



**DOING BUSINESS WITH THE DEVIL:
Land, Sovereignty, and Corporate
Partnerships in Membertou Inc.**



JACQUELYN THAYER SCOTT

July 2004

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2000 Barrington Street, Suite 1006, Halifax, Nova Scotia B3J 3K1

Telephone: (902) 429-1143

Fax: (902) 425-1393

E-mail: aims@aims.ca

Web site: www.aims.ca

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Telephone: (902) 429-1143
Fax: (902) 425-1393
E-mail: aims@aims.ca
Web site: www.aims.ca

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ABOUT THE AUTHOR

Jacquelyn Thayer Scott, O.C., Ph.D., LL.D.(Hons.), Dipl. (Hons.) is Professor of Organization Management and Public Administration at the University College of Cape Breton in Sydney, Nova Scotia, an institution that she served as its president and vice-chancellor for nearly ten years. She serves on several public and private sector governing boards, and is Deputy Chair of the Prime Minister's Advisory Council on Science and Technology for Canada.

EXECUTIVE SUMMARY

Membertou First Nation, a part of the city of Sydney, Nova Scotia, and one of the few urban aboriginal reserves in Atlantic Canada, defies stereotypes about poor, mismanaged reserves. Its potholes are filled and new buildings are under construction. On Career Days at the local school, students can talk with representatives of corporations that are partnering with the community. There are plans for a community arena and multipurpose centre, including a new health clinic and seniors' activity area, and a new housing subdivision.

The driving forces behind Membertou's success are Chief Terry Paul and Chief Executive Officer and General Counsel Bernd Christmas. Under their leadership, and with the able assistance of other highly competent Band managers, this Mi'kmaq community has gone from massive operating debt and welfare to labour shortages, budget surpluses, capital reserves, and annual dividend payments to Band members. It is the first aboriginal government in Canada, and possibly in the world, to achieve and maintain ISO-9000 certification. Its corporate offices are located in a glass-walled tower on the Halifax waterfront. The development of human capital has also been a priority, with increasing numbers of the Band's students going on to post-secondary education.

A large part of Membertou's financial success depends on revenues derived from gaming, in the form of video lottery terminals that bring in \$400,000 a week — much of it from non-aboriginal pockets. But the Band has also undertaken commercial projects in, for example, the fisheries and food and gasoline retailing that are now showing profits and promise. A new commercial centre and business park will anchor many of the Band's joint-company partnerships and provide land and facilities for long-term lease to other companies. The Band has also established a series of corporate partnerships — with companies such as SNC-Lavalin, Lockheed Martin/Fujitsu, Sodexo-Marriott, and the Laurentian Group — that offer training and profit participation to the Band and its members.

In addition to these initiatives, chief and Council have established an Economic Development Fund to assist Band members who are interested in establishing or expanding a business enterprise. An aboriginal employment agency is also in the works, and the Band is pursuing its rights and opportunities in such natural resources as forests and minerals. In all, Membertou and its Band-owned enterprises now employ more than 362 individuals on-reserve, about 55 to 60 of whom are non-aboriginal.

Membertou's approach to socio-economic development — sometimes referred to as a “First Nations progression model” — is based on using a business approach to government, management, and economic development to achieve social objectives. The foundational step was “capacity building” — assuring that financial affairs and quality were well managed and kept within a known framework of systems, policies, and procedures. The second step was “preparation” — to develop strategic



plans, make informed resource allocation investments, and capably manage their implementation. The third step, “economic development”, involves partnerships, new ventures, expansion of employment and enterprises, and reinvestment of profits to obtain community objectives.

At the same time, the Band’s leaders have been anxious to preserve aboriginal values such as conservation and sustainability. However, the wish to uphold those values has also led to a limited recognition of private property rights on the reserve and the lack of a true “firewall” between business and Band governance, both of which are of concern if Membertou is to sustain its stability and growth through potentially negative political leadership changes.

Despite its success, Membertou faces serious challenges in the future. One challenge is succession — its current leaders are strongly committed to the “Membertou model”, but no obvious successors are in the wings. A second looming challenge is the need for attitudinal change. Many leaders acknowledge that old community attitudes die hard: deep suspicions remain about the corporate model, and among older Band members the notion lingers that business development is a bad thing. Some feel that change may erode culture and loosen the traditional bearings that have sustained the community through hard times. Others believe that “the government victimized us and, under the treaties, it owes us a living” or that government should provide jobs through grants and subsidies to enterprises — a sentiment that is, indeed, shared by many non-aboriginals in Cape Breton’s industrial communities.

Human capital development remains a concern as well. Although many jobs are now to be found on-reserve, they tend to be comparatively low-paying ones in retail and service operations. Even so, a family with several lower-income earners, living in subsidized housing at the periphery of an urban area, can live well, so there is concern that young people will be diverted from completing post-secondary training by the lure of an immediate paycheque.

Another attitudinal problem that could adversely affect the Band as it seeks to extend its influence and success is the mixed reactions of other Mi’kmaq to that success. Cultural attitudes that value collective success over individual achievement mean that other Bands may applaud Membertou’s skills and accomplishments while bitterly resenting its prosperity and the media attention it brings. Managing such resentment could be a major task.

Finally, the issue of firewalls and property rights, with their implications for access to capital, must be addressed. The diversification of Membertou’s economy away from a heavy reliance on gaming operations will require more capital. In turn, that will require innovation and compromise on the property rights issue, as well as the separation of political and business decisionmaking authorities.

This article represents a “snapshot” in time: interviewing, other research, and writing were completed during the period April; 2003 to October 2003, and some initiatives or partnerships have evolved or changed since that time.

A PART, BUT APART

Cape Breton Island, northeast of Nova Scotia’s mainland, is internationally known as a place of great beauty. The same cannot be said for its largest city, Sydney, on the eastern shore. This community with a regional population about 125,000 has never been short-listed for a “prettiest town in Canada” award; rather, visitors often comment on its higgledy-piggledy milltown-gone-bad appearance. The industrial glory days of coal and steel are gone, and outmigration of people and capital has left a legacy of rundown buildings, empty storefronts, and a ragged infrastructure of potholed roads, boarded-up schools, and weed-choked parks.

At Sydney’s southeast corner — just off Alexandra Road, a major through-artery — the potholes are filled, new curbing and buildings abound, and construction work includes a new trade centre, which adjoins a new market, food retailing centre, and gas bar. Across the street and kitty-corner are new buildings housing the economic development corporation, local government chambers, and the gaming commission. Down the road, in the main administrative offices building, the lobby walls are covered with new architectural sketches, and posters advertising consultation sessions about a new community plan and Career Days at the local school, where students can talk with representatives of community partners such as SNC Lavalin and Lockheed Martin. There are plans for a community arena and multipurpose centre, including a new health clinic and seniors’ activity area, and a new housing subdivision.

Welcome to Membertou¹ Inc. — a 1,000-member² Mi’kmaq community that, over the past decade, has gone from massive operating debt and welfare to labour shortages, budget surpluses, capital reserves, and annual dividend payments to Band members (with those of minor children banked in a healthy trust fund for future education and other expenditures). It is the first aboriginal government in Canada, and possibly in the world, to achieve and maintain ISO-9000 certification. And while its headquarters are thoroughly grounded on the reserve, national and international business is more familiar with its Corporate Division offices, where the chief executive officer is mainly based, on the seventeenth floor of glass-walled Purdy’s Wharf Tower on the Halifax waterfront, hundreds of kilometres away.

One of Atlantic Canada’s few urban reserves,³ Membertou has been gaining new respect from its Sydney neighbours. Sydney merchants see Band members spending their wage and dividend cheques,

1 The community is named commemoratively for Grand Chief Membertou (1510–1611). It was legally created in 1959 as the Sydney Band (the name was later changed), to which three existing Indian Reserve lands were allocated.

2 Membertou Band documents report that the on-reserve population grew by 137 percent between 1980 and 2002, and continues to expand. Over the same period, housing units expanded from 56 to 218 on reserve.

3 The others are Eel River Bar, St. Mary’s (near Fredericton), and Madawaska (at Edmundston), all in New Brunswick, and Millbrook (near Truro), in Nova Scotia. In addition, the Acadia First Nation owns reserve land near Yarmouth, NS.



not welfare cheques, in local stores. Local radio talkback shows hear Sydney residents suggest that Membertou CEO Bernd Christmas or Chief Terry Paul would make a great mayor for the regional municipality. Most of Membertou’s market and gas bar customers are from Sydney, and they come not to avoid paying sales taxes — Membertou collects and remits the same sales taxes for nonresidents as do other Sydney businesses. “We’re competing on concept, service, and quality”, Christmas says, “not on any price advantages that may be considered unfair by other local businesses”.⁴

Recently, the Band contributed \$25,000 to the regional hospital’s campaign for a new MRI and bone densitometer equipment — a move warmly received by the local community, as was a \$15,000 contribution to a sports fund for young people. The message: We’re part of this area community, even though we’re apart.

4 Interview with the author, April 14, 2003.

A LONG AND WINDING ROAD...

That sentiment — “a part, but apart” — wasn’t always so. Atlantic Canadian aboriginal reserves such as Membertou have the smallest land base, per capita, in the country: an average of 3 acres per person, compared with 12—15 acres per person elsewhere in Canada.⁵ Eastern reserves have no diamond or gold mines, and no oilfields on tribal lands. “Everyone at Membertou grew up poor”, Chief Paul recalls about his own middle-aged generation, “and we all had to leave home for work or go on welfare”.⁶ There were no jobs for Mi’kmaq in the steelmill, the mines, or other local stores and businesses, and few young people completed high school.

Other issues stuck in Membertou’s craw as well. Although other Cape Breton reserves had had a history of “permanent” community sites before European contact, Membertou developed as a community only as Mi’kmaq — who had fished, hunted, and trapped in the area — were drawn to Sydney to provide services and sell handmade or gathered products to the new population.

Most settled in an area along King’s Road, a long and winding thoroughfare built originally by the French when Cape Breton (then called Île Royale) and Louisbourg defended the gateway to their colonial holdings in North America. The King’s Road Reserve, known as Indian Reserve No. 28, was created by the Nova Scotia colonial government some time before Confederation, possibly as early as 1832, through a grant of 2.3 acres to a Mr. Paul. This land, and two other parcels in the Sydney area, known as Indian Reserve 28B (now the site of Membertou) and Indian Reserve 28A (never occupied, known locally as “the Lingan Reserve”), were vested in the Commissioner of Crown Lands in 1852 to protect the interests of the Mi’kmaq. Transfer of jurisdiction to the new Canadian government did not occur until 1882.⁷

Throughout the late nineteenth and early part of the twentieth century, the reserve’s neighbours and Sydney municipal officials tried to force the Department of Indian Affairs to remove the Mi’kmaq from the now commercially valuable King’s Road site to somewhere else, preferably outside the town limits. Numerous approaches were made over the years to the Mi’kmaq residents, who steadfastly

5 Author’s interview with Steven Joudry, Regional Director-General for Nova Scotia, Indian and Northern Affairs Canada, June 6, 2003. Membertou’s actual land base is just 111.7 acres.

6 Interview with author, November 6, 2003.

7 Historical details regarding the reserve’s land history are drawn from “Indian Reserve No. 28, King’s Road, Statement of Fact and List of Sources Consulted”, prepared by legal counsel for the Membertou First Nation as part of its current land claim lawsuit against the government of Canada.



declined to surrender the land unless a suitable alternative location was provided. Various attempts were made to achieve involuntary surrender. In 1916, the Exchequer Court of Canada ordered the relocation of 125 Band members, and in 1926 the community was moved to its present site.

In the 1930s, the city of Sydney leased the King's Road lands, at the cost of a dollar a year, from the Department of Indian Affairs for the Community Club to use as a garden. The lease contained no stipulation that the Mi'kmaq be provided a portion of the garden's produce, and no allowance for the Mi'kmaq also to plant gardens on their own land.⁸ Then, in 1963, Dr. F.J. Kelley, a local physician, offered to purchase the property for \$6,500 in order to build a medical clinic on the site.⁹ In 1964, after a series of negotiations and meetings, and encouraged by the city, the Band apparently approved the sale for that purpose. "Apparently" is the key word here, as voting and documentation irregularities are alleged. In a current land claim, the Band further alleges that Indian Affairs:

alternately colluded in the removal of the Mi'kmaq by invoking s.49A, and ignored its duty to ensure the highest and best use of the property for the Mi'kmaq by leasing the land at a nominal rent. Finally, it ignored the clearly expressed desires of the band that if the reserve was to be surrendered, it be surrendered only on condition that a medical clinic be constructed on the land. By negotiating to include the conditions in the acceptance of the surrender by the Governor in Council, the terms of the surrender were invalidated.¹⁰

As well, Membertou residents felt they had been denied rightful access to treaty rights regarding hunting, fishing, trapping, and other traditional uses of surrounding lands. Famously, the Supreme Court of Canada upheld these claims in its *Donald Marshall* decision.¹¹

Until very recent times, the notion of running the Band as a corporation and partnering with major multinational corporations on economic development projects would have been anathema, given the history of racism and perceived betrayal of trust. As I discuss later in this paper, attitudes can be slow to change and not everyone at Membertou is fully comfortable with new directions. But doing business with neighbours and multinational corporations — descendants of earlier Europeans who had little appreciation for Mi'kmaq culture or ethnic dignity — has considerable support in the community at present.

8 Ibid., pp. 40–41.

9 Ibid., p. 49.

10 Ibid., p. 68.

11 Judgments were rendered on September 17 and November 17, 1999, in *26014 Donald John Marshall, Jr. v. Her Majesty The Queen — and — The Attorney General for New Brunswick, the West Nova Fishermen's Coalition, the Native Council of Nova Scotia and the Union of New Brunswick Indians (N.S.)*. The case overturned, by a 5–2 decision, Marshall's 1996 conviction for catching and selling eels out of season. Marshall is a resident of Membertou.

THE TURNING POINTS

Chief Paul might argue that the first turning point for Membertou’s socio-economic growth and self-confidence came in 1970, when the chief and Council of the day began to take direct control of delivery of federal programs and services. Others would note the hiring of John Gerard Paul as a senior officer (now executive director of the Atlantic Policy Congress, the political organization of Atlantic Chiefs). Most others would pinpoint 1994–95 as a key date, when Chief Paul recruited Bernd Christmas as CEO and General Counsel. Christmas, a Membertou native who earned his law degree at York University’s Osgoode Hall Law School, was then practising law with Bay Street powerhouse Lang Michener, where he implemented the firm’s aboriginal law practice group and specialized in corporate/commercial and aboriginal law.¹²

“That year, the Band had a budget of \$4 million and an operating deficit of \$1 million”, Christmas recalls. “The reserve wasn’t being taken seriously because of its financial situation, and almost all of its money came from Indian Affairs”.

Indeed, deficits had been accumulating since at least fiscal year 1984/85, when Chief Paul took over the leadership of the financially ailing reserve. The usual efforts had been made in the 1980s to attract companies and jobs to Membertou, with some of the same failures that other aboriginal and rural communities had experienced. A fast-talking consultant with no fisheries experience sold the Band on investing in a short-lived silver hake fishery experiment, the assets of which were eventually sold for five cents on the dollar. Later, an irrigation pipe company attempted to establish a manufacturing plant on the reserve, but the location displaced a traditional gathering space and the firm required round-the-clock shift work, for which Band members were not prepared. When the business collapsed, the Band was unable to meet its payroll.¹³

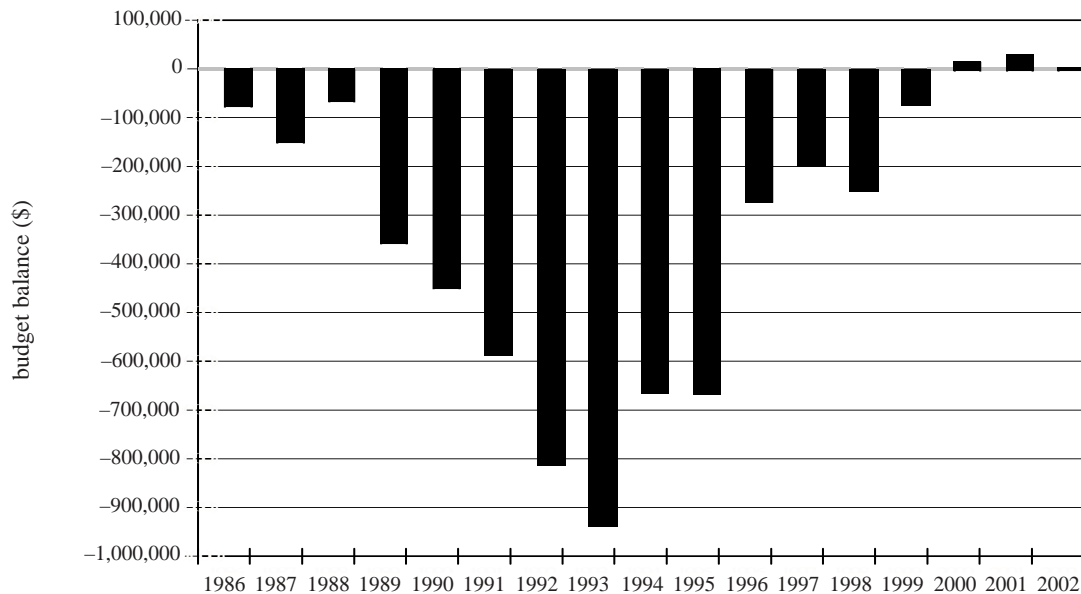
“We learned we couldn’t just vault into business, but we had to think it through first”, Eric Christmas, Membertou’s former director of Corporate Affairs, reflects. After a seven-year hiatus on major development projects, the accumulation of a huge debt, and the looming spectre of third-party management of the Band’s finances, “we had an epiphany”, he says. “Maybe it wasn’t all the gov-

12 Among Christmas’ previous and current activities, he has served on the Board of Governors of the Nova Scotia Community College and the Canadian Council for Aboriginal Business, and is a past director of Aboriginal Legal Service of Toronto. He is a member of the Ministerial Advisory Committee for Amendments to the Indian Act and the External Advisory Committee on Smart Regulation of the Government of Canada. He is a member of the Law Society of Upper Canada, the Nova Scotia Barrister’s Society, and the Indigenous Bar Association.

13 Author’s interview with Dan Christmas, Senior Adviser and Band Councillor, April 8, 2003.



Figure 1: *Deficit Reduction, Membertou First Nation, 1986–2002*



Source: Membertou First Nation, Auditor-General's presentation, March 31, 2003.

ernment's fault that we were in this shape. We just couldn't say 'no', so in 1994/95 we began to apply more rigorous tests to what we did.¹⁴

Chief Paul says erasing deficits was a necessary step toward self-determination for the Band. "If you are in debt, you have a noose around your neck, and the federal government controls all your decision-making power". Figure 1 shows the magnitude of the task and the progress the Band made between 1985 and 2002.

As the figure shows, by fiscal year 2002/03 Membertou had a budget of \$21 million, with approximately one-third of its revenues coming from Indian and Northern Affairs Canada (INAC), another third from the Membertou Gaming Commission and Membertou Bingo and Tobacco, and the balance from the Band's other business operations, with smaller grants from the federal Department of Fisheries and Oceans and Health Canada for specific programs and projects. Slightly more than one-third of expenditures went on programs and services and about 45 percent went to corporate and commercial operations, with the biggest expenditures being \$6.2 million for the Gaming Commission and \$2 million for the Membertou Commercial Fishery. Some \$1 million was paid in dividends to each Band member shortly before the Christmas holidays in 2002, another million dollars was set aside for the planned Multi-Purpose Community Centre, and \$800,000 was invested in road improvements.

14 Author's interviews with Eric Christmas, Director of Corporate Affairs, April 15 and July 4, 2003. Eric Christmas subsequently left to assume the post of Vice-President, Aboriginal Fisheries, for The Barry Group, a large Newfoundland-based fishery company. Eric and Dan Christmas are first cousins, but are not related to Bernd Christmas, who comes from another branch of the large Christmas family.

In fiscal year 2003/04, revenues are expected to climb to approximately \$41 million. Gaming, expected to bring in between \$15 and \$19 million, plays a big role in those numbers. By June 2004, the Band's 88 video lottery terminals (VLTs) were bringing in \$400,000 a week — much of it from non-aboriginal pockets. It would be a mistake, however, to conclude that Membertou's good fortune is simplistically linked to gaming and tobacco. During the past decade, the Band has undertaken a number of other initiatives that are now showing profits and promise.

Membertou Fisheries

Membertou Fisheries employs 15 to 20 people on a seasonal basis, and in fiscal year 2002/03 brought in \$2.8 million in sales and another \$1.2 million in contract income from the federal Department of Fisheries and Oceans (DFO). These enterprises conduct a community harvest of salmon and moose, with those who participate in the harvesting getting first choice of personally distributed goods, followed by elders, then the community's needy. A portion is also set aside and stored for special community occasions and feasts. In addition to salmon, the fish food harvest includes shellfish, lobster, trout, and groundfish. The commercial fishing operation harvests lobster, snow-crab, shrimp, bluefin tuna, and swordfish. Boat captains are currently non-aboriginal, but aboriginal successors are to be trained. Recently, the Band purchased two new quality-built 58-foot fishing boats. Both are Class B ice-breakers and, at \$900,000 each, represent a significant investment by the Band, but many Bands have bought boats of lesser quality for more money.¹⁵

The Band is undertaking a review of its commercial fishing, and developing a strategy for upcoming negotiations with DFO, since most of its "post-Marshall-decision" fishing licences expire within the year.

The Band also hopes to expand its unique partnership with Clearwater Fine Foods, a major Atlantic fish products company, which includes not only contract harvesting (with a 50–50 profit split) but also branding of Membertou-fished products. This arrangement employs 20–60 people on a seasonal basis, including approximately 20 at Clearwater's Highland Fisheries processing plant in Glace Bay. The Band is also partnering with the Acadia First Nation in western Nova Scotia to harvest and brand scallops. Acadia has a quota, licence, and dragger for scallops, while Membertou brings experienced crew and an additional licence to the table.

Mi'kmaq Gas Bar and Convenience

The new Mi'kmaq Gas Bar and Convenience market is a food retailing and gas bar concept unique in its merchandising format in the Sydney area. It employs 15 to 20 people and in 2004 is expected to bring in \$300,000–\$400,000 in revenues, with profits of about 16.5 percent.

¹⁵ Author's interview with Lance Paul, Fisheries Manager, April 11, 2003.



The Membertou Gaming Commission

Membertou has taken a different approach to gaming than that of the other Nova Scotia reserves. In 1994, when the province first offered reserves the opportunity to conduct gaming operations, Chief Paul held a referendum on whether the Band should be involved. It failed, “and people told me their fears — that the benefits would come to only a few, and I listened to that”, Chief Paul recalls. On other reserves, individuals have been licensed to place gaming machines in commercial and community locations, so that the Bands receive fees, but not profits, which accrued to the individual operators. In Membertou’s case, the proposal was re-worked so that the Band would own the Gaming Commission and operate all premises, with all profits going back to the Band. A second referendum duly passed with 87 percent support. “We knew we couldn’t stop the ills associated with gaming”, Eric Christmas says, “but we could ensure that our members could have positive financial outcomes from it”.

Corporate Partnerships

The Band has established a series of corporate partnerships that offer training and profit participation to the Band and its members. One example, that of Clearwater Fine Foods, was detailed above. Others include:

- **SNC-Lavalin:** This partnership was designed to involve Membertou in environmental technologies, including some of the large-scale monitoring and clean-up operations associated with the Sydney Tar Ponds Project and remediation of the Cape Breton Development Corporation lands. A year ago, the partners received a standing offer contract designation from the federal government for environmental assessment and remediation. The first step was a \$420,000 contract designed to transfer environmental expertise and technologies from SNC-Lavalin to Membertou. In addition to environmental work, Membertou is looking to develop its own expertise through this partnership in construction and design engineering services generally.
- **Lockheed Martin/Fujitsu:** This partnership was prompted by Lockheed Martin’s desire to boost its bid for the \$3.1 billion Maritime Helicopter Project, and is intended to provide additional information technology skills at Membertou. The Band recently created a joint venture, Membertou Technologies, Inc. (MTI), with Fujitsu Consulting and, in turn, Lockheed Martin has agreed to use the new company as an integral part of its business with the Department of National Defence. A first project, worth approximately \$500,000, consolidating and securing health records for Canada’s military personnel, was scheduled to begin in early 2004. MTI is 51 percent owned by the Membertou Development Corporation and 49 percent owned by Fujitsu Consulting.
- **Sodexho-Marriott:** In conjunction with Sodexho-Marriott, one of the world’s largest catering firms, Membertou hoped to land some of the catering contracts for the offshore oilrigs. The plan included training several community members in the hospitality program of the Nova Scotia Community College and in Sodexho-Marriott client kitchens. So far, the partnership has not had any real commercial success, but plans are under way to market hospitality services — such as

catering, housekeeping, janitorial, and laundry — onshore to universities, secondary schools, and health care facilities.

- **Grant Thornton LLP:** The Band has entered into a business alliance with Grant Thornton LLP to develop workable solutions for First Nations' financial management problems, focusing on building internal financial capacity. Accumulated deficits among First Nations in Atlantic Canada alone reached a combined \$59 million in 2002. Across Canada, some 138 native communities are experiencing some form of co-management or third-party intervention.¹⁶
- **Techlink Entertainment:** A deal with Techlink, a Sydney-based gaming technology company, will showcase the company's new-generation PERFORMER I VLT machine exclusively in the reserve as part of a government-sanctioned 90-day pilot project. The project will include a number of support activities that Membertou has been involved with designing.
- **The Laurentian Group:** In this project, the Band has linked with the local consortium that owns Sydport, a major ports facility for the Sydney Harbour, to examine a number of potential projects.

The Membertou Trade and Commerce Centre and Business Park

A new commercial centre and business park will anchor many of the Band's joint-company partnerships and provide land and facilities for long-term lease to other companies. A \$6.23 million initial structure is now under construction. As well, the Gaming Commission will lease space to host its bingo games and additional VLT operations. The 47,000-square-foot design includes convention space, which the Band hopes will also serve some of the mid-range meeting requirements (those for up to 900 delegates) for the regional municipality. Also included in the project are a Fisheries Science Centre — which will include a GIS Mapping Centre of Excellence, a training partnership for technicians with Eastcan Geomatics — a marine lab and classroom facilities, an aboriginal tourism office, and a 140-seat restaurant. Membertou will provide \$1.2 million of the funding, with the balance coming from government sources.

Other Initiatives

In addition to the initiatives outlined above, the chief and Council have established an Economic Development Fund to assist Band members who are interested in establishing or expanding a business enterprise. The fund is managed by the Corporate Division, and has already assisted several small businesses on the reserve, including its own radio station. As well, the creation of an aboriginal employment agency is in the later stages of planning and consultation with other agencies and jurisdictions. The agency would be owned and operated by Membertou and run out of the corporate office in Halifax.

¹⁶ Membertou Press Release, May 6, 2003.



Despite its limited land, the Band is also pursuing its post-*Marshall* natural resource rights and opportunities, including negotiating forestry agreements with the Crown and with Stora-Enso, a pulp and paper multinational with major facilities in Port Hawkesbury, on Cape Breton's western coast. Mining opportunities on Crown land also are being investigated.

In all, Membertou and its Band-owned enterprises now employ more than 362 individuals on reserve, about 55 to 60 of whom are non-aboriginal. Major employers include the Band Council, with about 100 full-time and 20 part-time or seasonal employees; the Membertou Gaming Commission, with 16 full-time and 19 part-time/on-call workers; and the new market and gas bar, which employs about 50 persons.

COMMUNITY GOVERNANCE: MERGING BAY STREET AND UNAMA'KI

Economic changes at Membertou have followed structural governance changes. What differentiates Membertou's changes from those of many other successful aboriginal communities, however, is that they did not follow a wholesale housecleaning at the political level — for the most part, the same individuals have occupied the positions of chief and Council for the past 20 years. Membertou is, in fact, fundamentally conservative in its approach to change, with the Band preferring long periods of reflection, experimentation, and trust building. In the early years of Chief Paul's leadership, the Band was organized much as many other reserve governments, with divisions replicating the departmental divisions at INAC. "Chief and Council were always fundamentally honest", one manager comments. "Some bad decisions were made in their early years only because of lack of knowledge or experience, not corruption".

When Bernd Christmas became CEO, he proposed organizing the Band like a business or commercial organization — in other words, merging Bay Street and this part of Unama'ki (the Mi'kmaq name for the Cape Breton division of their nation). He wanted to treat Band members as shareholders and INAC as an investor, not a funder. "In my experience, if you just say 'everyone's responsible and it will work out', it doesn't", Christmas says. "We consciously have modeled our organizational structure as a corporate structure, and sought qualified people to fill roles and made them accountable. Chief and Council are the Board of Directors".

"It was a bit difficult at first", says Dan Christmas, the Band's senior advisor and a councillor. "Bernd was speaking a foreign language".¹⁷ Over time, the Band administration developed nine departments: Finance and Administration, Education Services, Social Services, Corporate Division (Halifax), Public Works and Housing Services, Health Services, Natural Resources, Employment and Training Services, and the Gaming Commission. Only Education Services and the Gaming Commission are at any distance from direct governance by the chief and Council. In the case of Education Services, there is a strong relationship to Mi'kmaw Kina'matnewey, the tribal educational authority that covers ten of the Nova Scotia Bands.¹⁸ The Gaming Commission, although wholly owned by the Band, holds its own assets; its manager reports directly to the CEO and Council.¹⁹

17 Author's interview with Dan Christmas, April 8, 2003. Christmas also represents the Band on the Mi'kmaq Treaty Rights Committee, and serves on the Union of Nova Scotia Indians' Technical Committee. He has been senior advisor to the Chief and Council for six years.

18 Author's interview with Darren Googoo, Director of Education Services, April 10, 2003.

19 Author's interview with Mike MacIntyre, Internal Auditor, April 10, 2003.



For tax purposes, other Band enterprises are either wholly owned or joint ventured through its holding company, Membertou Development Corporation. At the end of the fiscal year, all operations are consolidated on the balance sheet and audited financial statements are published on the Band's public website — a move that has earned criticism from some other chiefs, as published audited financial statements are not a hallmark of many Canadian aboriginal community governments.

The management practices of chief and Council borrow from Bay Street standard Canadian governance practice, and aboriginal values. Sometimes, the mix may appear to external observers to have internal contradictions. For example:

- Regular Council meetings are always held *in camera*, rather than publicly, although Band members and others may petition to appear before Council.
- Band meetings are held only at the call of chief and Council — approximately annually, although Chief Paul is thinking about having more frequent public meetings.
- Major issues involve lengthy (in terms of lapsed time) consultation with smaller groups of Band members, iteratively: first, with Elders, then with other groups, including youth.
- The Band publishes a weekly on-line newsletter, with notices and messages from all administrative divisions — from reports on the latest corporate division activities, to messages encouraging parents to attend parent-teacher meetings and tips on helping children with homework, to job postings and reports on hiring even for seasonal jobs. Sections of the newsletter — letters of concern about speeders or mild vandalism, cards of thanks, birthday and get-well wishes — can be input directly by Band members.
- On most reserves, members with a problem line up directly outside the chief's office door (or home). At Membertou, however, divisional managers have, over time, taken on more “troubleshooting” and problem-solving roles. Band members are gently encouraged to go through channels first and to regard chief and Council as a “court of last appeal”.
- Although the Membertou Development Corporation was created for tax purposes, real governance of the Band's enterprises is in the hands of chief and Council, who act as the Board of Directors for any economic activity. Firewalls between economic and political activity are practically nonexistent. This has also meant that corporate partners, often unaware of how Band governance works in Canada — face a learning curve in working with the Band.
- Chief and Council encourage staff to provide information and explanations to Band members.

A key watershed for changes in operational management practices was the Band's decision to seek ISO 9000 certification, which it obtained in early 2001. Bernd Christmas says the Band needed certification for credibility and the opportunity to work with multinational partners: “It sends a message about who we are and our commitment to quality”. The internationally recognized process includes an external audit of management processes, including links between policy decisionmaking and implementation, human resource and communications practices, evaluation activities, and so on. While at one level the organization is measured against its own statement of mission and objectives, the audit attests to the use of appropriate management processes and standards in achieving those outcomes.

For Band managers, this exhaustive certification process forced cultural change. “The process makes you treat citizens as customers”, Eric Christmas notes. “It makes you focus on vision and interconnect roles within the organization — to understand others’ roles so we can do our own job better”. It also requires that “customers” know the vision and that progress be measured regularly so mitigating action can be taken. “Before Bernd, departments just did their separate functions”, says John Miller, former director of Finance and Administration. “Now, managers meet weekly, set objectives, document progress and evaluate performance”.²⁰ “With Bernd, it’s more results oriented and less process oriented”, adds Darren Googoo, director of Education Services.

John H. Paul, director of Public Works and Housing and a long-time middle manager for the Band, maintains that the biggest benefits to him of the ISO process were management training and learning how to use the planning cycle fully. “Now, we have a five-year rotating plan for preventative maintenance for housing and other Band buildings — the results have been better service and fewer complaints”, he says. A telling example: Cape Breton’s harsh winters, with multiple freeze-thaw cycles, result in more potholes and road cave-ins than in many other parts of Canada. In winter, Nova Scotia’s roads — notorious for their history of poor maintenance — and Sydney’s streets resemble slalom courses without flags, especially at night. Often, there is a six-week “break-up” period in the early spring, during which the most egregious potholes cannot be repaired, and car owners often incur broken axles, flat tires, and other structural damage to vehicles. At Membertou, however, “customer orientation” now means that John H. Paul’s workers are sent out in spring with spray cans of orange phosphorescent paint to spray around potholes and crumbling shoulder-beds so drivers can spot and avoid them — a Nova Scotia first!

²⁰ Author’s interview with John Miller, April 8, 2003; at the time, he was one of two non-aboriginal senior managers.



THE MEMBERTOU MODEL

As might be expected, Membertou’s approach to socio-economic development has a strong ideological foundation. Bernd Christmas calls it a “First Nations progression model”, based on using a business approach to government, management, and economic development to achieve social objectives. As Figure 2 indicates, the foundational step was “capacity building” — assuring that financial affairs and quality were well managed and kept within a known framework of systems, policies, and procedures. Only then could the Band move to the second step, “preparation” — to develop strategic plans, make informed resource allocation investments, and capably manage their implementation. The third step, “economic development”, then involves partnerships, new ventures, expansion of employment and enterprises, and reinvestment of profits so as to attain the community’s objectives.

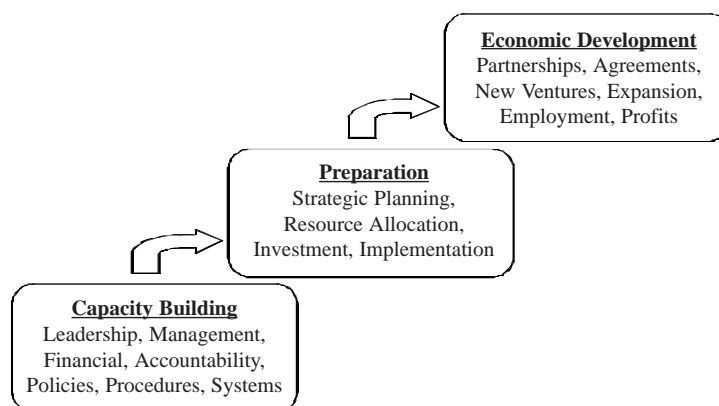
The model rests on four value pillars, Christmas says: conservation, sustainability, innovation, and success. The latter two would be commonly recognized at any corporate annual general meeting, but the first two embed cultural values. “Conservation and sustainability, including stewardship of the land, are traditional native values that have been important to Mi’kmaq people over hundreds and thousands of years”, Christmas says. “There is only one economy — the mainstream economy — but we have to bring our concepts into the monetary system built on innovation and success. There’s no dishonour in measuring success through profit and return on investment, but it has to occur within a native cultural values framework”.

Christmas’ managers add three other operating values that are key to the model: transparency, accountability, and legitimacy. Integration of mainstream and aboriginal concepts in a socio-economic model requires enormous amounts of explanation, education, and consensus building. As Chief Paul puts it, “You have to have the buy-in of the people, or it won’t work. As long as the Elders are talking with me, I know things are going pretty well. When they stop talking with me, I know we’re in trouble. Everyone has to have their say, they have to know you aren’t hiding anything and that they can trust your word. So change takes a long time”.

If most developed Western societies find their ideological governance roots in the pages of Adam Smith and company, then form follows function. First, the nature of economic growth changed with the coming of the Industrial Revolution and the sweeping away of feudal agricultural society, which created a new class of “landless” wealth. Then, political models followed, through the debates of the Enlightenment, toward democracy and away from absolute monarchical forms embedded in land-based primogeniture.

Some would argue that, for Canadian aboriginal communities, the process was inverted. First, there were reserves and the *Indian Act*, which allowed political evolution, but not an evolution in economic

Figure 2: *The First Nations Progression Model (The Membertou Model)*



Source: Membertou First Nation, Auditor-General's presentation, March 31, 2003.

models. Rather, the act established a form of feudalism, which disallowed sovereignty and provided no incentives for innovation and change. Add to that, Christmas would say, the dispossession of culture through the continuing legacy of the residential schools, band relocations, and historical seizures of resources, and one begins to understand why aboriginal communities are seeking extraordinary means to protect their cultural values — and why they so often continue to occupy the lowest quartiles of all socio-economic indicators.

But how does this integration of modernist and traditional values work in practice, beyond issues of management style? Some specifics are contained in the statement of the objectives of the Band's Corporate Division, shown in Box 1. In addition to those elements that are recognizably part of any corporate regime, the focus is clearly on community benefit. Wealth and development are meant for the Membertou community, as are returns on profits created by the corporate strategy, and its outreach with respect to sharing intellectual property and economic benefits with other Mi'kmaq First Nations.

A closer look at practices illustrates the issue more clearly.

Land and Property Rights

Membertou's chief and Council and their managers are adamant that property ownership should not be available either to outside companies or to Band members for commercial purposes. "We don't give [Certificates of Possession]²¹ for that anymore", was a common reply. Although specifics are

21 A Certificate of Possession is one instrument available under the current *Indian Act* for distribution of a form of individual property rights within a communal environment. It provides the individual with undisturbed use of the land for personal or commercial purposes, as indicated in the documentation. The federal government's interpretation of the *Indian Act* speaks exclusively about "land", not about an asset, such as a house, that might be placed on the land. This is a contentious issue, and has raised many complexities for matrimonial property rights on reserves. For example,...

**Box 1: Objectives of Membertou's Corporate Division**

- To create wealth and development for the Membertou First Nation community.
- To disseminate Membertou's corporate vision and strategy to its community and to the corporate world.
- To define and develop relationships with potential partners in the corporate sector.
- To promote efficiency and profitability within Membertou's current businesses.
- To establish investment protocols for all profits created by the corporate strategy to the maximum benefit of the Membertou Band and its community.
- To create partnerships with other Mi'kmaq First Nations to ensure that those communities share in Membertou's intellectual properties and corporate success.
- To develop a strategy that ensures that all of Membertou's corporate entities are operated in a fashion that conveys our commitment to excellence.

Source: Membertou First Nation website, <http://www.membertou.ca/corporate/index.html/>, 07-07-03.

hard to come by, it is estimated that almost all long-time business land properties and more than 95 percent of housing land is Band owned, with no individual rights beyond those in lease arrangements. The Band is, however, willing to provide long-term commercial leases either to outside companies or to Band-member entrepreneurs. The community newsletter, for example, encourages would-be entrepreneurs to identify themselves to chief and Council and to work with advisers for assistance through the Community Economic Development Fund, with the proviso that the Band collectively also benefit from their future success, usually through payment of leasing fees.

The argument for communal land ownership has two extralegal roots. "We've lost too much land — now we buy it, we don't sell it or give it away", one manager says. Others argue the value is more cultural: "Sharing" is a fundamental principle that governs food, shelter, and possessions, and others must not be deprived because of the perceived personal greed of some individuals.

Commercially, three examples illustrate the Band's allegiance to this point. As noted earlier, the decision to become involved in gaming only proceeded after a second Band referendum, the first having been defeated because members felt only individuals would benefit from gaming franchises.

Note 21 - cont'd.

an individual Band member may have a house fully paid for from personal resources (through a bank mortgage or other means) on a plot of reserve land for which there is a Certificate of Possession, but the house sits on land held in common for all Band members.

22 Author's interviews with various present and former INAC officials, including Steven Joudrey (Regional Director-General for Nova Scotia), Dennis Wallace (former assistant deputy minister and, at the time of the interview, President of the Atlantic Canada Opportunities Agency), Gordon Shanks (ADM of Economic Development and Special Initiatives at the time of the interview and now Senior ADM, Regional Operations Support and Services), and Robert Frelich (Executive Assistant to the INAC Minister for Atlantic Canada).

The second example is the Membertou Market, which was the first and most visible economic development project to take place once the Band gained control of its deficit. The small Membertou reserve already had an extremely successful, privately owned (by a Band member) gas bar and convenience store that, at times, had employed 35 or more Band members. But when asked why the Band would want to make its first commercial foray in an already-occupied niche, the answer from managers was universal: “Because people in the community felt one family was benefiting too much from the use of reserve land, and this showed our commitment to communal benefit”. The third example is the Band’s decision to pursue commercial fisheries activities collectively, even though a private fishery company, owned by a Band member, already existed on the reserve.

The status of private land control by Band members for housing seems less clear to managers. Practice varies across the country, but some reserves (such as Six Nations, Fort Alexander, Westbank, Kamloops, and Whitecap)²² have developed either an internal real estate market within the Band or provided conditional surrender and long-term leases — up to 100 years. In 1988, Membertou began arranging 25-year mortgages for members who had been allocated housing on reserve, because housing program monies from INAC fell far short of demand for housing. When asked what the status of an individual’s house would be once the mortgage was paid off, replies were definitive but varied. Most believed that the mortgage payment was a form of rent and that the individual family would simply cease paying this rent — but no Certificate of Possession would be given. Nevertheless, some individual Band members consulted during this study who were paying such mortgages felt “the house would be mine” at the end of the period.

Indeed, the actual mortgage documents that occupants have signed confirms the view that “ownership” of the house lies at the end of the lease period, when the premises can be purchased for one dollar by exercising a written option within 365 days of making the last rent payment. The Band is then supposed to issue a Certificate of Possession to the tenant. Whether this will eventually result in the development of an internal housing market at Membertou remains to be seen, but it at least presents that possibility, and pragmatically it recognizes that younger Band members will be influenced in the matter of potential home ownership on reserve by mainstream Canadian culture, which places a high value on home ownership.

As I note further below, the limited recognition and acknowledgement of land and property rights is a central concern, along with development of arm’s-length institutional mechanisms, if Membertou is to sustain its stability and growth through potentially negative political leadership changes, however unlikely these may seem to be at present.

“Firewalls” between Business and Band Governance

A “firewall” between business and Band governance on reserves involves the creation of a truly arm’s-length institutional mechanism, governance of which is not directly affected by a political authority (in this case, the Band Council). That is, the institution is separately incorporated, governed by its own Board of Directors (with most or all appointed for multi-year terms, or elected by



institutional membership), and with the capacity to raise funds independently and to manage the organization's affairs in a sound and accountable manner.

Few true firewalls exist between business operations and political governance in Canada's First Nations. Indeed, senior INAC officials identified only one — the Labrador Innu Development Corporation — and it is still relatively new and inexperienced. At least two Membertou managers cite the location of their Corporate Division in Halifax as a “virtual firewall” created by geographical distance, and an important perceptual one for potential corporate partners. “We tell potential partners our demonstrated record of transparency, accountability, and legitimacy is a key protection for them”, says Gerard MacAdam, senior manager for Project Development at Membertou Development Corporation. “In turn, we look for integrity, a concern with more than just profit, and relevance to our community goals in prospective partners”.

The issue has not presented huge problems to date (except, perhaps, for those families affected by Band competition with their individual businesses) because of Membertou's political stability, quality professional management, and the value-based symmetry between the two. But the vulnerability exists. Other Band members may have been little interested in political life when their government had only debt and problems to share, but now that the Band reasonably anticipates significant annual profits, other noses may sniff the political opportunities, and not all of them may be committed to the personal integrity and accountability that has characterized the current government and administration. Without firewalls between the Band Council's legitimate political activities and its economic enterprises, there is always the risk of political interference in business operations. This risk to investors and business partners normally is ameliorated through federal government financial assistance, often in the form of loan guarantees or other sureties. This practice, however, leads to cynicism among non-aboriginal businesses and taxpayers, and leaves the federal government in a powerful position regarding the Band's business and economic development choices.

Another risk exists. The “financial firewall” issue has been raised recently in many First Nations' communities where business failures have affected a Band's ability to maintain delivery of essential services funded by other levels of government. Although Membertou has some protection through incorporation of its holding company, if push comes to shove in legal terms (given that business and Band decisionmakers are the same), it may be difficult to shield the Band's main government operations from the consequences — either a recovery of funds by other levels of government (which would presume that program funds were diverted to support or maintain business operations) or an inability to provide essential public services to Band members.

More critically in the Membertou example, there is no immediate or near-term anticipation that the “no firewall” situation should be changed. In part, some managers say, this is because the community is so small and tightly knit: it is hard to have effective firewalls when everyone knows the chief and where he lives. More fundamentally, the dominant value that chief and managers share is that business and economic activities must be closely attuned to community values and readiness before they are allowed to proceed. In their view, this requires the political-development symmetry that now

exists. “Maybe someday”, one manager says, “but for now we’re still building our own institutions and both sovereignty and culture matters very much. We had no control over bad things when they were happening, and the good outcomes are still too new for us to let go of control prematurely”.

Partnership Conditions and Benefits

Both Bernd Christmas and Eric Christmas have seen the poor results of early partnership agreements between aboriginal governments and corporations. “These often failed because what was created was only a shell company”, Eric Christmas says. “A Band might get a bonus cheque or finder’s fee only — no real transfer of business skills or capacity happened. Also, the Bands were not transferring aboriginal skills and perspectives back to the corporate partner. We wanted a symbiotic relationship”.

Both men feel they have accomplished such a relationship with their partnership agreements, having gained confidence with experience. Key features are training and internship experiences for front-line and managerial staff, joint-venture structures, profit sharing, branding, and the opportunity for global reach. Band management sees working capital investments by Membertou in these and other business ventures from consolidated Band revenues as “shareholder loans”. “We have many of the basic partnerships we want in key areas for employment and growth”, Eric Christmas says. “Now we’re ‘filling in the pieces’ and would only be interested in major new partnerships that are really different from those we already have”. Sophisticated and integrated partnerships also are time consuming, he says, and Membertou is careful not to commit beyond its growing management capacity.

In summary, the Membertou, or First Nations Progression, model is theoretically embedded in a notion of entrepreneurial state capitalism. As I outline below, key elements in the effectiveness of that model are leadership trust and a competent operational management team of principled and passionate technocrats.

Membertou’s Aboriginal Rights Agenda

The Band’s focus on governance and socio-economic development has not deflected its attention from the broader issue of aboriginal rights. Indeed, the name of one of Membertou’s leading citizens — that of Donald Marshall, Jr. — is synonymous with aboriginal rights in Canada. “The large gap in socio-economic attainment must be closed and rights and treaties must be respected”, Bernd Christmas says. “These are not independent or mutually exclusive concepts. We have always maintained that these two concepts must be addressed at the same time”.

Membertou has pursued the rights agenda in various ways. As noted earlier, the Band undertook its own specific land claim with regard to the sale of the King’s Road property, and provides key leadership for overall Mi’kmaq treaty claims. The Band has also taken advantage of opportunities opened up through court judgments in fishing, hunting, forestry, and mineral resources. Most recently,



Membertou has entered the long-standing interjurisdictional morass over the clean-up of the Sydney Tar Ponds. Citing archaeological evidence of Mi'kmaq hunting and fishing in the Muggah Creek watershed and Sydney Harbour, Chief Paul has indicated Membertou intends to press senior levels of government for remediation action under its own treaty rights.²³

²³ The *Cape Breton Post* reported (June 17, 2003) that Chief Paul had requested that Ottawa reimburse the community for the loss of fishing due to contamination of the site. It quoted Chief Paul as remarking, "All we're saying is that there is a legal obligation for the federal government to consult with us (about remediation) and to mitigate issues satisfactorily....[T]he government has no choice because it has a legal obligation to deal with us".

KEY COMPONENTS OF MEMBERTOU'S SUCCESS

When one looks for “prime causes” of Membertou’s success, two stand out: leadership and the Band’s history of human capital development. The two likely are interdependent variables in the Membertou case.

Leadership

Although Band members and other observers spread the “credit” for the Band’s success among several members of the past and current management group, everyone agrees that Chief Terry Paul has provided the “vision” for, and has been the ultimate driver of, the Band’s performance. Chief Paul marked his twentieth anniversary on the job in June 2004, and still finds it rewarding and challenging. “I’ve always been interested in politics”, he says. “During a nomination meeting for chief and Council, I was nominated to run for Band councillor by the past grand chief, Donald Marshall, Sr., when I was just 16 years old. I couldn’t accept because I was too young under the *Indian Act*”.

Chief Paul has made up for lost time since, serving not only as Membertou’s chief, but also as president of the Mi’kmaq Kina’matnewey (the tribal education authority), and the Un’amaki Natural Resources Institute (another tribal entity). He was also co-chair of the Association of Nova Scotia Chiefs, an executive member of the Atlantic Policy Congress (the chiefs’ policy advocacy body), president of Ulnooweg Development Group Inc. (an association of Atlantic Canadian aboriginal financial institutes), and founder of the National Aboriginal Capital Corporation Association.

Where did Chief Paul’s “vision” come from? He says it is a combination of values and experience. Unusually in his generation, he has always been a fluent Mi’kmaq-speaker, and grew up living on all five Cape Breton reserves. “I firmly believe we need to be proud of who we are, that this is part of our spirits and emotions”, he says. Then, like other young Mi’kmaq, he left the island to find work, and spent five years in Boston. “I learned so much there, not only about work and living in a different place, but it was a very exciting period of Mi’kmaq renewal in the New England area”, he recalls. “Every night and weekend there were meetings and planning sessions, and people from Harvard and the other universities were there to help”. His views about the necessary integration of cultural tradition with hard work and self-sufficiency were solidified there.

“But every time I was traveling on business and saw the Green Mountains, I’d think, ‘I have to go home’”, he says. But when he arrived back in Membertou after the idea-rich environment of Boston, “I was shocked at how little had changed”. His early years as chief were spent laying the ground-



work for the more recent changes. “I spent a lot of time speaking, writing, telling people why I feel the way I do about our future and how we get there”.

Among Mi’kmaq chiefs, Chief Paul was a leader in promoting post-secondary education. When access and outreach programs were developed with the nearby University College of Cape Breton, tiny Membertou had five times the number of participating students as had larger reserves, such as Eskasoni, the biggest aboriginal community east of Quebec. Those early graduates, too, had to go away for work and experience.

“When we were finally ready as a community (to move ahead), and I went to recruit some of those educated young people, their ‘going away’ experience was an important factor”, Chief Paul says. They needed to gain skills and perspective on the emerging knowledge-based economy, and to experience a different culture of work and achievement than existed in mainstream industrial Cape Breton society.

The management team developed under Bernd Christmas’ leadership is tightly knit, but there is also an inner circle of “big-picture” thinkers: the “Membertou model” brains trust of Chief Paul, and Bernd, Dan, and (until his recent departure) Eric Christmas. Bright and energetic, their skills are complementary:

- Chief Paul is the principal visionary and highly successful political strategist, reading the pulse of the community and other governmental players. A family man and sports enthusiast, he is a “man of the people”, dressing casually whenever he can, and a visible symbol that Membertou’s government is still in touch with its own community and with members of other Mi’kmaq communities.
- Bernd Christmas is the corporate strategist who identifies opportunities and moves quickly to bring actors together and media attention to the process. An extremely able lawyer and manager, his Hugo-Boss-and-ponytail business persona puts non-aboriginal multinational business managers at ease. He is also a skilled and frequent public speaker, promoting Membertou’s success and potential.
- Dan Christmas is the quiet diplomat, avoiding the media spotlight as much as possible, but using his provincial aboriginal political staff experience as a skilled negotiator and peacemaker, bridging many of the middle-management relationships with other Mi’kmaq Bands and communities. He also is the Band interface with key political and sectoral non-aboriginal groups in the Sydney area.
- Until his departure, Eric Christmas followed immediately behind Bernd’s lead with corporate partners, and managed those relationships on a day-to-day basis. He was also the ideologue: a keen student of economic theory and Third World development, he refined elements of the “state capitalism” theory underlying the Membertou model.

The remaining members of the management group (as distinguished from members of Band Council) are competent managers with a team ethic, distinguished from private sector corporate counterparts by their zeal and passion for the ideological model. Personal integrity and credibility are expressed as high personal values, and this is regularly reinforced in the team-building process. One might think of this as a “principled technocrat” model of basic institutional capacity building.

Human Capital Development

Chief Paul's early commitment to advanced education (both university and skilled trades) allowed the Band to reap measurable benefits as it implemented its socio-economic development plans. That commitment continues. According to Darren Googoo, the goal of Education Services is to have 20 percent of Band members complete post-secondary education (the current total is 4 percent). Increasingly, the Band's students are diversifying their program choices. In the 2000–01 academic year, 83 percent of Membertou post-secondary students were enrolled in arts programs; by 2002–03, only 38 percent were enrolled in such programs. Importantly, nearly one-third of current students are enrolled in science-based programs, nearly all at University College of Cape Breton, which pioneered an integrative science program in cooperation with Mi'kmaq educational leaders and Elders. Membertou's total represents a significant proportion of all aboriginal science students in Canada.

The Band's emphasis on education and its direct connection to economic growth is supported by a recent study of that relationship in 16 "emerging economies" (UNESCO 2003). The study concludes that, overall, investments in education during the past two decades may have contributed about half a percentage point to annual growth rates in the countries studied. Its results also indicate that "high levels of upper-secondary and tertiary attainment are important for human capital to translate into steady growth".

To highlight the Band's focus on continued human resource development, Education Services holds an annual community forum on education that includes youth and focuses on "what can we do better?". Past suggestions have resulted in an increased focus on meaningful summer employment for young people, more scholarships, and an annual Career Day that involves Membertou's corporate partners. As well, training programs associated with corporate partners require participants to work outside the community and off-island, as outside work and cultural experience is still seen as a critical part of the process of attitudinal change.

Focus is also placed on family intervention to promote homework skills and better communication between parents and teachers.



“HARVARD” VS “MEMBERTOU”: HOW DOES THE MODEL STACK UP?

Critical studies of aboriginal economic success are still quite limited in Canada. In the United States, however, the Harvard Project on American Indian Economic Development has, for more than 15 years, been studying the conditions under which sustained self-determined social and economic development has been achieved on aboriginal reserves in that country (see <http://www.ksg.harvard.edu/hpaied>).

The Harvard Project tracks the performance of Indian nations according to two models of reservation economic development. The first model, which the Harvard Project calls the “standard model”, has predominated since the 1920s. In it, the focus is short term and nonstrategic, looking for income and jobs, but letting others set the development agenda. Development is viewed as primarily an economic problem and indigenous culture as an obstacle to development. Starting businesses is more important than sustaining them, and there is a “flavour-of-the-month” approach to sectoral investment. Stephen Cornell describes the development planning and process in this model:²⁴

- Ask the tribal planner to identify business ideas and funding sources.
- Apply for outside grants, and respond to outside initiatives.
- Start whatever can be funded.
- Appoint supporters to run projects.
- Micromanage.
- Pray.

By contrast, the second approach, labelled the “nation-building model”,²⁵ uses *de facto* sovereignty and self-governance, effective governing institutions, and a matching of contemporary indigenous culture with strategy, and has a long-term strategic orientation. Cornell maintains that, for reserves, economic development is first and foremost a political problem. In this model, the necessary characteristics for effectiveness include:

- Asserting sovereignty by assuming control of the agenda and resources, and coupling decisions and consequences with concrete, bottom-line payoffs.

24 Cornell is Professor of Sociology and of Public Administration and Policy, and Director of the Udall Center for Studies in Public Policy at the University of Arizona. His list of attributes of both the standard model and the nation-building model, discussed below, is drawn from a set of slides he prepared for distribution by the Economic Development Administration, U.S. Department of Commerce; see website: <http://12.39.209.165/xp/EDAPublic/Research/NativeAmerican.xml>.

25 Developed and discussed by Cornell and Kalt (no date).

- Building institutions that are characterized by stability, separation of politics from business management, employ a competent bureaucracy, and have effective and nonpoliticized dispute resolution (a strong and independent judiciary).
- Ensuring a cultural match of institutions and strategies with indigenous ideas about how legitimate authority should be organized and exercised.
- Implementing strategic action by shifting from reactive to proactive, from short term to long term, and from opportunistic to systemic thinking and operating with a broad societal focus.

The Harvard Project concludes that the standard model typically results in failed enterprises, a politics of spoils, outside perceptions of incompetence and chaos, and continuing poverty. The nation-building model, the Project asserts, offers more effective access to, and use of, resources; increases the chances of sustained and self-determined economic development, provides a more effective defence of sovereignty; and results in societies that work. Commonly cited examples of successful Indian nations that are using the nation-building model include those both large and small and those well-endowed with natural resources and those with few:

- the Choctaws, one of the largest employers in the state of Mississippi, who also employ several thousand non-Indians in their enterprises;
- the White Mountain Apaches of central Arizona, who operate forestry and tourism enterprises that outperform private competitors;
- the Flathead Reservation in rural Montana, which also has an outstanding tribal college; and
- the Cochiti Pueblo in New Mexico, which employs most of its members in tribally owned enterprises.

By contrast, most Canadian reserve “success stories” begin with a large and resource-rich land base. Membertou is thus one of a handful of exceptions.²⁶ Using the nation-building model, Membertou measures up on several counts:²⁷

- The Band has *de facto* asserted sovereignty through its land and resource claims, effective financial management, and organizational changes to goals-setting and evaluation processes.
- The Band has built institutions through its focus on its “holding company” approach to enterprises, a program of educational and cultural authorities and programs, use of legal contracts, and development of a long-term community plan, combined with stability and an able bureaucracy.

26 Senior INAC officials often mention LaRonge, Saskatchewan, and Osoyoos, British Columbia as successful reserves that are small and resource poor.

27 Many of Membertou’s administrative and development practices would have been further encouraged for other Bands through elements of Bill C-19, *The First Nations Governance Act*, tabled by the INAC minister in June 2002, and Bill C-61, *The First Nations Fiscal and Statistical Management Act*, tabled in August 2002. At time of writing, however, these bills had been effectively killed as a result of protests by the principal chiefs’ organization, the Assembly of First Nations, and other groups that disagreed with provisions pertaining to elections, accounting, and governance practices, and to policies of transparency, disclosure, and redress with more access to information by individual Band members. Bands also would have had additional financial instruments with which to raise long-term private capital for infrastructure, and a First Nations Tax Commission would have been created to resolve problems arising from Band taxation of nonmembers. For a discussion of these bills and the broader issues of First Nations governance taxation, see Richards (2003).



- The Band has established a cultural match in the collective structure of its gaming enterprises and in its state capitalism approach to enterprise development. In addition, Chief Paul has developed a long-term focus on preservation and the use of the Mi'kmaq language on-reserve and in governance and business activities wherever possible.
- The Band has taken strategic action through its contracting practices with partners, its attention to community and non-aboriginal relationships, targeted media attention, and infrastructure and human capital planning.

The Band falls far short of the goal of separation of business and political management, and its dispute resolution history with partners has yet to be tested, although these are contractually embedded. The outcome of any future contractual challenges will send an important signal to potential business partners, as the predictable rule of law (or judicial review) in enforcement of contracts is a critical feature of a stable economy, putting limits on political and administrative discretion and increasing the accountable autonomy of individuals and organizations. Contractual business partnerships are still a relatively new phenomenon for Membertou, but the reserve is on track to establish a “global reach” in its economic activities. When business activity is small and local, the number of relationships is also limited and is governed, in part, by local convention and mores. Once that economic activity grows in size and beyond local borders, Membertou is likely to find that investors will judge it on the predictability of contractual enforcement through law, much as is the case for international states, whose economic fortunes are affected by the integrity with which laws are passed and enforced in their jurisdictions.

Few partnership joint ventures are, as yet, located on-reserve, but with the construction of the Membertou Trade and Commerce Centre and Business Park, this will change and may present new issues for Band management. It remains to be seen whether long-term leases will be sufficient to overcome a desire for embedded individual and corporate rights to property in a firewall-free environment. History elsewhere, however, encourages skepticism. At least one scholar argues that Bands should be willing to forgo temporarily their sovereign immunity, which protects tribal assets from litigation, in order to convince investors and partners they are playing on a level field (Bernardi-Boyle 2001).

Others, such as Peruvian economist, Hernando DeSoto (2000), argue that both individuals and corporations ultimately require the ability to leverage their own capital independently through property rights — perhaps more so when a marginal jurisdiction lives within the framework of a culturally distinct (and property-based) mainstream regime. Certainly, the inability to leverage personal and business capital assets will constrain individual experiments with entrepreneurialism and change. Individuals may improve their homes or business premises, establish their reputation and expertise, and improve property that others recognize as having a historical relationship with them or their families. Without formal title to the land and, therefore, without the capacity to leverage their own assets, however, individual Band members are greatly dependent on the largesse of Band Council in obtaining loans or grants for investment and working capital. The individual who falls out of favour politically with key powerful individuals in the Band government will find it difficult to obtain leaseholds, capital, and business licences. As in earlier times — if for different reasons — Band

members could then be obliged to leave Membertou to pursue economic freedom, regardless of their cultural, linguistic, and blood ties to the community and its land.

In addition, no matter what value and goodwill may be built up in an on-reserve environment, without formal title the individual has no way of establishing the value of what he has through transactions at a distance from the community. This potentially inhibits the building of relationships with suppliers, partners, and future buyers. It restricts all value created by the individual to an internal on-reserve market only or to a larger but still internal market consisting only of aboriginal communities (within which some surrogate instruments may be developed for barter or exchange without transfer of formal title).²⁸

Jorgenson and Taylor (2000) looked at some 70 Indian enterprises in the United States, including those studied by the Harvard Project, and conclude that three strong independent variables are predictors of performance:

- firms with outstanding technical assistance needs tend to perform more poorly — that is, those that do not have appropriate managerial or technical expertise to carry out organizational functions and responsibilities successfully.
- firms with nonpoliticized boards of directors tend to perform better; and
- firms that are tribally owned tend to perform more poorly.

Gordon Shanks, a senior INAC official who has carefully studied the Harvard Project and other U.S. literature on aboriginal enterprises, believes some of the earlier conclusions may now be open to question with additional enterprise experience. Ten years after his first tour of successful U.S. enterprises, he recently revisited some of the same reservations. “The Harvard studies have clearly demonstrated that natural resource wealth is not required for a reserve to be successful in socio-economic terms”, he says. “But the single real predictor of success appears to be leadership”. That is, where leadership has been strong and consistent, socio-economic success continues. Where political change has occurred and, with it, a decline in the quality of leadership vision and strength, success also has declined. This may relate, in part, to the short historical timelines involved, in that most Bands have been studied only in the modern era, and only over the past 15–20 years.

Effective leadership, however, does not necessarily equal good governance on reservations any more than in other jurisdictions, Shanks says. The Choctaws, he notes, have a legendary chief who is now 77 years old, but he has ruled with an iron hand. As well, he notes, individual (as different from collective) success is almost universally resented by “successful” aboriginal governments in the United States, “and that’s hardly a feature of good governance”. And firewalls are more apparent than real in the long-term Harvard cases, he notes, while issues of collective versus individual property rights are the same in both countries on successful as well as not-so-successful reserves. “The property rights issue influences access to capital”, Shanks says. “Aboriginal communities need mainstream financial markets to be interested in them, and the problem with collective state capitalism is that banks find it easier to make money elsewhere”.

28 For more discussion of de Soto’s theories and their impact on other Atlantic Canadian communities, especially coastal communities, see Crowley (1995).



THE CHALLENGES AHEAD

Membertou is undeniably a great success story today — one that has resulted from good planning and skill as well as some timely luck. Looking ahead, however, this successful Band can expect to face some serious challenges. The first, and most obvious, is succession. Chief Paul is young enough to have many more years as chief ahead of him, assuming he surmounts future political challenges — but he is nearer the end of his tenure than the beginning of it. He feels he has more to accomplish, but says he does think about what would happen if he were run over by a truck. “We have a very solid and experienced team here, and I’m still recruiting others”, he says. “I can think of five or six possible candidates for chief in the future”.

This may well be, but one of the first names to come to mind outside the community is not likely among them. Everyone, including Chief Paul, acknowledges that Bernd Christmas is future chief material — but Membertou likely is too small a palette for someone with his talents. Others are acknowledged as capable, but success at Membertou is still new enough that external partners, communities, and governments equate it with “Bernd and Terry”. It is well that succession planning is on the Band’s agenda, but Membertou must continue to hope that no speeding trucks appear in the wrong place for several years to come.

A second looming challenge is the need for attitudinal change and continued human capital development. Things are going well at present, but nearly all Membertou-related interviewees agree that old community attitudes lurk just below the surface. Deep suspicions remain about the “corporate model”, and among older Band members the notion lingers that business development is a bad thing. Some, while trusting the chief, feel change is coming too quickly and that it may erode culture and loosen the traditional bearings that have sustained the community through hard times. Others continue to believe that “the government victimized us and, under the treaties, it owes us a living” or government should provide jobs through grants and subsidies to enterprises. Indeed, this sentiment, though fading, is shared by many non-aboriginals in Sydney and other Cape Breton industrial communities.

A corollary of this kind of short-term thinking shows up in a new human capital development issue. In the old days, people in Membertou did not get an education because they felt it would not make a difference to their future. Then, with encouragement, Band members found they could get good jobs “away” if they were well educated and highly qualified. Now, many jobs are to be had on reserve, but they tend to be comparatively low-paying ones in retail and service operations. Even so, a family with several lower-income earners, living in subsidized housing at the periphery of an urban area, can live well, and educators and councillors are finding it difficult to convince young

people that they should complete post-secondary training when the lure of an immediate paycheck is stronger.

Another attitudinal problem could adversely affect the Band as it seeks to extend its influence and success. Although Membertou's chief and managers are committed to sharing their success with other Mi'kmaq bands, the reactions of other Mi'kmaq to that success has been mixed. Cultural attitudes that value collective success over individual achievement mean that members (and governments) of other Bands may applaud Membertou's skills and accomplishments, but bitterly resent its prosperity and the media attention it brings. Cape Breton's non-aboriginal communities are famously known for their intraregional jealousies, backbiting, and sabotage, which adversely affect the entire region. To the extent that the island's aboriginal population shares these attitudes, managing resentment could be a major task.

Finally, the issue of firewalls and property rights (with their implication for capital leverage) will not go away. At the moment, human vice is addressing Membertou's immediate cash needs through gaming revenues. This may sustain growth for a long time, as vice seems unlikely to become unfashionable. But the Membertou vision seeks diversification — of enterprises, occupational opportunities, and cultural interaction through global economic participation. So long as its gaming operations are confined to the immediate geographic area, those revenues are likely to peak and level off within a few years. Will these activities generate enough capital to continue the Band's great leap forward? Perhaps, as the Band is small — but these fiscal realities may dim the prospects for more global dreams. A longer period of high growth is likely to require more capital, and that will require innovation and compromise on the property rights issue, as well as the separation of political and business decisionmaking authorities.

Chief Paul isn't overly worried. "Change takes a long time, and we're adaptable because we know who we are. If we need to organize ourselves differently in the future for better advantage, we can do that".

This article represents a "snapshot" in time: interviewing, other research, and writing were completed during the period April; 2003 to October 2003, and some initiatives or partnerships have evolved or changed since that time.

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