third or tenth reserve was selected. For these reasons of confidentiality and privacy, the Kth value will not be revealed in this thesis.

²³ Questionnaires were kept short as to minimize respondent burden; pre-paid and addressed return envelopes were included to increase the likelihood of bands participation. Follow-up calls were made to confirm receipt of the questionnaires but nevertheless questionnaires were not returned by eight

may feel unwilling to participate if the number of students from their reserve community population is small and the respondent's identity may be at risk. In total, I generated a potential pool of 15 off-reserve First Nations university students and 10 agreed to participate. Despite this small sample size, results did prove invaluable in furnishing a "snapshot" of student experiences as well as providing me experience with survey methodologies and interviewing. The results are in no way meant to represent all off-reserve status Indian university students.

The students that agreed to participate completed an interviewer-administered questionnaire followed by an unstructured interview with open-ended questions (see Appendix 4). All but one student consented to have their interview taped and transcribed. Table 3.1 summarizes the topic area coverage for both the band administrators and student samples. Band administrator questionnaires collected information on PSE administration, fiscal accountability, student support mechanism, program devolution and impacts of the *Corbiere* decision. Student questionnaires addressed issues such as their university education and experiences of various levels of funding. Unlike the band administrator questionnaires, the students were asked to participate in an open-ended interview portion that provided additional information on PSE funding and accountability, spatial imagining and the *Corbiere* decision.

Table 3.1: Overview of Both Questionnaires by Part and Section

Part	Section	Band Administrators	First Nation Students
A	A	First Nation Information	Personal Information
	B	Post-Secondary Education Administration	University Education
	C	Accountability & Support	University Funding
	D	Opinion Based (write-in) <ul style="list-style-type: none"> • Administrative challenges • Program devolution • <i>Corbiere</i> Decision 	Bands or DIAND Funding
B		- Not applicable -	Open-ended Interview <ul style="list-style-type: none"> • Funding and Accountability • Spatiality • <i>Corbiere</i> Decision

To ensure comparability of results between the band administrator and student samples, a triangulation strategy was employed to ensure convergence of the subject matter such as PSE administration, accountability, funding and the *Corbiere* decision. Triangulation is important as it reduces the effects of systematic bias or limitation of a given methodological approach (Maxwell, 1996, p. 75) and also offers the researcher the possibility of a different perspective that can enhance overall validity to the research design (Denscombe, 1998, p. 85). Triangulation is not meant to prove a hypothesis is correct, for example, as in quantitative tests of significance; rather, triangulation provides some level of confidence that the data has consistency across various methods (Denscombe, 1998, p. 85).

Ethical Considerations

A few comments on ethical research are pertinent as human participants were integral to this research. The Social Sciences and Humanities Research Council of Canada (SSHRC) has published an extensive ethical guideline called the Tri-Council Policy Statement-Ethical Conduct for Research Involving Humans (1998). The policy provides an overview of how ethical research should be conducted with human subjects and includes a section that specifically outlines how ethical research should be conducted with Aboriginal people. As a non-reserve band member, I take exception with several of the suggestions of Tri-Council policy statement. Of greatest concern is the requirement that the researcher contact Chiefs and Councils before approaching community members to participate in research. Like the *Indian Act* discussed in this thesis, such guidelines are premised on the assumption that all persons are deemed by the government to be members of legally sanctioned communities. There is an assumption that Chief and Council represent community interests of every band member even though until the 1999 *Corbiere* decision, off-reserve First Nations members could not vote for the elected representatives of bands.

Although the *Corbiere* decision made elected representation more attainable for off-reserve First Nations, there still remains an issue of power with the autonomy of individuals subsumed to the power of a collective community-based population. The Tri-Council policy statement assumes that all individual bands members are part of the collective reserve community. In other words, it supposes that all First Nations persons have a spatial identity linked to their First Nation community.

Not all off-reserve First Nations people, however, include themselves in this reserve community or identify with their First Nation band's political process. This is probably true for those who have never resided on a reserve. To suggest to researchers, therefore, that they must contact the Chiefs and bands Councils in order to identify potential participants (Ibid. p. 6.2) not only risks compromising confidentiality, and ignores the autonomy of the individual; it also potentially limits the identification of a pool of suitable participants. While SSHRC's policy intends to respect and protect the self-governance of First Nations, it assumes heterogeneity of each First Nations band in that each Chief and Council exerts authority over each band member, regardless of residency. The Tri-Council policy presumes a social heterogeneity of the First Nations population and thereby does not account for the spatial heterogeneity of band members who are both spatially and socially removed from the reserve community. As an off-reserve status Indian, I would be deeply insulted if a researcher sought permission from my Chief and Council when I feel that they have no authority over me. For this reason, I did not follow SSHRC's guidelines as they related to Chief and Council's authority regarding access to band members. This rationale was presented to, and accepted by, the University of Northern British Columbia's Research Ethics Board.

For the interview component of the research, I supplied participants with an Informed Consent Form as well as confidentiality assurances. A brief description of the research project outlined the issues under investigation and stressed that respondent participation was voluntary and the information collected confidential. Given the small number of participants in the snapshot portion, neither the names of the interviewees nor the First Nations to which they belonged are used. Other than

the exception noted above, the interviews were conducted according to the ethical guidelines prescribed by SSHRC.

Chapter Four

Legislation and Indian Policy: Looking Closer

“There are forces that would like to see us eliminated from the face of the earth. If they can no longer do it through actual physical destruction, then it will be attempted through laws that strip us, point by point, of our powers to govern ourselves as peoples. It will be attempted through systems and institutions whose appropriateness and ineffectiveness will leave us in a state of division and turmoil, and make us doubt our existence as peoples.”

- Former Grand Chief Matthew Coon Come speaking in Halifax, July 17, 2001²⁴

Introduction

The comments of former Grand Chief, Matthew Coon Come give voice to the struggle and opposition First Nations face as we negotiate with the Canadian government to improve the quality of life for First Nations. As I have argued thus far, federal policies and legislation that are spatially inaccurate and do not reflect the geographic reality of First Nations peoples, only serve to perpetuate the divisions between those populations designated as on- and off-reserve. Such identifications continue to divide First Nations peoples and impede progress towards ending discriminatory and segregationist practices. In particular, First Nations peoples are generally categorized according to two key legislatively-based identities. The first relates directly to the *Indian Act* and designates persons according to whether or not they are status or Registered Indians. The second is determined by whether one inhabits “Indian spaces” defined almost exclusively as the reserve. These binary

²⁴ *Ottawa Citizen*, July 19, 2001: A17.

identities are commonly referred to as “status”/“non-status” and “on-reserve”/“off-reserve” but their implications for First Nations are far more complex and relate to the ways in which the spatiality of First Nations has been socially constructed across space and time.

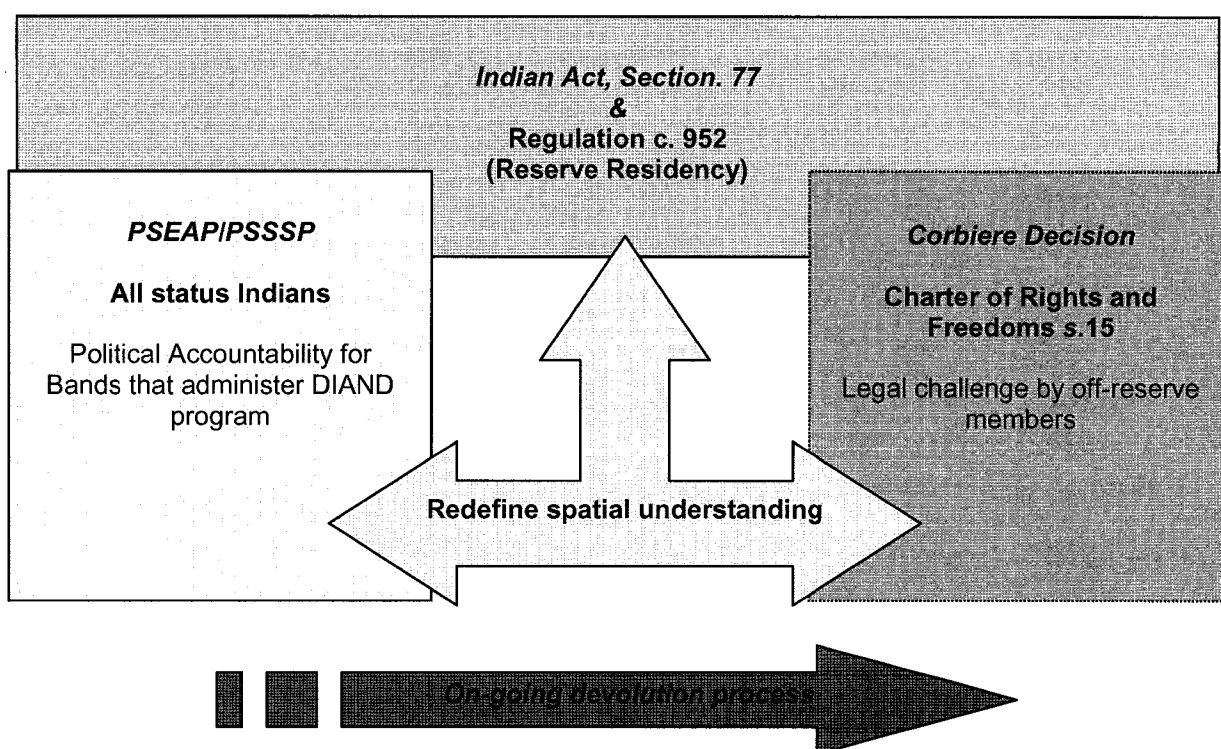
In this chapter, I focus on three separate elements that together support my overall argument that off-reserve status First Nations post-secondary students are discriminated against by inequitable and non-representative policies and programs driven by incorrect constructions of their spatiality. First, I examine post-secondary education by analyzing the Post-Secondary Education Assistance Program (PSEAP) and the 1989 revised Post-Secondary Student Support Program (PSSSP), both federally developed and administered programs designed to assist all status Indian students in attaining post-secondary education. What is critical to this Post-Secondary Education (PSE) analysis is my reading of devolution as a spatial process that is affected by the spatial myopia of the *Indian Act*, legislation that remains primarily responsible for directing Aboriginal-state relations in Canada.

The middle section of the chapter surveys the spatial discrimination embedded in the *Indian Act* which has defined the geo-legal configuration of First Nations peoples for well over a century. The *Indian Act* still affects the lives of status and non-status First Nation peoples on a daily basis with little regard for their geographic reality of on- and off-reserve. Specifically, I am interested in the residency requirement for electoral eligibility, the infamous Section 77.²⁵ First

²⁵ The *Indian Act* has an accompanying set of regulations to guide the enactment of various sections of the *Act*. In the case of s. 77, regulations c. 952 entitled *Regulations Governing Indian Band Elections* provides detail on the Chief and band electoral process by First Nations. Please see pages 69-70 of this Chapter for excerpts from the *Indian Act* and the Regulation.

Nations students who reside off-reserve, either temporarily in order to attend university or who ordinarily reside off-reserve, are subject to s. 77, and, as a result, have little political recourse if unsatisfied with the administration of the PSSSP. Finally, I investigate the Supreme Court of Canada decision, *Corbiere v. Canada and the Batchawana Bay Band*, which ruled that s. 77(1) of the *Indian Act* is discriminatory to off-reserve First Nation members under s. 15 (1) of the *Canadian Charter of Rights and Freedoms*. The impact of this challenge to the spatial inaccuracies informing the existing *Indian Act* should prove beneficial to the future rights of off-reserve members in elections. This decision potentially facilitates the participation of off-reserve First Nations peoples in the political processes of their bands and encourages greater accountability of First Nations Chief and band Councils to all members, regardless of residency status. My analysis teases out the spatial incongruity of the *Indian Act* and the Post-Secondary Education Programs (PSEAP/PSSSP) and assesses the impact of *Corbiere* decision on the relationship between off-reserve university students and their elected Chiefs and band Councils.

Figure 4.1 illustrates the connectivity of the topic areas under consideration. The *Indian Act* is the legislative backdrop to post-secondary education (PSEAP/PSSSP) and the *Corbiere* decision. Consideration of the PSEAP/PSSSP, the *Indian Act* and the Supreme Court *Corbiere* decision together, therefore, calls into question persistent notions that First Nations' spatiality remains bounded to colonial imagination of "Indian space." Integrated analysis of these elements challenges the pervasive colonially-inspired acceptance that most, if not all, First Nations peoples come from reserves.

Figure 4.1: Conceptual Representation of Topic Areas

First Nations Post-Secondary Education

Over the past century, attendance at post-secondary institutions was rare for First Nations, even though education was, and remains, a treaty right. Historically, post-secondary education was associated with assimilation through enfranchisement of an Indian,²⁶ who upon completion of a university degree was forced to rescind their identity as an Indian (Castellano, et al., 2000, p. 171; Dickason, 1992, p. 284). Although enfranchisement as part of Indian legislation has since been rebuked, the belief that post-secondary education is still assimilationist endures. Nevertheless,

²⁶ Enfranchisement on the basis of a status Indian attaining of a university degree was legislated in the 1850-51 *Indian Act* (Dickason, 1992, p.284). As a consequence, status Indians were reluctant to seek out post-secondary education.

under the terms of the *Indian Act*, the federal government through the Minister for the Department of Indian Affairs and Northern Development is vested with the fiduciary responsibility to provide education to Indian and Inuit children who reside on reserve or Crown lands.²⁷ In this discussion, I focus on DIAND's post-secondary education policies, exploring the spatial implications for status First Nations students who normally reside off the reserve. I first offer a brief overview of the PSE program (PSEAP/PSSSP) outlining the history and key elements of this program.

PSE Program History

In the 1950s, post-secondary education support for First Nations was not part of the any official federal government program (Canada, DIAND, 2000b, p. 1). Nevertheless, financial support was provided to a limited number of students on an individual basis (Ibid.). Specifically, the federal government of 1956 began to facilitate vocational training (Canada, DIAND, 1972, p. 31) at the post-secondary level with the aim of improving, "the level of education of Indians to standards that will enable them to take advantage of social and economic opportunities for advancement" (Ibid, p. 1). Additionally, support for early post-secondary education can be attributed to the recognition of treaty obligations by the federal government to provide education, obligations enshrined in the *Constitution Act* (Assembly of First Nations, 2005a, p. 7). The Department of Indian Affairs and Northern Development (DIAND) introduced the first impromptu financial assistance "program" in 1968 to encourage status Indians and Inuit people to attend technical, vocational, college

²⁷ DIAND is responsible for legislation, programs and policies relating to status Indians and Inuit. In this thesis, I focus only on the status Indian population.

and university institutions. Its primary purpose was to increase the employment opportunities for First Nations by increasing their education levels (Canada, DIAND, 1972, p. 1). At that time, there were only 250 Status Indians enrolled in post-secondary institutions and support was sought under the 1976 *Adult Occupational Training Act* (Canada, DIAND, 2000b, p. 2). In October 1977, DIAND officially introduced the Post-Secondary Education Assistance Program (PSEAP) due to an increasing number of First Nations people pursuing post-secondary education. Of interest is that the initial financial support was funnelled through a discretionary program, “one was not mandated by an Act of Parliament” (Assembly of First Nations, 2001, p.1). Rather, the PSEAP was funded as a component of social policy not under legislation (Canada, DIAND, 2004, n. pag). This is significant because it provided the opportunity for the federal government to alter or even end the PSEAP without consultation of its client base of status Indians.

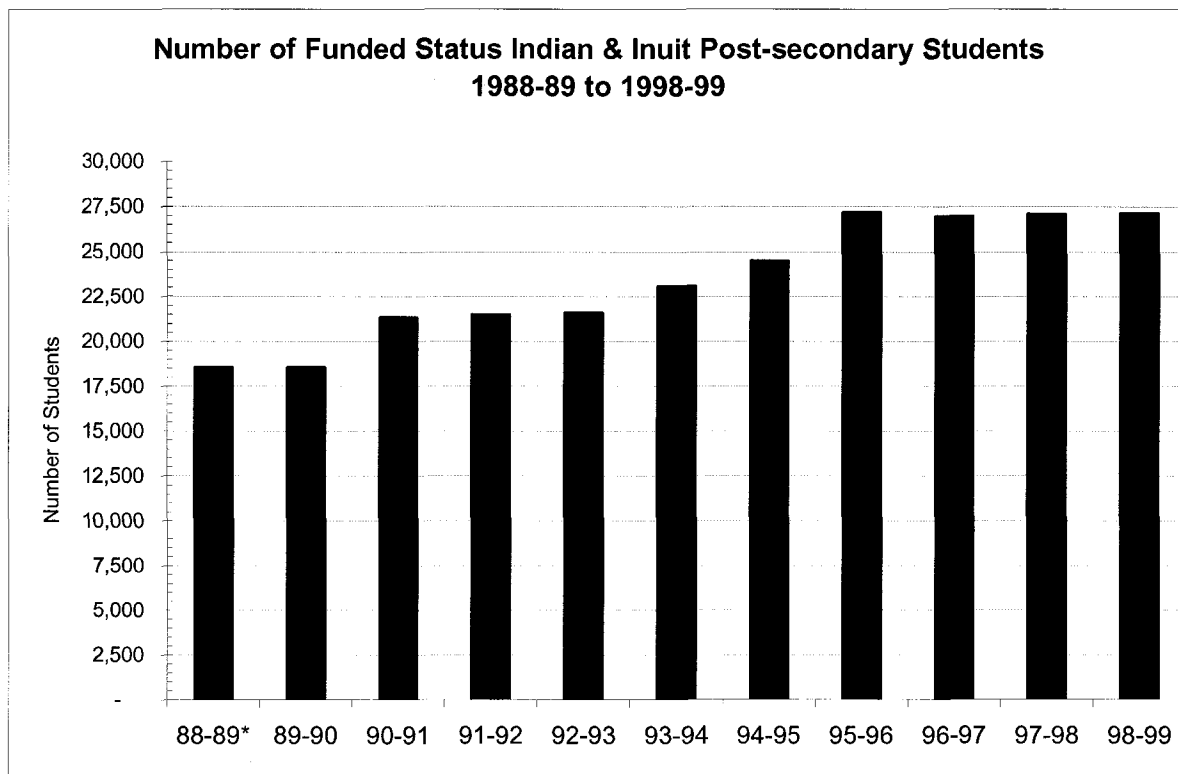
The objectives of the PSEAP were to increase accessibility and enrolment of status Indian and Inuit students in post-secondary education. For the purpose of this thesis, what is of critical significance for status Indians, is that the program did not specify reserve residency as a requirement for eligibility for assistance, only legal Indian status. The PSEAP specified nine types of financial support including a training allowance, special shelter (rent subsidies), tuition for full and part-time studies, travel allowance, clothing, special clothing and equipment, books and supplies, special tutorial assistance, and special services for daycare (subsidies). The program was largely administered directly to all status First Nations students by DIAND via a local education office, DIAND regional office or with the cooperation and assistance from post-secondary institutions. Prior to post-secondary devolution,

students applied directly to DIAND for funding and assistance. It should be noted that as PSEAP was administered as a more centralized program, on-reserve PSE students were spatially disadvantaged, as many were from rural or northern communities. Regardless of spatial identity, most First Nations bands had very little control over post-secondary education and their student populations whether they resided on reserve or not.

As the number of status Indians and Inuit seeking financial support increased,²⁸ DIAND was faced with a difficult decision to limit support for post-secondary education as a program funding crisis was emerging. In March 1989, the PSEAP was overhauled and re-introduced as the Post-secondary Student Support Program (PSSSP) with the aim of reducing department expenditures and increasing academic success rates (Canada, DIAND, 1989, p. 1). With the new program came the introduction of a 2% funding cap (Assembly of First Nations, 2005a, p. 8). This limited the amount of funding available to First Nations by imposing restrictions on eligibility and cutbacks in program elements previously financed, particularly subsidies provided for rent and daycare. This resulted in hundreds, perhaps thousands, of status First Nations students unable to access any program funding in order to pursue a post-secondary education, although program demand was increasing (Assembly of First Nations, 2001, p. 2). Figure 4.2 illustrates an increasing trend in the number of status Indians accessing financial support through PSSSP for the period from 1988-89 to 1998-99. The effects of fiscal restraint are

²⁸ DIAND reported that PSE funding increased from \$98 million in 1986-87 and \$269 million in 1996-97. In real terms this meant that enrolment of status Indian students rose significantly from approximately 13,200 in the 1986-87 fiscal year to approximately 27,100 for 1996-97 (Canada, Department of Indian Affairs and Northern Development, 1997, p. 38). This represents an increase of 105% over the ten year period.

Figure 4.2: Total Number of Funded Status Indian and Inuit Post-secondary Students, 1988-89 to 1998-99



Notes:

The total number of post-secondary students funded under PSSSP includes both Registered (status) Indians and Inuit students, as DIAND does not disaggregate these values for departmental purposes. Data compiled are based on a fiscal year ending March 31.

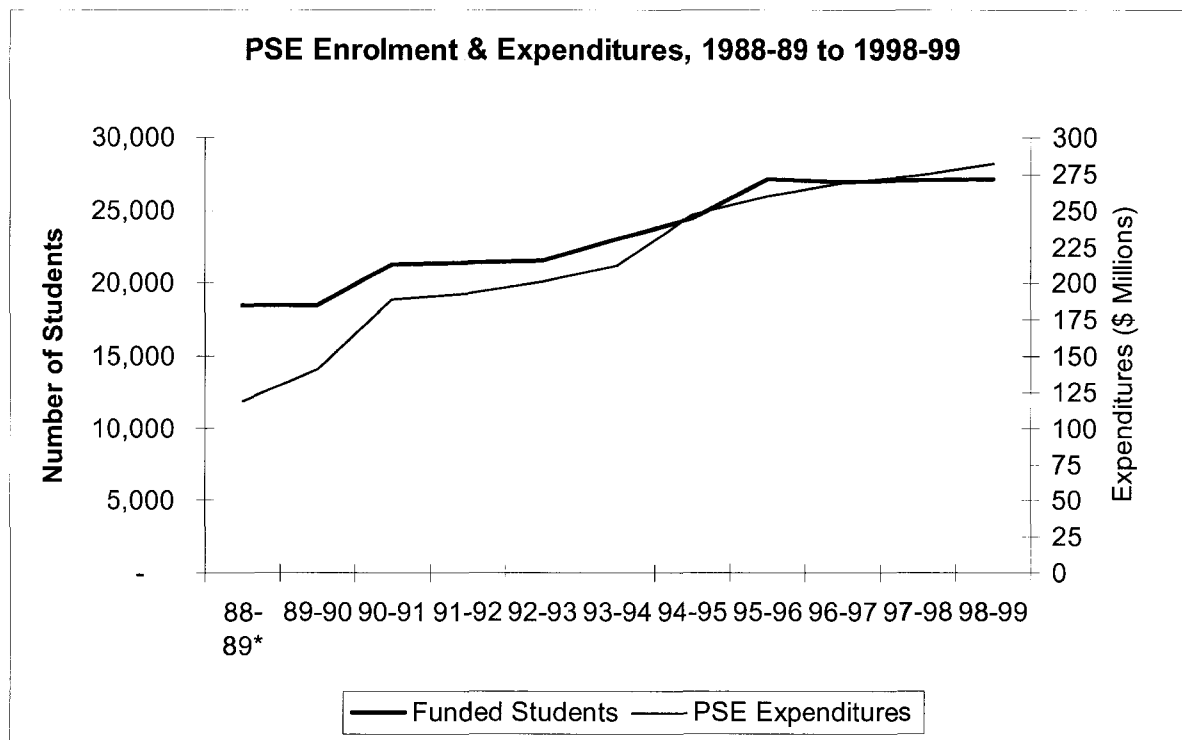
*For the year 1988-89, the counts include University and College Entry Program (UCEP) students.

Sources:

DIAND. 2000a. *Overview of DIAND Program Data 2000*, p. 16.

DIAND. 2001b. *Overview of DIAND Program Data – Education 2001*, p. 76.

DIAND. 1996b. *Basic Departmental Data, 1995*. p.41.

Figure 4.3: PSE Enrolment and Expenditures, 1988-89 to 1998-99

Notes:

The total number of post-secondary students funded under PSSSP includes both Registered (status) Indians and Inuit students, as DIAND does not disaggregate these values for departmental purposes. Data are compiled based on a fiscal year ending March 31. PSE Expenditures refers to PSSSP, UCEP and the ISSP.

*For the year 1988-89, the counts include University and College Entry Program (UCEP) students.

Sources:

Indian and Northern Affairs Canada. 2000a. *Overview of DIAND Program Data 2000*

DIAND. 1998. Departmental Performance Report 1999-00

DIAND. 1997a. Departmental Performance Report 1998-99

DIAND. 1996a. Departmental Performance Report 1997-98

DIAND. 1995. Departmental Performance Report 1996-97

less evident in the data; for example, DIAND departmental data showed only a nominal decrease in funded students from 18,535 in 1988-89 to 18,525 in 1989-90.²⁹ That same ten-year period saw a 31.7% increase in funded Status Indian and Inuit students. Figure 4.3 includes DIAND's departmental expenditures for the all Post-Secondary Education (PSE) during this period.³⁰ In terms of departmental spending for post-secondary educational assistance from 1988-89 to 1998-99, Figure 4.3 illustrates an increase in spending of over \$160 million. Over the ten-year period, that is an increase of nearly 58% in PSE funding. The Assembly of First Nations, however, insists that thousands of status Indian students were unable to access financial support due to program changes (Assembly of First Nations, 2001, p. 2). Increased PSE expenditures may be attributable simply due to increased costs in post-secondary education. The Assembly of First Nations reported that PSE costs have increased by 400% since 1988 (2005a, p. 8) in addition to increased numbers of eligible status Indian and Inuit students.

Watershed: PSE Devolution

The devolution of powers from the federal state to First Nations has been occurring since the late 1960s, with periods during which the pace and nature of the transfer varied greatly. In its broadest terms, devolution implies a hierarchical structure where a decentralization of power, authority and responsibility occurs, shifting from one superior body to a lesser. Contemporary Aboriginal scholars, through their

²⁹ DIAND does not maintain data on the number of students who applied for PSSSP but were denied (Canada, Department of Indian Affairs and Northern Development, 2000a).

³⁰ This includes PSSSP, UCEP and the Indian Studies Support Program (ISSP) that contribute funding to Indian education organizations, and Indian post-secondary institutions.

support of Aboriginal self-government, enlist devolution as a mechanism of decolonization (Henderson 2000b, Green 2002). Devolution is often a spatial process that reconstructs space and more importantly emphasizes legislative, jurisdictional and administrative shifts that vary from federal department to department. Devolution has the significance of place as part of its conceptual framework. It does so by shifting the locale of authority from the one location to another, from one scale to another. Frances Abele referred to this a shift in “policy authority” whereby various levels of government bureaucracy gradually relinquish administrative control over a particular program from central to regional offices and eventually into the hands of those to whom a particular program or policy is being devolved (1990, p. 83). In terms of federal government devolvement it is a transfer of numerous services and programs across various departments and agencies to provincial, territorial and First Nations governments. “As devolution of many services has become a reality and there is a desire on the part of the [federal] government and First Nations to carry on with this process, there is an ongoing need for a structure to provide advice to bands and/or deliver services” (Canada, DIAND, 1997b, p. 11). One could suggest that devolution is a spatial strategy, in fact, that enables First Nations bands to assert administrative authority over a variety of social areas. This is representative of a significant reproduction of space whereby the locus of decision making regarding key social areas has shifted from the federal government to local First Nation communities and their governing institutions. While devolution may be a potentially positive spatial strategy, it does not negate the ongoing paternalistic relationship that continues to exist between the federal government and First Nations. However, it does represent momentum on the part of

the federal government to delegate and release some of its authoritative stranglehold over First Nations. As an increasing number of First Nations and their leadership demanded greater control over their affairs, the federal government responded by devolving selected programs and their administrative control across a number of social policy areas such as health, economic development and education certain programs to First Nations. One of these programs was post-secondary education.

Prior to the mid 1980s, few First Nations administered Post-Secondary Education (PSE), as Indian and Northern Affairs Canada functioned as the primary program administrator. In 1986, Treasury Board Secretariat set forth a comprehensive 5-year devolution plan whereby First Nations who wanted to take on responsibility for delivery of selected services and programs could do so (Canada, DIAND, 1993, p. 42). The devolution of power over education from the federal government to First Nations bands progressed steadily since that time, with most First Nation communities now in administrative control of their education systems and school infrastructure. While devolution enables greater self-determination by many First Nations, as I document below, it does not include economic control. Nevertheless, while many First Nation communities do not have fiscal independence from the federal government, program administrative autonomy is certainly well established for many First Nations communities. Consequently, programs and policies, such as Post-Secondary Student Support Program (PSSSP), are now “closer” to the people they are intended to serve. This is not to say that PSSSP administration has been without difficulties, and as I illustrate in Chapter Five, it remains a challenging program for both eligible students and band administrators to

navigate. What is relevant to this research is the manner in which devolution has spatially impacted the off-reserve population of post-secondary students. In the final section of this chapter, I show how in the aftermath of *Corbiere*, First Nations that already administer post-secondary education programs are now compelled to be more accountable and inclusive of all First Nations students, regardless of their residency.

The PSSSP: On-going Devolution

There has been a steady increase of First Nations control over program administration since the Treasury Board released its devolution plan (Canada, DIAND, 1993, p. 43). The 1989 post secondary education program overhaul and the implementation of the new Post-Secondary Student Support Program marked the beginning of devolution for First Nations post-secondary education. The federal government argued that a revamped PSEAP was warranted to reduce departmental expenditures. A second reason offered by the federal government for the program change was that this responded to increasing demands from First Nations for greater autonomy. The essential change was that while fiscal authority remained vested with Indian and Northern Affairs Canada, many First Nations now administered their own post-secondary programs that followed a strict set of funding and support elements stipulated under the PSSSP. Program administration was downloaded from federal to local jurisdiction. In principle, the federal government rescinded its unilateral approach to the Post-Secondary Education Assistance Program. It now allowed First Nations to participate in a process whereby administrative control was at the grassroots level. Nevertheless, the final authority for post-secondary funding

decisions remained squarely within the purview of the federal government. Although many First Nations disagreed with the undemocratic nature of this decision, which occurred without consultation, and considered the changes to the PSEAP as a breach of the federal government's fiduciary obligations (Ward 1992, p. iv), the shift to the PSSSP did mark an important milestone in the devolution of administrative authority.

The PSSSP was touted by the federal government as a vehicle for ameliorating many of the financial barriers faced by status Indians and Inuit students. The new program repackaged the three primary support elements that defined the PSEAP:

1. Tuition support – provided to part-time and full-time students and can include tuition, registration and other compulsory fees, books and supplies;
2. Travel support – available to students who must leave their permanent place of residence to attend college or university; and,
3. Living allowance support – offered to full-time students to help cover the costs of food, shelter, transportation and daycare (DIAND, 2000b, p. 2).

In introducing the PSSSP, the Department of Indian Affairs and Northern Development presented the support elements as new initiatives. However, what changed were the departmental criteria used to apply each element such that they would meet the federal government's overall main objective of expenditure reduction. When implemented, these changes had potentially negative consequences for all First Nations status students. For example, Tuition Support fully covers the costs associated with tuition and registration but the portion related to books and supplies is often under allocation control by band administrators. In

other words, the band administrator could choose to set up an account at the PSE institution's bookstore rather than allowing the student to have control over the spending of this money. Travel Support includes relocation costs to attend a post-secondary institution but this is discretionary financial support allocated by the band administrators and, as such, is not always available. The third element, Living Allowance Support, potentially is the most contentious support element of the PSSSP. This particular program element has not kept pace with the level of financial support necessary to cover urban living costs such as rent, utilities, public transit and food. For example, the basic living allowance amount has not changed since before the 1989 revision and on average remains at \$675 a month.³¹ All related living costs are supposed to be covered by this amount even though cost of living has increased dramatically since 1989. The program does allow for students to apply for additional funds to compensate for "high rental areas" but these are rarely approved. This means while students might be assured of having tuition and education-associated costs covered, they are less certain of being able to afford other costs incurred to move to attend school. Overall, therefore, the PSSSP does not provide adequate financial support for some of the very elements that are components of the program.

The negative consequences for students at the level of implementation stem from systematic deficiencies within the program. As noted by Margaret Ward, the PSSSP is a departmental policy rather than a legislated obligation (1992, p. iii) and,

³¹ I have personal records indicating the amount of funding for monthly living allowance both from the PSEAP and PSSSP periods of the post-secondary education program. This amount did not generally change over the course of program devolution and remained constant throughout. As more First Nations took control of PSE, \$675 may be a minimum amount and may be augmented if bands choose to do so.

as such, Indian and Northern Affairs Canada is under no obligation to review the program or adjust the funding elements. The fact that post-secondary education devolution encompasses program administration but not overall PSSSP fiscal management is illustrative of this reality. First Nation band education authorities control the overall administration and application under the framework of the PSSSP but INAC continues to exercise control over transfer amounts. As Gurston Dacks states, devolution may be symbolic of the finality of “political empire” but it does not mean the end of “economic colonialism” (1990, p. 11). As such, the PSSSP program limits imposed by Indian and Northern Affairs Canada have left most First Nations bands with a fiscal shortfall, unable to meet the ever-increasing number of eligible applications. Even those students who are eligible to apply for funding, therefore, cannot be assured of assistance due to overall program funding limits imposed by the federal government.

Despite the serious funding issues, the advent of the PSSSP did allow for quasi-devolution of post-secondary education administration. The principal purpose of devolution was to put program control and accountability at the local level which constituted a shift in the scale of control. This is evident from DIAND’s 1996-97 Departmental Report which states that, “First Nations have assumed responsibility for the delivery of almost all federal programming funded by DIAND” (Canada, DIAND, 1995, p. 29). The transfer of administrative authority to First Nation bands re-situated accountability from the federal government to individual First Nation bands who responded with varying degrees of acceptance. Many bands subsequently developed their own post-secondary guidelines outlining how the post-

secondary program is to be administered, yet regardless of this administrative devolvement, all First Nations remain subject to the federal PSSSP standards.

The spatial reorientation of authority that accompanied this scalar shift in program administration also produced significant consequences. Many ongoing difficulties now faced by First Nations band education administrators stem from deficiencies in program administration due to poor training, and imposed and outdated budgetary limitations. In turn, status First Nations students are faced with administrative difficulties, such as insufficient knowledge of PSSSP requirements among students and administrators alike, changing band administration due to biennial Chief and band Council elections and marginalization of those students who usually reside off the reserve. This last point is of particular relevance to this thesis such that administration of PSSSP and accountability to off-reserve First Nations students sometimes may be particularly problematic.

In Chapter Five, I expand on the spatially-related problems endemic to off-reserve status First Nations students and band administrators. There I argue that the problems I identify derive from inadequate understanding of the spatial issues inherent in education policy, and, by extension, the *Indian Act*. In the following section, I highlight the specific spatial biases found in the *Indian Act* and consider their implications for status Indians.

The *Indian Act*: Spatially Divisive Legislation

In this section, I outline the myriad of spatial implications for on- and off-reserve First Nations persons embedded in the *Indian Act*. This discussion situates my previous examination of the PSEAP/PSSSP against the background of the

federal government's long-established definition of "Indians" and anticipates the discussion of the *Corbiere* decision that follows. Here, I argue that legislation such as the *Indian Act* and related policies, including post-secondary education, must address the spatial reality of today's First Nations.

Although the *Indian Act* has gone through many amendments and several revisions since its appearance in 1876,³² the federal government has consistently ignored the ever-changing spatiality of First Nations and continues to rely on the *Indian Act* to define First Nations geographic space in specific, limited, and erroneous ways. Many scholars document how a progressively narrowing definition of "Indian" space served as a mainstay of colonial expansionist policies, facilitating the geographic relocation and reorganization of First Nations peoples as a tool to limit settler contact and confrontation with Indian peoples over territory (Miller, 1991; Dickason 1992; Armitage 1995, Cairns, 2000). The administration of Indian affairs, dating back to 1755³³ allowed colonial governments to dispossess First Nations peoples systematically from their traditional lands. Indian policy reflected the underlying political will of early governments to assimilate Indian people by dismantling their culture and identity through removal from their lands and separation from colonial Canada. "Indian space" was re-produced and re-defined by geo-legal means using tools such as the *Royal Proclamation, 1763*, and, almost a century later, the *Indian Act*, a document Wotherspoon and Satzewich describe as "the embodiment of two centuries of racist thinking..." (1993, p. 16).

³² Significant *Act* revisions occurred in 1880 (enfranchisement); 1884 (tribal government by council); 1951 (greater provincial authority over Indians); 1985 (Bill C-31). For further discussion consult Dickason, 1992 or Miller, 1991.

³³This was the first time that an official "Indian department" was organized to oversee the acquisition of Indian territories in the name of Indian protection.

During the pre-Confederation period, control over Indian Affairs was assigned to the military and later to the Governor General. In 1860, a major shift in thinking occurred with the transfer of Indian Affairs to the Crown Land Department. At this point, the relationship changed from one founded on mutual political alliance to political subjugation with the goal of dispossessing Indian people from their lands. Indian Affairs became inextricably guided by a definition of the “Indian problem” that linked territory with Indian identity.

The first version of the *Indian Act* passed by Parliament in 1876 sought to assimilate Indian people into the dominant Euro-Canadian society and furnish a legal framework for managing the daily lives of Indian people, solidifying their geographic identities with the reserves, and exercising authority over Indians and their lands via section 91 (24) of the *Constitution Act*. In order for the *Indian Act* to be effective at exerting control over Indian people, however, the federal government recognized the benefit of centralizing legislative and administrative power into a central department. Menno Boldt terms this a process of “institutionalized assimilation” (1993, p. 85).

Quickly, the “imagined geography” of the federal government in relation to First Nations came to define all Indians in relationship to a reserve. The relationship between territory (Indian reserve) and First Nations (Indian identity) is implicitly imagined to be one that originates only from a reserve. This is a *carte blanche* assumption that we are all from a reserve which is not a steadfast reality but rather a half-truth based upon centuries of spatial reconfiguration and colonial-based spatial imagining that remains directly associated with the reserve. This implicit assumption hinders the freedom of First Nations who are not connected to a reserve to re-imagine their spatiality and is attributed to the existence of the Indian reserve

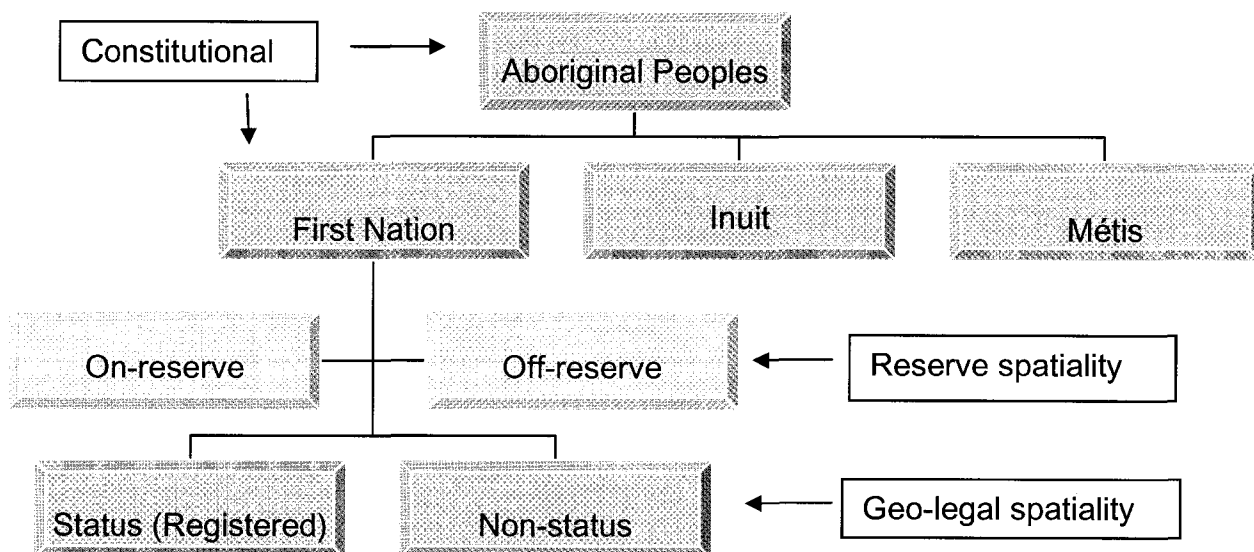
system and related legislation found in the *Indian Act*. Evelyn Peters suggests that the imposed reserve system promoted spatial segregation which helped to preserve the notion that First Nations are only from reserves and that being from “other” places such as cities and other urban environments was an incongruity (2001, p. 142). This definition evolved into a deeply entrenched stereotype that blurred First Nations rights and identity with reserve residency and was strictly reinforced by the Department of Indian Affairs and Northern Development’s policy of assuming responsibility *only* to status Indians on reserves (Peters, 2001, p. 142).

In fact, however, the spatiality of First Nations is far more complex than the binary geographic categories of “on-reserve” and “off-reserve” perpetuated by the *Indian Act* and the imposed First Nations’ spatiality is seriously inconsistent with contemporary spatial arrangements of First Nations people. What is interesting is that even as FN spatial identities are formulated and imposed by policy and legislation, they may be incongruent with how individuals identify themselves. Self-identity is more personal and subjective and not dependent on of legislators or bureaucrats.

Figure 4.4 illustrates how the federal government attempts to impose a legalistic and spatial organization First Nations in Canada. The shadowed boxes represent the formal geo-legal identity relationship of Aboriginal peoples in which off-reserve status First Nations are situated, particularly post-secondary students. As the data now show, First Nations peoples no longer live only on reserves or in the distant hinterlands of frontier Canada. First Nations, along with Métis and Inuit peoples, are found in all reaches of Canadian-claimed territory, particularly in urban regions (see Appendix 5 for selected Census Metropolitan Areas, Census 1996).

Urban in-migration and urban origins of First Nation people in Canada's urban centres, particularly in western cities, has shifted the demographic and geographic reality of First Nations. Evelyn Peters points out that the settlement patterns of Aboriginal people in Canada led to "uneven geographies" and that the urban Aboriginal population now is increasingly significant in urban centres (2001, p. 140). While Peters does not distinguish by Aboriginal group (First Nation, Métis or Inuit), she is right in concluding that First Nations have undergone a profound geographic shift in their spatial realities. As I discuss below, until the *Corbiere* decision, federal and sub-national governments continued to perpetuate the belief that the spatial reality for First Nations people was inextricably tied to a reserve.

During the 1960s, as migration of First Nations peoples off the reserves increased, and enfranchisement was waning as an assimilationist tool, First Nations peoples retained their legal identity as status Indians. Their off-reserve spatial reality no longer threatened their Indian identity but still hindered their access to some federal programs. What is pertinent for this thesis is the manner in which First Nations geo-legal position curtailed their right to exercise political influence. Off-reserve status First Nations individuals with band membership were barred from participating in the election process of their First Nation. Consequently, political accountability by Chief and band council to off-reserve members was of little consequence and such First Nations persons were geographically discriminated against because of s. 77 of the *Indian Act* (Armitage, 1995; Boldt, 1993; Dickason, 1992; Miller, 1991). It is to an examination of that section of the *Indian Act* that the discussion now turns.

Figure 4.4: Formal Geo-Legal Spatiality of Aboriginal Peoples in Canada

Note: Post-secondary students are situated in all classifications.

Section 77: Spatial Exclusion Entrenched

The spatial duality embedded in *Section 77* of the *Indian Act* requires First Nations people to ordinarily reside on-reserve in order to participate in band elections of Chief and band Council. Specifically, s. 77 constructs a geographic dichotomy among First Nations by ignoring the geographic realities of First Nations whose spatial location often shifted from on-reserve to off-reserve in accordance with their migration to cities, towns and rural areas or through birth off-reserve. Because s. 77 of the *Indian Act* remains spatially stagnant, however, it reinforces a false spatiality of First Nations and perpetuates a divide between on- and off-reserve populations. *Section 77* of the *Indian Act* states:

Eligibility of Voters for Chief - Councillor

77. (1) A member of a band who has attained the age of eighteen years and is ordinarily resident on the reserve is qualified to vote for a person nominated to be chief of the band and, where the reserve for voting purposes consists of one section, to vote for persons nominated as councillors.

77. (2) A member of a band who is the full age of eighteen years and is ordinarily resident in a section that has been established for voting purposes is qualified to vote for a person nominated to be councillor to represent that section. *R.S. 1985 (1st Supp.), c. 32, s.14.*

The key language in both subsections is “ordinarily resident on the reserve” as this clearly excludes status First Nations members that usually reside off the reserve from participation in elections for Chief and Band Councillors that have adopted s. 74 of the Indian Act as their electoral process.³⁴ Although s. 77 does not explicitly outline who is excluded, it reinforces the on- and off-reserve dichotomy. The related provision is the *Indian Band Election Regulations, C.R.C. 1978, c. 952*, provided here in part:

Definition of Residence For The Purpose of Determining the Eligibility of Voters

3. The following rules apply to the interpretation of the words “ordinarily resident” in respect of all matters pertaining to the right of an elector to vote in an election:

- a) Subject to the other provisions of this section, the question as to where a person is or was ordinarily resident at any material time or during any material period shall be determined by reference to all the facts of the case;
- b) The place of ordinary residence of a person is, generally, that place which has always been, or which he has adopted as, the place of his habitation

³⁴ Governance using the *Indian Act* is set out in *Section 74*. It should be noted that at the time of the *Corbiere* decision, the majority of First Nations bands elected their Chief and Councillors using this approach. The remaining First Nations communities used customary elections. At the time of the decision, these communities were exempt from the *Corbiere* decision. Since the 1999 decision, there has been increasing debate as to whether reserve communities that elect their leadership according to custom are eligible for continued exemption.

or home, whereto, when away there from, he intends to return and, specifically, where a person usually sleeps in one place and has his meals or is employed in another place, the place of his ordinary residence is where that person sleeps;

- c) A person can have one place of ordinary residence only, and he shall retain such place of ordinary residence until another is acquired;
- d) Temporarily absence from a place of ordinary residence does not cause a loss or change of place or ordinary residence.

The language in the related regulation, c. 952, delineates what is meant by “ordinarily resident on reserve”. In order to determine this distinction, legislators used three main factors. A person is deemed to be resident if he or she ordinarily sleeps at home in a location on the reserve. The regulation also considers location of meals and employment but the primary benchmark for residency is the place where people return to in order to sleep.

When Bill C-31, an *Act to Amend the Indian Act*,³⁵ was adopted in 1985, legislators overlooked the inherent geographic discrimination of s. 77. As a consequence, thousands of First Nations people were reinstated with Indian status, allowing them to access programs specifically designated for status Indians. The majority of First Nations people reinstated resided off the reserve, however, and as a result of s. 77, remained ineligible to participate in band elections, thus perpetuating the isolation of status First Nations people who ordinarily reside off-reserve from their band’s political processes. Indeed, the spatiality of First Nations was still lacking adequate acknowledgement and substantive attention from the federal

³⁵ Bill C-31 was passed on June 28, 1985, amending the *Indian Act* and bringing the *Indian Act* more in line with provisions of the *Charter of Rights and Freedoms, 1982*. Control over band membership by Indian bands is a form of administrative devolution, increasing control of bands over their own affairs.

government. To be designated as “off-reserve”, therefore, was to continue to exist as politically tangential.

Clearly, to be a First Nation person living off the reserve places a geographically-imposed limitation on access to many social services that on-reserve residents are entitled to simply due to their residency. However, s. 77 of the *Indian Act* does more than control program access; it divides a First Nation band into two disparate groups by creating a group of “other” members, those outside the reserve. Peters suggests that this legislatively entrenched spatial divide creates an “artificially imposed distinction between reserve and urban First Nations people ha[ving] driven a wedge between these populations [and] distorting the social realities of Aboriginal people” (2001, p. 142). Peters also points out that lack of access to federal programs for off-reserve First Nations people denies their inherent rights as Indian people (Ibid.).

While Peters distinguishes between *on-reserve* and *urban* First Nations, I would suggest that while many First Nations do migrate to urban areas, the spatial divide is much broader. Indeed, a distinction between on-reserve and off-reserve captures more than simply the geo-legal impact the *Indian Act* and related policies have had on defining the spatiality of First Nations. These are “Indian spaces”; binary geographies socially produced by legislation and laws that are socially constructed. Many of the challenges that exist for First Nations people who usually reside off the reserve are indicative of this geographic duality, their reproduction of space and thus their identity as off-reserve. The distinction of urban and rural that Peters identifies is less relevant when considering First Nations spatiality in this broader context. The discriminatory nature of the *Indian Act* does not specify a

particular residency, such as urban; instead, it cuts across the spatial reality of First Nations regardless of whether they live in downtown Toronto or rural Saskatchewan.

The Corbiere Decision

In Soliloquy and Dialogue: Overview of Major Trends in Public Policy Relating to Aboriginal Peoples (1996) Katherine Graham, Carolyn Dittburner and Frances Abele overview Aboriginal education policy between 1965-1992. Their focus on the period of 1988 to 1992 situates education policy within the larger context of contemporary debates over sovereignty and self-government. As they argue, First Nation leaders at this time increasingly realized the importance of post-secondary education in relation to their broader agenda of attaining self-government. At the same time, Amendments to the *Constitution Act, 1982* and the entrenchment of the *Canadian Charter of Rights and Freedoms* in 1985 signalled a new openness in Canadian politics to recognizing human rights violations and to extending equality rights in line with s. 15 of the *Charter*. Unfortunately for First Nations off-reserve populations, however, it would take the *Corbiere* decision of 1999 to challenge successfully the inherent inequality found in the s. 77 of the *Indian Act* by appealing to s. 15 of the *Charter*.

This chapter's final section analyzes the impacts of the *Corbiere* decision in terms of its challenge to the persistent geographically-based stereotype that First Nations people must reside on a First Nation reserve or community in order to participate politically. More specifically, I examine the potential legacy of the decision for post-secondary education. I argue that the *Corbiere* decision's impact on off-reserve post-secondary students and, by extension, post-secondary

educational policy, potentially is very significant as it finally empowers off-reserve status Indians to participate in band politics and casts long-overdue attention to the spatial discrimination embedded in the *Indian Act*.

The May 20, 1999 Supreme Court of Canada decision in *Corbiere v. the Batchawana Band and Her Majesty the Queen*, initiated a process of fundamentally transforming First Nations band politics. The decision ruled in favour of John Corbiere, a member of the Batchawana Bay First Nations near Sault Ste. Marie Ontario, and found s. 77 (1) of the *Indian Act* discriminatory towards all First Nation members who ordinarily reside off the reserve. Prior to the *Corbiere* decision, only status First Nation members who resided on the reserve were eligible to vote for Chief and band Councillors, preventing nearly 190,000 individuals out of the nearly 274 First Nation bands that conduct their elections under s. 74 of the *Indian Act* (Anderssen, 1999, O'Neil, 2001, pp. 1-4) from participating in the electoral process.

In rendering its decision, the Supreme Court found that s. 77 (1) of the *Indian Act*, was both discriminatory as well as spatially biased. In particular, s. 77 (1) violated the protections guaranteed under s. 15 (1) of the *Canadian Charter of Rights and Freedoms*. Section 15 of the *Canadian Charter of Rights and Freedoms*, states that:

- (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
- (2) Subsection (1) does not preclude any law, program or activity that has as its objective the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Subsection (1) of s. 15 encompasses equality protection before and under the law as well as equal protection and benefit of the law. Subsection (2) refers to affirmative action programs and ensures their existence as long as the objective is to improve the conditions of disadvantaged groups or individuals. As suggested by Mandel (1994), this section of the *Charter* attempts to make us equal before the law by listing the very socio-cultural characteristics that create inequality in our daily lives (p. 340). In light of the *Charter* protections, s. 77(1) of the *Indian Act*, therefore, denied equality to off-reserve status Indians because it denied the existence of different spatial realities for First Nations people. As Justices McLachlin and Bastarache argued in their decision:

[T]he exclusion of off-reserve band members from the right to vote in band elections constitutes discrimination. ... They have important interests in band governance which the distinction denies. They are co-owners of the band's assets. The reserve, whether they live on it or off it, is their land. ... Although there are some matters of purely local interests, which do not directly affect the interests of off-reserve members, the complete denial of their right to vote and participate in band governance treats them as less worthy and entitled, not on the merits of their situation, but simply because they live off-reserve. Section 77(1) reaches the cultural identity of off-reserve Aboriginals in a stereotypical way. (Zandra, 1999, (3), CNLR, p. 20)

The Supreme Court, therefore, recognized that off-reserve band members hold particular interests in band governance, not exclusively at the local community level, but also with respect to larger issues that relate to the land base (reserves) and band assets. Denying off-reserve status Indians the right to vote and participate in band governance, therefore, only perpetuates historical patterns of discrimination.

From a geographical perspective, the Supreme Court recognized a specific spatiality in the *Indian Act* that is discriminatory and based old colonial productions of Indian space and the locale of the reserve as place. In terms of legal geography, the

Corbiere decision makes additional room for policy reform around self-government rights and, more specifically, urban self-government. J-Yves Assiniwi et al., suggest that the *Corbiere* decision “may form part of the larger restructuring of Aboriginal self-government” (2001, p.66). Clearly, the decision rejected the spatial myopia of the *Indian Act* and will prove fruitful for future expansion and inclusion of off-reserve members in the band political process and/or even the evolution of urban-based political representation that is First Nation specific. Perhaps new First Nation spatial identities can emerge that are reflective of the spatial reality of First Nations people. In taking this decision, the Supreme Court of Canada provided momentum for moving First Nations closer to rebuilding a citizenry that is connected to their governments regardless of spatiality.

While the impact of the *Corbiere* decision is still unfolding, the Assembly of First Nations (AFN) has outlined several key potential outcomes of the decision for First Nations and their members:

1. The right of off-reserve members to vote in First Nation band elections;
2. Greater band council liability and accountability to all members;
3. First Nations will have to ensure that programs and services are accessible to all band members and the federal government may have to acknowledge a broader responsibility to off-reserve members by provision of resources;
4. Land management must include the concerns and benefits of all members including off-reserve;
5. First Nations that have opted to use customary codes for election may be subject to future challenges under similar sections of the *Charter* and those band that currently follow s. 74 of the *Indian Act* and are considering changing to customary codes may be expected to include off-reserve in the future;
6. Indian monies are held in trust by DIAND and done so with the interests of

all members;

7. First Nation administration of housing, education, lands, residency and membership programs and services must consider all members, resident and non-resident. (Assembly of First Nations, 1999, pp. 1-9)

The inclusion of off-reserve members in the political process, however, does impose a new financial burden. Monies to defer the cost associated with conducting inclusive elections must come from the federal government, as many First Nations are unable to assume the additional costs associated with a more open electoral process.

With respect to the PSSSP, the *Corbiere* decision should end the discrimination that post-secondary students have endured since the post-secondary program's inception in 1968. For post-secondary students whose First Nation band operated elections under s. 74, the *Corbiere* decision restored the right to participate in the band election process. Potentially, this decision offers new opportunities for all off-reserve status Indians, including post-secondary students, to enjoy greater political participation. Additionally, it ensures increased accountability of the elected Chief and band Councils to all band members, regardless of their residency status. As part of the new accountability (and potential liability) First Nation bands now face, *Corbiere* should ensure that voices from off-reserve (urban and rural regions) students are heard and heeded.

Conclusion

The historical relationship between the federal government and Indians has long been shaped by spatially-biased assimilationist policies. As I have argued, off-reserve First Nations post-secondary students are prejudiced against in federal

policies and programs driven by inaccurate productions of our space and construction of spatial identities. The status quo for Indian spatial placement through the reproduction of indigenous space in early and even contemporary Canadian society has always been understood and accepted to be from an on-reserve viewpoint due to the *Indian Act* and Department of Indian Affairs and Northern Development's policies and programs. It is the duality of these spatial concepts which perpetuate First Nation identities as either "on-reserve" or "off-reserve." Spatial identities that are tied to geographic territory are out-dated and not reflective of the contemporary spatiality of First Nations.

Part of my analysis considered the role of devolution in the spatiality of First Nations. I reasoned that devolution is an on-going spatial process. In the case of First Nations, it also impacts scale as the devolution of various social programs re-located responsibilities for policies and programs. Devolution has had both beneficial and less certain outcomes with regards to First Nations and the federal government's post-secondary education programs. It was beneficial for providing opportunity for First Nations bands to have greater autonomy though administration and delivery of almost all of Indian and Northern Affairs Canada's social programs, particularly the Post-Secondary Student Support Program (PSSSP). This analysis is important for First Nations as it advances the argument for the inherent right of self-government.; however, I have also suggested that devolution for off-reserve First Nations without equal access to political representation is problematic. Section 77 of the *Indian Act* is at the source of this spatial inequity.

Legislation and related policies must address the contemporary spatiality of First Nations. The *Indian Act* has spatial implications for on- and off-reserve First

Nations people and was the backdrop for my analysis of the PSE program. As I have posited, s. 77 of the *Indian Act* acts to further divide First Nations into disparate groups that of on- and off-reserve. The spatially-based impact of the *Indian Act* was that mandatory reserve residency created inequality by denying political participation in band elections to all off-reserve status Indians, including the student population. As I discussed, the *Corbiere* decision challenged the spatial discrimination of the *Indian Act* and may provide opportunity to participate more fully in decision-making processes that affect off-reserve status Indians.

This decision also exposed the federal government's flawed view of First Nations spatiality as either on- or off- reserve. We do not all come from the reserve and, therefore, our identities should not be tied to this legislated territory called the reserve. With regards to post-secondary students and the PSSSP, therefore *Corbiere* offers beneficial changes by guaranteeing the right to political participation and greater program accountability. It has the potential to traverse the spatial divide that exists between on- and off-reserve First Nations. In the next chapter, I turn to First Nations post-secondary students and band administrators to offer a snapshot picture of their experiences with post-secondary educational programs.

Chapter Five

Snapshot Analysis: Adding Voices

Introduction

In this chapter, I introduce the “snapshot” data collected through questionnaires and interviews and offer a comparative discussion of the study’s results. It is called a snapshot analysis as it is intended solely to provide narratives of some that are pertinent actors in the research. It is not intended to be representative of all First Nation band administrators or students. I first present data based upon the questionnaire returns from the First Nation band administrators (Appendix 3). The second section of the chapter reviews the data gathered from the student respondents. This interview component supplies additional context to the issue of post-secondary education administration to off-reserve members and reinforces how existing spatial discrimination embedded in the *Indian Act* compounds the challenges faced by both students and First Nations. As I acknowledged in Chapter Three, this is a tiny sample and the data serve illustrative purposes only; nevertheless, they do lend validity to the questions raised in this thesis and give voice to the lived experiences of First Nation administrators and students.

Post-Secondary Band Administration

In Table 5.1, I summarize data on the identifier portion and that section of the questionnaire addressing the PSEAP/PSSSP (Section B). Some background

information is excluded in order to ensure the confidentiality of the participating First Nation communities. The population count of First Nation *Band A* varies depending upon the source of the data (i.e., Statistics Canada, Department of Indian Affairs and Northern Development, Tribal Council etc.) while data are unavailable for First Nation *Band B* except for Tribal Council data. Both are small northern Ontario communities with populations of less than 1000.

Table 5.1: Background and Summary of Survey Data for Band Administrators

	First Nation Band A	First Nation Band B
BACKGROUND INFORMATION		
Community Population		
INAC (Indian Register) ^a (1999-2000)	810	Not available
Statistics Canada (1996 Census) ^a	475	Not available
Tribal Council Population Estimate ^b	780 (1999)	650 (2000)
SECTION B - PSSSP Administration		
Typical Year - No. of students administered	no response	100 or more
5 year estimates	Increase	Stay the same
Own Policy or Tribal policy	No	Yes
Year of Implementation	Not applicable	1986
Provided to Students	...	Yes
Own Policy Development	No	...
Use of INAC Policy	Yes	...

... Data not reported.

^a The Department of Indian Affairs and Northern Development (DIAND) and Statistics Canada (STC) use different methodologies and population definitions, that lead to differences in population counts.

DIAND maintains information on the registered Indian population while STC uses the concept of North American Indian having status or non-status.

^b The tribal councils maintain records of the number of band members for each First Nation.

The questions on the Post-Secondary Student Support Program (PSSSP) in Section B yield some interesting information regarding program administration. At the time of reporting, *Band B* was administering PSSSP to over 100 students, which is significant given the small size of the community. Although *Band A* chose not to report the number of students currently accessing the PSSSP, they predict an increase over the next few years in the number of students applying for post-secondary education funding. *Band A's* PSSSP is administered through a Tribal Education Council³⁶ that oversees the PSSSP for several First Nations in Northwestern Ontario. Based upon the data collected, it is unclear whether administration at the Tribal Council level affects the degree of accountability to individual students who ordinarily reside off the reserve. Alternatively, *Band B* has used a community-developed PSSSP policy since 1986, but administers this policy directly to its post-secondary students without intervention from either a Tribal Education Council or the Department of Indian Affairs and Northern Development.

The third section of the questionnaire examines accountability measures implemented by the post-secondary band administrators. Each band reports using various measures such as daily living receipt tracking, invoicing directly through the university bookstore for books and supplies and a yearly review of academic transcripts to ensure accountability. *Band A* carries out annual visits to their student

³⁶ Instead of individual First Nation bands administering the PSSSP to their post-secondary students, First Nations may administer PSSSP through a Tribal Education Council, which can emerge as a sub-structure of a Tribal Council. Typically, a Tribal Council is an administrative agglomeration of several individual First Nation bands based on tribal affiliation and geographic proximity. While Tribal Education Councils may provide a more efficient means of program delivery, they do not ensure increased sensitivity to the administrative needs of off-reserve/non-reserve students. This is due in part to the fact that Tribal Councils are typically geographically organized and thus replicate similar patterns of spatial discrimination. Such Councils are not stable administrative entities; not all First Nation bands remain members of a Tribal Council nor even belong to a Tribal Council.

population enrolled in post-secondary institutions located in southern Ontario. *Band B* sends out a bi-monthly newsletter to keep all students, whether off-reserve or on-reserve, informed of events in their community. *Band A* also makes additional financial support available to students who ordinarily reside off the reserve. For example, where living costs are high, *Band A* provides additional monies to offset such costs as well as monies for daily transportation (public transit).

Table 5.2 summarizes the responses to the three open-based questions in Section D that probed challenges for off-reserve/non-reserve administration, the effects of post-1980s devolution and the impact of the *Corbiere* decision.

Table 5.2: Summary of Responses from *Band A* and *Band B* Administrators

Challenges for off-reserve administration	Effects of devolution since 1980s	Impacts of the <i>Corbiere</i> Decision
<p>Funding is inadequate and the daily training allowance does not meet the associated high cost of living</p> <p>Not seeing the students is a problem especially for those who reside off-reserve normally as the administrators do not know what students look like nor getting to know their individual situations.</p>	<p>Policies are now better able to meet the needs of students, especially those where the band has its own policy</p> <p>There has been an increase in the number of students who graduate from post-secondary education</p> <p>Greater control by the bands over their own funding has facilitated student successes.</p>	<p>Agreement that off-reserve members should be treated the same regardless of residency; for example, FN <i>Band A</i> has abandoned its "out of territory clause" that required students to reside in the territory in order to receive funding</p>

First Nations University Students

The sample from the student pool consisted of ten off-reserve/non-reserve First Nation students, each affiliated with a different First Nations band and several of whom recently completed university. The following discussion summarizes the responses of the six respondents who screened into Part B, the student open-ended interview section. These open-ended interviews examined three main themes: Funding and Accountability; Spatiality; and the *Corbiere* decision.

Theme One - Funding and Accountability

In general, the respondents reported mostly positive experiences of post-secondary funding and its administration while they attended school. It should be noted that those who reported a positive experience also maintained close ties to their First Nation community, with family residing on-reserve and/or frequently visiting their community. Four of the ten respondents reported a positive experience. Two had family members or family friends who worked as post-secondary administrators or in the band office and recognized this as beneficial to their funding experience. Only two respondents had difficult experiences regarding post secondary funding. Each participant cited how problematic it was to receive their living allowance on time and both noted that the available amounts were insufficient. Both of these respondents cited a strong dislike of band administrators' practice of placing books and supply monies on credit at the university bookstore, thus imposing further external control over the student's funding.

One respondent mentioned applying for funding pre-devolution and post-devolution and noticed changes to the application and administration processes over

time. The respondent recalled that during the pre-devolution period, students were required to contact DIAND directly for funding and monies were distributed via native counselling units located in the city in which the respondent attended university. By contrast, in the post-1989 period following the PSEAP program changes, the respondent contacted her/his First Nation band directly and made application for funding via the post-secondary administrator. The consequence of this administrative change was that it became more difficult for the student without direct links back to the band to expedite funding and deal with any other potential problems. Although reported by only one respondent in the student pool, this example suggests the need to investigate further the experiences of those students who applied for post-secondary educational support post-1989. This same respondent also noted that between 1986 and 1995, the monthly living allowance amount of \$675 never increased although the cost of rent, utilities, food, clothes and transportation increased during the same period. The respondent also recalled applying for supplemental funding during this period due to living in a high-cost urban area, but additional support was never forthcoming.

The second question probed respondents as to whether they saw changes as necessary to improve the administration of post-secondary funding to off-reserve students. The majority of respondents (including those who experienced a positive funding situation) agreed that changes were required. Both respondents who reported problems believed that changes were needed. They suggested that First Nation bands must foster better communication with their students, improve training for administrators and increase sensitivity to the urban demands of off-reserve students such as the necessity of paying rent on time. In terms of communication,

one respondent noted that the infrastructure for effective communication (i.e. reliable electricity and telephone service, computers or Internet access) is not present in many remote northern communities. Three respondents replied that bands require increased federal funding support in order to operate a successful post-secondary education program, particularly as the demand for university education increases among First Nation peoples. More students are eligible to apply to the PSSSP as status Indians.

Accountability concerns were also addressed in these interviews. Three of the respondents replied that First Nation bands need greater control over their own affairs, as it is virtually impossible to have a program function well when there is no fiscal control at the band level. One respondent who had a negative experience of funding felt that bands were unprepared for further devolution and explained that the political corruption of Chiefs and Councils impeded appropriate accountability. This respondent predicted that accountability concerns throughout the system could improve if the federal government itself increases its accountability to First Nations through acknowledgement and respect for treaties. One respondent who had a positive experience of post-secondary funding argued that bands do not exercise accountability because they are expected to do more with less. This respondent also stated that bands need greater control over their own affairs and the federal government must be held more accountable for the myriad of social, economic and political problems it continues to create for First Nations.

Theme Two - Spatiality

The next section of the interviews addressed the spatial experiences of off-reserve university students. Of the six respondents who screened into the open-ended portion of the interview, three identified as living off the reserve while two regularly resided in their First Nation community on reserve. The final respondent claimed a non-reserve identity. Of the four who identified as off-reserve/non-reserve, two reported that ordinarily residing off the reserve negatively affected their experience of post-secondary funding. The respondents stated that they felt disconnected from their First Nation community and sometimes found it frustrating to access post-secondary administrators and funding. One of these respondents stated that it definitely helped to have family who resided on the reserve as family members were able to intervene on the respondent's behalf when problems arose. This respondent explained that distance from her/his reserve placed she/he at a disadvantage compared to those members who usually resided on the reserve. Respondents with positive experiences felt that it was helpful to have contacts within the community and speculated that perhaps their positive experience was influenced by their community contacts.

Another question asked the respondents to offer suggestions for administering post-secondary programs to students who ordinarily reside off-reserve. Only one respondent declined to speak to this, feeling that as an on-reserve person, she or he could not speak on behalf of those students who reside off the reserve. Nevertheless, the following summarizes the suggestions generated by the other respondents:

- *Universities should have a liaison office or person who would deal directly with DIAND regarding funding for off-reserve First Nation students.*
- *Large urban centres should establish post-secondary education offices where First Nation students normally residing off-reserve can access funding, guidance services, academic services and career counselling.*
- *Use Friendship Centres as a focal point to provide services to off-reserve post-secondary students. They could provide counselling, both academic and career.*
- *First Nation self-government in urban area modelled on a traditional territory or municipal governance is desperately needed. Students who normally reside in an urban area would seek out the administrative office of the Nation on whose traditional territory the student resides or they would seek out the office of an urban self-government similar to a municipal government.*
- *First Nations need greater autonomy in order to run programs, such as the post-secondary education program, with less interference from the federal government and greater financial support.*
- *The post-secondary education program should be divided into two portfolios – one administered by a band to its First Nation students who reside on-reserve and the other that is urban-based and administered to students that normally reside off-reserve.*

Theme Three - Corbiere Decision

All six respondents were aware of the *Corbiere* decision and knew when their band held elections. Two respondents had always been able to vote regardless of where they lived. Both of these respondents enjoyed strong ties and ongoing involvement with their First Nation community even though they resided off the reserve for the majority of their time. Two other respondents were anxious to exercise their right to participate in upcoming band elections. Several respondents stated that they did not feel that members who resided off-reserve should be involved in issues that affect on-reserve members such as matters related to

infrastructure and local by-laws. They did not offer suggestions as to what kind of involvement off-reserve members should enjoy.

A final question asked whether the *Corbiere* decision could affect the relationship between on- and off-reserve students and their respective First Nation band. The following summarizes the opinions expressed by the six respondents:

- *Implementing Corbiere will be difficult and costly, especially to bands that have a large percentage of members who reside off the reserve.*
- *This may cause a greater rift between on- and off -reserve First Nations peoples generally.*
- *Corbiere may provide the silent majority who reside off the reserve with a political voice and may unify First Nations by setting right the inequality set forth in the Indian Act.*
- *This decision may give urban First Nations members a sense of belonging “somewhere” and give them an opportunity to establish links with their First Nation community.*
- *Corbiere should not allow off-reserve members to vote on issues that relate directly to the lives of those who reside on the reserve.*
- *Corbiere has made post secondary education a joint issue for on- and off-reserve students and bands must be more accountable to the off-reserve students when they apply and receive funding. Decisions should be made in the best interest of all parties concerned.*

Discussion

As argued throughout this thesis, the spatial lens is one that is often overlooked as a vehicle for analysis of public policy related to First Nations. Both the questionnaires and the interviews confirm that spatial issues do underpin the challenges associated with being a First Nations band administrator or a student who are targets of federal post-secondary educational policies.

Spatiality of First Nations figures prominently with respect to the level of ease with which off-reserve students can access post-secondary funding. Participants who had little or no contact with their First Nation band and had never resided on the reserve voiced this perspective. Four student participants with strong links to their First Nation reserve community indicated that they had no difficulty with funding support. This contrasts with the experience of their two off-reserve counterparts who expressed varying levels of frustration with the Post-Secondary Student Support Program. It may well be that the degree of association with a First Nation community influences the experience of post-secondary funding and accountability. In fact, all of the participants who reported no significant challenges had either lived on their reserve, had family residing on-reserve or knew someone in the band office who could assist with issues as they arose. Two respondents who never resided on the reserve both recounted serious problems in accessing PSSSP funding and in contacting their band administrators and reported that their band administrators failed to exercise appropriate accountability. The interviews revealed also that a student whose First Nation community was close to an urban area where the university was located was more successful in accessing band administrators. Those who attended university at significant distances from their First Nations band reported they were less successful. Together, these interviews confirm that a spatial divide exists between students with on-reserve connections and those identifying as off-reserve/non-reserve without ties to any "home" community. This may be attributed to closer affiliation with the reserve as a place rather than merely an Indian space that administered programs. To reiterate Doreen Massey, a sense of place is constructed through active connection to a particular place (2005, p. 118). In this

case, students with links to their reserve are directly involved with their reserve community.

Geographical and proximity issues were of concern to the band administrators as well. Physical distance was a problem for one band administrator who was unlikely to see students in person unless scheduled visits to southern Ontario occurred. For this administrator, communication and ties with permanently off-reserve/non-reserve students were quite difficult. The use of technology may improve communications but was not mentioned as a way of improving communications with PSE students. The administrator indicated support for initiatives to help improve program delivery to off-reserve students, recognizing the challenges of bridging this geographical and identity divide. For this administrator, site visits to post-secondary students and regularly distributed newsletters functioned as important tools to foster the inclusion of off-reserve student population within the community. Similar concerns were echoed by one of the off-reserve student participants who felt isolated from her/his First Nation community both geographically and in terms of a sense of personal association with the band. The reserve had little spatiality associated with place. Such evidence points to a recognition on the part of on-reserve administrators and off-reserve students that space matters. As I argued in previous chapters, the social production and reproduction of First Nations space by the spatially prejudiced legislation such as the *Indian Act* has spawned generations of First Nations people forced to distinguish themselves along artificially-imposed spatial lines.

A strong sub-theme evident from both the reporting administrators and students was the perennial issue of government under-funding. Both band

administrators stated that the PSSSP is seriously under-funded with inadequate program support cited as the major contributing factor that inhibits the successful devolution of the PSSSP to First Nations bands. Clearly, the process became more competitive due to increased demand of PSSSP with funding shortfalls limiting the number of status Indians approved for post-secondary education support. This also limited the ability of bands to respond to those eligible status Indians who apply for funding. From the students' perspective, under-funding spawned an increasingly competitive process. Funding freezes on the PSSSP left bands with no other recourse than to implement student performance standards as a criterion for awarding continued funding.³⁷ At the same time, however, the available funds inadequately met the burgeoning demands from an increasing number of status First Nations people seeking post-secondary education. For example, two respondents enrolled in university prior to devolution in 1989 remarked that there were no increases in daily living allowances granted by their bands, regardless of the shift towards program devolution. While devolution brought greater autonomy to many First Nations administering programs under the PSSSP, it was not accompanied by adequate funding. Accountability between students and their First Nations bands did increase post-devolution, however; the new practice of relying on students' academic transcripts to allocate funding potentially minimized opportunities for administrators to discriminate against those off-reserve/non-reserve students who lacked direct ties to their reserve community. As devolution is a spatial process, it is

³⁷ At the discretion of the band administrator, returning students may receive priority over new students.

also acts to potentially provide greater equality and accountability by bands to status off-reserve students.

There was also a general consensus among the interviewees that policy innovations were required to better address the needs of status off-reserve and non-reserve student population. Respondents suggested that urban centres where students attend universities need appropriate administrative focal points in order to assist in the delivery of the PSSSP and potentially offer expanded accessibility to First Nations communities. One possible idea involved using the Friendship Centre networks already in place in urban areas to enhance program delivery and provide increased support, particularly for off-reserve/non-reserve students.

Such responses illustrate that geography does matter and that there is a growing awareness among First Nations students that the spatial organization and current administrative practices do not work well, particularly for off-reserve/non-reserve students. For a majority of the interviewees, solving the challenges experienced by off-reserve students necessitates some form of urban self-government which would bring PRSSP administration closer, literally, to the recipients. The respondents agreed that off-reserve students in urban environments need attention both in terms of policy development around educational issues and, more generally, in the contentious arena of First Nation-state relations.

Finally, in regards to accountability and representation, two participants cited corruption as potentially compromising accountability. These may be isolated incidents with specific bands as a consequence of other issues such as personality conflict, poor communication, inadequate program design or high administration turnovers, and frequent band elections held every two years. Nevertheless, these

responses highlight the accountability concerns of student populations. While corruption can be experienced both by on and off-reserve students, students who ordinarily reside on the reserve can maintain personal interactions with post-secondary band administrators in order to promote their successful post-secondary sponsorship. Consequently, the accountability issue remains particularly acute for the off-reserve/non-reserve student. As such, the implications of *Corbiere* are increasingly relevant given its attention to the chasm between on-reserve and off-reserve/non-reserve populations. When probed in the questionnaire about the *Corbiere* decision, both band administrators recognized the need to address the issues faced by off-reserve status Indian students and acknowledged that residency discrimination has, and continues, to exist for some First Nation peoples.

The student interviews also revealed similar opinions on the potential impact of *Corbiere*. Each respondent agreed that off-reserve students and members should be included in the election process at some level. Two participants, however, felt that while issues that relate only to on-reserve members should not be directed by off-reserve members, post-secondary education should be directed by both on and off-reserve members. To what degree the *Corbiere* decision will correct historic inequities in the *Indian Act* and remedy the spatial inequities documented above remains to be seen. Unfortunately, given the scarcity of financial resources, *Corbiere* does have the potential to further polarize the positions of on-reserve and off-reserve members. As suggested by several respondents, however, some form of political autonomy from the federal government and increased control over programs like PSSSP are pivotal in facilitating better management and administration of First Nations educational policy.

Conclusion

Together, the questionnaires and interviews offer an additional dimension to my spatial analysis of the interrelationships among the *Indian Act*, the Post-Secondary Student Support Program and the *Corbiere* decision. They serve well as a snapshot of qualitative experiences offering an opportunity to add additional voices to this research. This qualitative analysis and the analysis presented in the previous chapter support my thesis that where First Nation students ordinarily reside is critical to understanding how they experience not only post-secondary education policies, but the full range of their own First Nation's policies and, ultimately, those of the federal government.

In the future, improvement in the delivery of program funding and communications may be achieved by the utilization of an ever increasing capacity of communications technology. It would be advantageous for band administrators and PSE students to use e-mail, websites or other Internet-based communications strategies as they could improve communications and connectivity with both on- and off-reserve PSE students. Internet-based communications could facilitate the sharing of information between band administrators and their PSE students and perhaps better include all PSE students in reserve-administered programs such as the PSSSP. In terms of other electronic resources, electronic banking may be another way to alleviate delays of delivering PSE funds (for example, monthly training allowance, book and supplies etc.) and to expedite delivery in a more efficient and timely manner. As a caveat, I would offer that at the time of this research survey, Internet connectivity was not an option for many rural or northern communities as many had limited computer resources, Internet service or other

communications technology. Although the use of electronic banking services was an option in the later part of my own experience with PSSSP, it proved to be cost prohibitive as a regular way of transferring funds from First Nations bands to PSE students. Part of the problem was due to the costly service fees associated with electronic banking for remote reserve communities. While the service increased efficiency of delivering funding, the financial burden bands were left with was too high. For example, the fee for electronic banking was exorbitant at \$25 per transaction in 1998-99 for the band and still required a minimum 3 to 5 days advanced notice.³⁸ Nevertheless, as more communications strategies become available, the benefits to First Nation bands and their administration of devolved social programs, such as the PSSSP, can only improve.

³⁸ This example is based upon my own experience in 1998-99 while attending university in Prince George, BC.

Chapter Six

Conclusion: Re-imagination of First Nations Spatiality

Summary of the Thesis and its Findings

The impetus for this thesis derived from my personal frustration as a non-reserve, First Nations university student accessing support through the PSSSP. Inspired by that set of experiences, I began an inquiry of the PSSSP in order to better understand the education programs in place to serve off-reserve, status Indian post-secondary students. Because I was fortunate enough to have accessed both the PSEAP and PSSSP in different time periods, I was cognizant of the different incarnations of the PSE program and curious as to the impact of the shift to the PSSSP in 1989. Although PSE eligibility always has been available to status Indians regardless of residency status, I also knew that the manner in which my spatial identity as a First Nations person was constructed by the state under the *Indian Act* factored into my history with educational support programming. As a non-reserve status Indian and university student with limited ties to my ancestral reserve, I was aware that devolution changed my experience of the program. In the aftermath of the *Corbiere* decision, therefore, I was motivated to learn how that case might alter the ways in which First Nations spatiality was conceptualized and treated in law.

I chose a critical legal geographic framework informed by the concepts of space, place and scale through which to examine the spatiality of First Nations. Specifically, I conducted a spatially-informed analysis of the PSEAP/PSSSP, s. 77 of the *Indian Act* and *Corbiere* to support my central thesis that off- and non-reserve

status First Nations post-secondary students are discriminated against by inequitable and non-representative policies and programs driven by outdated definitions of First Nations spatiality.

Using insights drawn from critical geography and geojurisprudence, I call for a re-conceptualization of First Nations spatiality that moves beyond the ingrained status/non-status, on-reserve/off-reserve definitions that only serve to entrench further the erroneous assessments of spatial identities commonly ascribed to First Nations. Current First Nation spatiality is not reflective of individual spatial identities but remains linked to legislation, policies and programs. The thesis makes this argument first by documenting how the PSEAP and PSSSP, although similar PSE programs, were delivered very differently due to the devolutionary exercise in which the federal government was engaged that shifted the scale of the administration and delivery of various social programs, including PSE, from the national to the local level (federal government to First Nation bands). While this change was rationalized, in part, by the federal government as a tactic for bringing programs and policy closer to the people they are intended to serve (on-reserve), in the case of off- and non-reserve persons, whether this goal was achieved remains debatable. The implicit assumption is that First Nations remain spatialized by the federal government as being from the reserve. There needs to be an inclusive approach to program devolution that deals with the heterogeneous spatiality of the First Nations population. Fundamentally, the PSE programs (PSEAP/PSSSP) were spatially discriminatory towards all status First Nations Indian students regardless of spatial identities. In the broadest sense, similar challenges were faced by both on- and off-reserve students when it came to program delivery and administration, though at

different times of program devolution. However, on-reserve PSSSP students in the post-devolutionary period had spatial and proximity advantages over off- and non-reserve students when it came to accessibility to PSE band administrators in their reserve communities. Given the spatial realities of off- and non-reserve First Nations, program delivery under the PSSSP was not necessarily improved for those who had few, if any, ties to “their reserves.” As I document, off-reserve status Indian students who accessed the PSSSP prior to the *Corbiere* decision had very little recourse when problems arose and were unable to demand greater PSSSP program accountability given the constraints on their participation in the democratic processes of bands as proscribed by s. 77 of the *Indian Act*.

My analysis of the *Indian Act* reviews how this legislation entrenched spatial dichotomies for First Nations for decades and perpetuated spatially-based discrimination. This thesis then assessed the significance of *Corbiere* for First Nations populations. For my purposes, I concentrated specifically on how this decision potentially impacts positively on off- and non-reserve status Indian post-secondary students who may now look forward to more concerted attention to the spatially-based discrimination embedded in the *Indian Act*. While the legacy of *Corbiere* is still unfolding, I argue that, at a minimum, the decision raised awareness that on- and off-reserve classifications and the spatial bias that informs the *Indian Act* must be revisited. New and emerging spatial identities can challenge colonial-based identities imposed through federal legislation, policy and programs.

Challenges

Like all scholarly research, I faced some particular challenges in completing this thesis. Although conducting research on a topic that impacts the researcher personally can yield certain advantages, it can also prove difficult in other respects. Certainly, my prior knowledge of PSEAP/PSSSP, the *Indian Act* and the implications of the *Corbiere* decision, offered me important insights into what questions needed to be addressed in this thesis; at the same time, I obviously held a vested interest in this research that made it difficult to divorce myself emotionally from some issues under scrutiny. The challenge in such a situation is to acknowledge openly my lack of objectivity in relation to the topic and make clear throughout the process my own personal perspective on these subjects.

Another challenge related to finding participants for my snapshot analysis. Although the bulk of this thesis focused upon analyzing legislation, policy and programs, the research also included a modest sample of voices from some First Nations post-secondary students and band administrators in order to furnish tangible proof of the complexities involved in accessing and implementing these programs. Certainly, this portion of the thesis was more limited than I had envisioned originally. Perhaps because Aboriginal peoples - First Nations, Métis and Inuit – have too long been the “objects” of study by non-Aboriginal and Aboriginal scholars, securing participation by First Nation peoples for academic research can be difficult. In my case, the responses from band administrators were much lower than I had anticipated. Another factor that may account for this low level of participation for my snapshot analysis may be the limited time resources that many band administrators face. The fiscal restraints, under which I undertook this research, meant that I was

unable to travel throughout Ontario to pursue respondents more actively and, therefore, relying solely on mail-out questionnaires, produced limited results.

A final significant (and unexpected) challenge related to the difficulty I encountered in terms of accessing certain documentation from Indian and Northern Affairs that would flesh out the historical evolution of post-secondary educational funding. The issue was not reluctance on the part of INAC to provide requested materials; rather, there was an inability to locate documentation or information related to the early days of the program. Perhaps in recent years the corporate memory of INAC has diminished similarly to that of many federal departments due to attrition, retirement and a shrinking workforce, making it more difficult to trace the evolution of particular programs. This issue was compounded by the fact that there exists a very limited secondary literature on the PSEAP and PSSSP on which I could rely and perhaps suggests the need for further study of this policy area.

Contributions and Suggestions for Future Research

I see this thesis as making three distinct contributions. First, my research adds to the growing literature on critical legal geography by focusing on the relationship between the spatiality of First Nations and the legislative constraints that the *Indian Act* imposes on our lives. I believe this thesis demonstrates the fruitfulness of critical legal geography as a valuable approach to First Nations scholarship given the unique spatiality of First Nations people that continues to be legally defined, often inappropriately and incorrectly. As my thesis illustrates, using critical legal geography to analyze the spatial and legal implications of judicial decisions that impact First Nations can be most revealing.

Related to that is my adaptation of the term “*non-reserve*” as I believe this accurately reflects the spatiality of those First Nations persons who are legally bound to a reserve under the *Indian Act*, but have few, if any, ties to their ancestral reserve. I believe my discussion of the limitations of the on-/off-reserve distinction exposes the limitations of this dichotomy and points to a potentially more accurate description of the full range of First Nations spatiality. In fact, I hope that this research makes the case that the time has come for First Nations-federal government dialogue on the *Indian Act* to include on-, off- and non-reserve perspectives.

The thesis also provides additional insights into the nature of the devolutionary process. Although there is general consensus on the part of First Nations populations that devolution is a positive development, my case study of the PSSSP and the PSEAP reveals the unintended consequences of the federal government’s devolutionary strategy. Specifically, this example confirms that we must be cognizant of the fact that devolution to the bands brings with its additional responsibilities and complications that must also be evaluated on a case-by-case basis.

A preliminary study of this type suggests many avenues for future research. Because First Nations post-secondary educational funding is administered as a national program and my snapshot analysis is limited to Ontario, an obviously starting point to build on this research would be to expand the study to consider other provincial contexts. This would test whether my findings would be replicated elsewhere and might reveal that there are other models employed by First Nations that work well to ensure that off- and non-reserve post-secondary students’ needs are met. Additionally, it may also be beneficial to compare the experiences of Inuit

students to First Nations since the Inuit are not legislated under an Act analogous to the *Indian Act*. Alternatively, it would be useful to replicate this study around a different policy area as a way of exploring the consequences of devolution.

Research that tracked devolution in health, economic development or even primary or secondary education might reveal different lessons about the ways in which the spatiality of off- and on-reserve populations factored into other policy devolution practices.

Further research should document the impact of the *Corbiere* decision for off- and non-reserve status Indians. For example, research is needed to determine whether First Nations bands are including their off-reserve/non-reserve membership in Chief and band councillor elections as stipulated by the Supreme Court. If they are not, it would be beneficial to understand why they continue to exclude some of their membership from band matters that are of consequence to the off-reserve/non-reserve population.

Finally, I hope that the complexity of First Nations spatiality continues to receive the attention it deserves. This will require further scholarly theorization and my experience of this thesis suggests that mining the potential of critical legal geography, as an important field, can inform such theorization. Refining our collective understanding of First Nations spatiality certainly will enrich First Nations scholarship. Most importantly, however, a more accurate understanding of First Nations spatial realities is critical for policymakers and First Nations organizations alike who together must work to realize self-determination for all First Nations people.

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Appendix 1

This table includes only the status Indian population as registered under the Indian Act. The data are from the 1996 Census. The percentage of First Nations persons living off-reserve in Ontario is almost 66%, well above the national total of just over 53% of registered Indians living off-reserve.

Registered Indian population living on- and off-reserve, 1996 Census

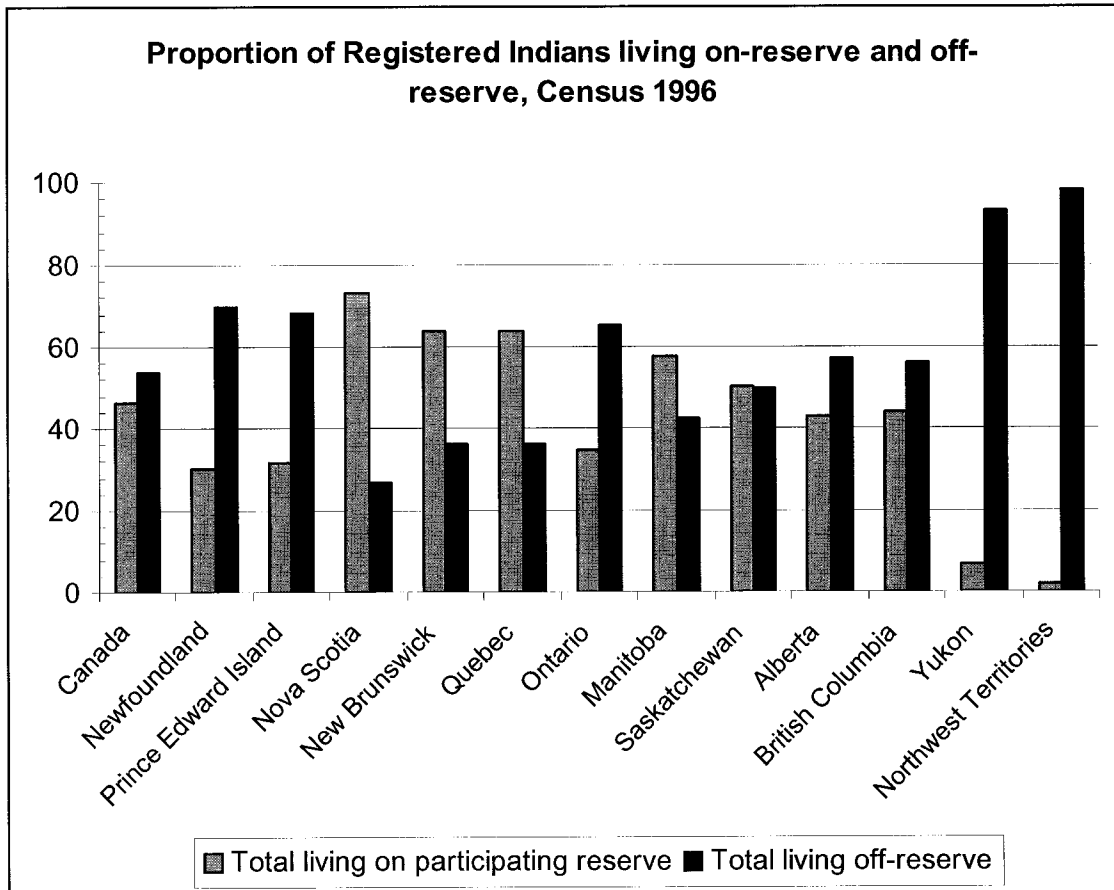
Level	Total Registered Indian Population		Total living on participating reserve		Total living off-reserve	
	Number	%	Number	%	Number	%
Canada	488,040	100.0	227,285	46.6	260,755	53.4
Newfoundland	2,230	100.0	675	30.3	1,560	70.0
Prince Edward Island	650	100.0	205	31.5	445	68.5
Nova Scotia	9,260	100.0	6,760	73.0	2,495	26.9
New Brunswick	8,080	100.0	5,165	63.9	2,915	36.1
Quebec	44,155	100.0	28,230	63.9	15,920	36.1
Ontario	90,540	100.0	31,530	34.8	59,010	65.2
Manitoba	81,725	100.0	47,125	57.7	34,600	42.3
Saskatchewan	74,095	100.0	37,070	50.0	37,020	50.0
Alberta	66,770	100.0	28,615	42.9	38,155	57.1
British Columbia	93,835	100.0	41,320	44.0	52,515	56.0
Yukon	4,970	100.0	350	7.0	4,625	93.1
Northwest Territories	11,730	100.0	240	2.0	11,490	98.0

Notes:

1. Users should note that the count of registered Indians may be affected by the incomplete enumeration of 77 Indian reserves and settlements in the 1996 Census. The counts for these incompletely enumerated areas are not included in the totals shown.
2. The Statistics Canada counts for "on-reserve" do not include persons in incompletely enumerated reserves.

Source: Canada, Statistics Canada, 1996 Census, Nation tables.

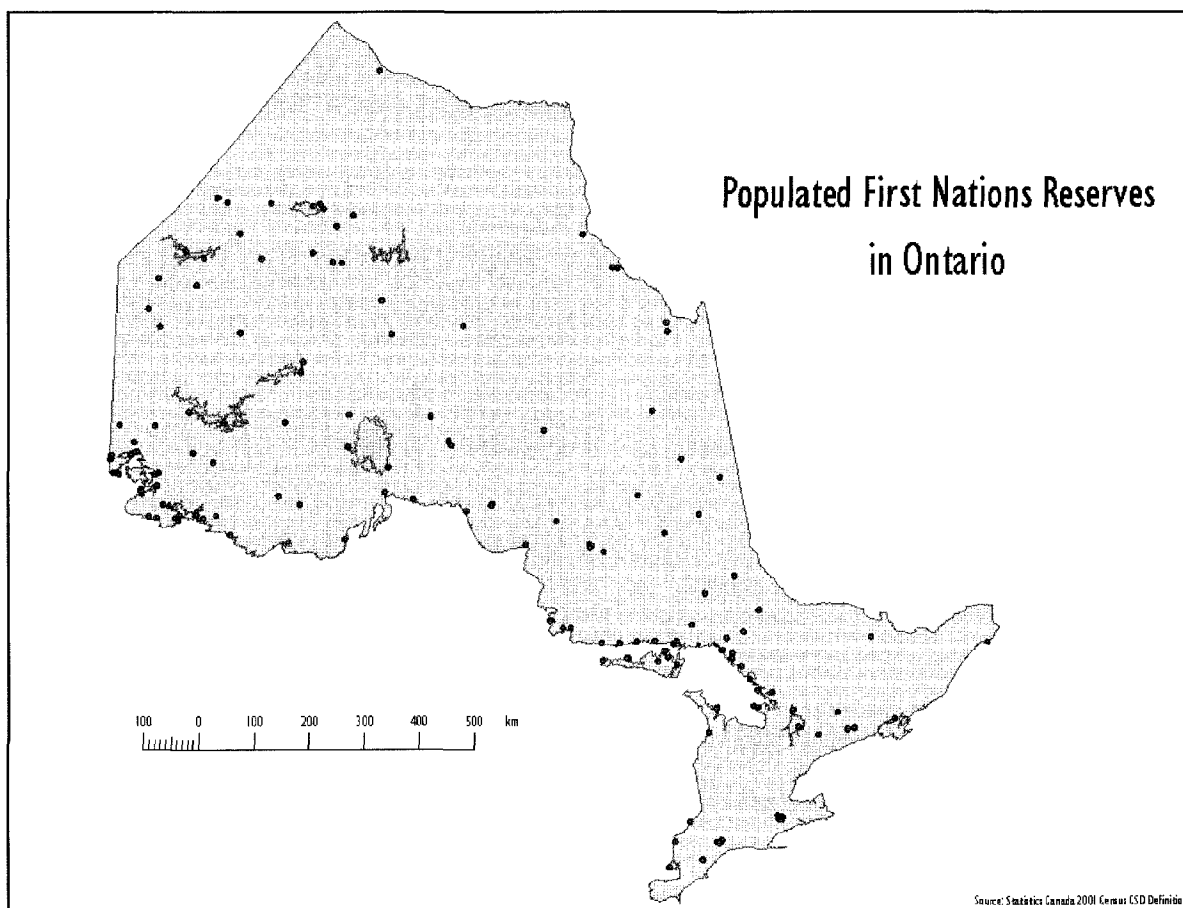
The following is the same data charted. The Yukon and Northwest Territories report a high percent off-reserve population due to the low number of Indian reserves as defined by the *Indian Act*.



Appendix 2

Spatial Distribution of Populated First Nations Reserve in Ontario

The following map serves to illustrate the location of populated First Nation reserves in Ontario. It is based upon the 2001 Census geography definitions. Populated reserves are indicated by a dot.



Appendix 3

This appendix includes the cover letter sent to band administrators, an instruction sheet, consent form and the self-administered questionnaire.

SAMPLE OF COVER LETTER

October 17, 2005

Post-Secondary Administrator
Selected First Nation Band
P.O. Box 000
Community, ON X1X 0X0

Dear Sir or Madam:

I am contacting you to ask for your support through participation in research I am conducting for my Master's thesis. My name is Melissa Baxter and I am completing a Master's degree from the University of Northern British Columbia. The research design includes a survey to assess any impact geography may have on program delivery by a First Nation to their post-secondary students who reside off-reserve. It also attempts to ascertain any possible affects that the Corbiere decision may have on program delivery. As I am sure you are aware, First Nation members, who normally reside off-reserve, who are 18 years of age and eligible for membership have had the right to vote in First Nation elections since November 20, 2000. As most First Nation students must leave their communities and live off-reserve to attain post-secondary education the Corbiere decision can affect them.

I am an Anishnawbe woman and my people are from Martin Falls First nation. I myself have lived off-reserve all of my life and have experienced post-secondary program delivery in different ways. During the 1980's, DIAND administered the program through an Indian Education Support Centre in the city. In the 1990's, due to devolution of power from the government to First Nations, my First Nation delivered the post-secondary program directly. There were changes in how the program was administered, affected by the new geographic reality of my First Nation and myself.

Post-secondary education for First Nations people is more important than ever. The number of First Nation students enrolled in post-secondary education programs has steadily increased over the last decade, with nearly 28,000 students nationally in 1998. This research is important to First Nations, particularly those members who live off-reserve, as it will provide insight into areas of program delivery that are challenging due to funding constraints in DIAND policy as well as the geographic reality of program delivery by First Nations.

I have included a questionnaire and an instruction sheet to assist you in completing the form. I hope that you will participate by taking a few moments to fill in the questionnaire. Thank you.

Respectfully,

Melissa L. Baxter
MA Candidate, University of Northern British Columbia

INSTRUCTION SHEET

The Questionnaire kit includes the cover letter, a consent form, questionnaire and postage paid envelope. The post-secondary administrator or the most knowledgeable person with regards to post-secondary program administration should complete the questionnaire.

1. Consent Form

Please read over the consent form carefully. It outlines my research project and the details of how the information that you provide will be used. I have already signed where it is applicable for the researcher. Please remember that the information you provide will be kept confidential. Please sign fill in and sign where indicated.

2. Administrator Questionnaire

The questionnaire has 4 sections. The first three sections, A to C are short and require you to fill in the appropriate box. Section D is opinion based and requires you to provide written answers. These can be in point form if you prefer.

Please read all instructions and questions carefully. Please fill in sections A to C by marking the appropriate box for each question. Question 3 has a skip direction that if you answer "No" or "Don't know" that you go to question 7. This is the only skip on the questionnaire.

3. Instructions for Returning

NOTE: Whether or not you participate, please return all materials in the postage paid envelop.

Please ensure you include the consent form and the questionnaire in the postage paid envelop. The earlier you return the questionnaire kit the better, however, please return by no later than July 13. Feel free to photocopy the questionnaire and consent form for your records. If you have any questions please feel free to contact me at:

Melissa Baxter
613.728-7291
e-mail: seadog@eisa.com

I will contact you with a follow-up phone call if I need any further information. My research should be complete by the end of this year. Thank you for your time and support.

CONSENT FORM

“Beggars & Scholars: Rethinking the Geographies of off-reserve First Nations”

Project Description:

The geographic realities of Aboriginal peoples in Canada varies from region to region. Many First Nation people live off-reserve for the majority of their lives. The circumstances that bring them to reside off-reserve are diverse yet collectively similar. For some, it is the necessity of relocating to an urban centre to attend university. For others, the city has always been their home.

With regard to First Nation university students, the business of post-secondary education has gone through several shifts in administrative structuring due to the gradual devolution of authority from the Department of Indian and Northern Development (DIAND) to First Nations. Many First Nations now administer their own post-secondary education programs to their students.

This research is designed to investigate the geographic experiences of off-reserve First Nation university students who are attending or have graduated from a university program having received financial or other forms of assistance from their First Nation. In addition, the prevailing impact of the *Indian Act* and the subsequent Supreme Court of Canada case of *Corbiere v. Canada and the Batchawana Band* will be geographically examined. The Corbiere decision ended the discriminatory process of how First Nation elections for Chief and Council are conducted. Prior to November 20, 2000, First Nation members who ordinarily resided off-reserve, including First Nation students, were ineligible to vote.

Consent:

Name of Interviewee: _____

Name of Interviewer: _____

Place: _____

Date: _____

My participation in this research is voluntary. I am free to end my participation in the research project at any time and withdraw my information from the project at any time. **The information that I provide to the project will be confidential.** This means that my name will not appear on any research product unless I indicate otherwise. My participation in the research may be acknowledged but not directly linked with specific information.

I agree that any audio recordings and/or transcriptions resulting from my participation in this research project may be used for the following purposes:

Scholarly and other publications and/or presentations about the research project
 Project Reports
 Poster(s), web page(s) and/or other display media

I understand that such recordings and transcriptions may be used by other scholars and or researchers interested in the devolution of authority to First Nations with regard to post-secondary education. Transcripts of this interview will only be made available to public archives after a 7 year period has elapsed from the time of completion of the research thesis.

I give permission to the researcher to deposit copies of my recordings at the appropriate archival depositories (to be mutually agreed upon by the researcher and me).

I agree to the use of information I provide according to the conditions stated above.

Signature of Participant

Date

I agree to use of the information according to the conditions stated above.

Signature of Researcher

Date

This project is subject to the ethical guidelines of the University of Northern British Columbia. The thesis is being conducted under the supervision of Dr. Gail Fondahl, Department of Geography, UNBC. Dr. Fondahl may be contacted at (250)960-5856 or via e-mail: fondahlg@unbc.ca

Melissa Baxter can be contacted at (613) 728-7291 or seadog@eisa.com

SELF ADMINISTERED QUESTIONNAIRE: ADMINISTRATORS

<u>PART A</u>		
Date: <input style="width: 100%;" type="text"/>	<i>Post-secondary Education Administrators Questionnaire Ottawa, ON</i>	University of Northern British Columbia 3333 University Way Prince George, BC V2N 4Z9
Number: <input style="width: 100%;" type="text"/>		

Information collected during this research project is strictly confidential. Data use will secure personal information in such a way that you remain anonymous. Confidentiality is subject to the University of Northern British Columbia's Research and Ethics policies and procedures.

SECTION A – First Nation Information

Name of Administrator
Name of First Nation
Mailing Address of First Nation	Street:
	City..... Prov
	Postal Code:
Telephone	Area Code:..... Number:.....
Tribal Affiliation

SECTION B – Post-secondary Education Administration

1. On a yearly average, how many students did you administer post-secondary funding to for 2000?

- 1 - 19
- 20 - 39
- 40 - 59
- 60 - 79
- 80 - 99
- 100 or more

2. Would you say that over the last 5 years, the number of post-secondary students who are band funded has ...

- Increased
- Decreased
- Stayed the same
- Don't know

3. Does this First Nation have its own post-secondary education policy?

- Yes
 - No
 - Don't know
- } Go to Question 7

4. What year did the post-secondary education policy take effect?

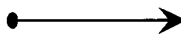
Year:

- Don't know

5. Are students provided with a copy of the policy?


- Yes
- No
- Don't know

6. Do the students have access to the policy through the other means?

- Yes  How do they access or understand the policy?
- No

Go to Section C, Question 9

7. Is there a post-secondary policy being developed for the First Nation?

- Yes  Is it over the next...
- No
- Year?
- 2 – 3 years?
- 4 – 5 years?
- more than 5 years?
- Don't know

8. Does this First Nation currently use DIAND/INAC post-secondary education policies?

- Yes
- No
- Don't know

SECTION C – Accountability & Support

9. How does this First Nation ensure accountability from its students who receive financial assistance? (Mark all that apply.)

- Submission of Daily living receipts (rent, food, utilities, transportation)
- Invoice directly through the university bookstore for text and supplies
- Annual request of academic transcripts for review
- Other

Please Specify...

10. How does this First Nation ensure accountability to its students who receive financial assistance? (Mark all that apply.)

- Frequent contact with students via phone, fax or mail
- Easy accessibility to post-secondary administrators
- Contact with University First Nations Centre or other Native support centres when requested by student

Other

Please specify...

11. Does this First Nation make any special arrangements or provide additional support for students who normally reside off-reserve?

- Yes
- No
- Don't know

Appendix 4

This appendix includes the consent form presented to student participants and the questionnaire.

CONSENT FORM

“Beggars & Scholars: Rethinking the Geographies of off-reserve First Nations”

Project Description:

The geographic realities of Aboriginal peoples in Canada varies from region to region. Many First Nation people live off-reserve for the majority of their lives. The circumstances that bring them to reside off-reserve are diverse yet collectively similar. For some, it is the necessity of relocating to an urban centre to attend university. For others, the city has always been their home.

With regard to First Nation university students, the business of post-secondary education has gone through several shifts in administrative structuring due to the gradual devolution of authority from the Department of Indian and Northern Development (DIAND) to First Nations. Many First Nations now administer their own post-secondary education programs to their students.

This research is designed to investigate the geographic experiences of off-reserve First Nation university students who are attending or have graduated from a university program having received financial or other forms of assistance from their First Nation. In addition, the prevailing impact of the *Indian Act* and the subsequent Supreme Court of Canada case of *Corbiere v. Canada and the Batchawana Band* will be geographically examined. The Corbiere decision ended the discriminatory process of how First Nation elections for Chief and Council are conducted. Prior to November 20, 2000, First Nation members who ordinarily resided off-reserve, including First Nation students, were ineligible to vote.

Consent:

Name of Interviewee: _____

Name of Interviewer: _____

Place: _____

Date: _____

My participation in this research is voluntary. I am free to end my participation in the research project at any time and withdraw my information from the project at any time. **The information that I provide to the project will be confidential.** This means that my name will not appear on any research product unless I indicate otherwise. My participation in the research may be acknowledged but not directly linked with specific information.

I agree that any audio recordings and/or transcriptions resulting from my participation in this research project may be used for the following purposes:

Scholarly and other publications and/or presentations about the research project
 Project Reports
 Poster(s), web page(s) and/or other display media

I understand that such recordings and transcriptions may be used by other scholars and or researchers interested in the devolution of authority to First Nations with regard to post-secondary education. Transcripts of this interview will only be made available to public archives after a 7 year period has elapsed from the time of completion of the research thesis.

I give permission to the researcher to deposit copies of my recordings at the appropriate archival depositories (to be mutually agreed upon by the researcher and me).

I agree to the use of information I provide according to the conditions stated above.

 Signature of Participant

 Date

I agree to use of the information according to the conditions stated above.

 Signature of Researcher

 Date

This project is subject to the ethical guidelines of the University of Northern British Columbia. The thesis is being conducted under the supervision of Dr. Gail Fondahl, Department of Geography, UNBC. Dr. Fondahl may be contacted at (250)960-5856 or via e-mail: fondahlg@unbc.ca

Melissa Baxter can be contacted at (613) 728-7291 or seadog@eisa.com

Appendix 5

Selected Geographies including Census Metropolitan Areas, Census 1996

Aboriginal identity population	North American Indian				
Selected Geographies	Total North American Indian Population	Registered Indian		Not Registered as an Indian	
	Number	Number	%	Number	%
Canada	529,035	442,440	83.6	86,595	16.4
Ontario	112,825	81,970	72.7	30,855	27.3
Selected CMAs					
Toronto	12,420	6,440	51.9	5,980	48.1
Ottawa - Hull	7,075	3,495	49.4	3,580	50.6
Halifax	1,590	680	42.8	905	56.9
Saint John	505	230	45.5	275	54.5
Montréal	5,600	2,925	52.2	2,675	47.8
Winnipeg	20,230	17,005	84.1	3,225	15.9
Regina	8,275	7,795	94.2	480	5.8
Calgary	7,450	5,510	74.0	1,940	26.0
Edmonton	15,310	12,115	79.1	3,190	20.8
Vancouver	21,275	14,005	65.8	7,275	34.2

Notes:

1. As the geographies are selected, columns and rows do not total.
2. Statistics Canada uses the "identity" concept whereby respondents indicate if they identify with at least one Aboriginal group - Inuit, Métis or North American Indian. This value is meant to be representative of the Aboriginal population.
3. Registered Indian refers to the population that is registered as an Indian under the *Indian Act*.
4. The North American Indian population includes single responses only.
5. The percent values are provided to illustrate the breakout of registered and non-registered total Aboriginal and North American Indian populations.
6. North American Indian is a legal definition as set out by the *Charter of Rights and Freedoms* and is synonymous with the term First Nation.

Source: Canada, Statistics Canada, Census 1996, The Nation Tables.