

**Response of the Government
to the Report of
the Special Committee
on Indian Self-Government**

**Presented by the
Honourable John C. Munro, P.C., M.P.,
Minister of Indian Affairs and Northern Development**

**Ottawa, Ontario
March 5, 1984**



Members of the Special Committee

Dear Members:

I would like to take this opportunity, on tabling the Government's response to the Report of the Special Committee on Indian Self-Government, to express my appreciation for the energy and dedication which you have devoted both to the Committee's demanding schedule of public hearings and to the preparation of the Report itself.

The Special Committee process undoubtedly marks an important turning point in Federal-Indian relations in Canada. I am sure that the impact of the Committee's work will continue to be felt for some time to come, as we work toward establishing a new relationship with Indian peoples.

The Government has now taken a significant first step in the direction of Indian Self-Government in Canada, but it is, as you know, just a beginning. We have an important and challenging task ahead of us. However, I am confident that the process of implementation following this response will advance in the same spirit of cooperation and good faith which has characterized the Special Committee process.

Thank you most sincerely for your invaluable contribution of this vitally important issue.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "John C. Munro". The signature is fluid and somewhat stylized.

John C. Munro

**MEMBERS OF THE SPECIAL COMMITTEE
ON INDIAN SELF-GOVERNMENT**

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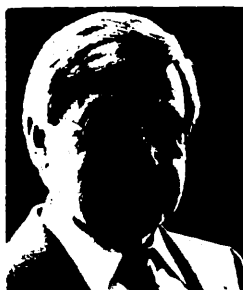
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Ms. Roberta Jamieson
Ex officio member
Assembly of First Nations



Ms. Sandra Isaac, Liaison member
Native Women's Association
of Canada



Mr. Bill Wilson, Liaison member
Native Council of Canada

The Report of the House of Commons Special Committee on Indian Self-Government was tabled in November, 1983. The Government is tabling this response pursuant to the Committee's request that the Government respond to its Report in accordance with Standing Order 69(13).

The Committee's recommendations have a special importance because they were unanimously supported by Committee members of all parties. Furthermore, the Committee process was unprecedented in including an *ex officio* representative of the Assembly of First Nations and two liaison representatives. The Government thanks the Committee and all those, Indians and others, who appeared before it and shared their knowledge and perceptions with its members.

General Commentary

The effect of the Committee's recommendations is to call for the Government and Indian First Nations to enter into a new relationship in which Indian First Nations and their governments would be free to set their own course within Canada to the maximum possible extent. The objective is to break the dependency cycle in which Indians have too often been caught, both individually and collectively. The new relationship would recognize the importance of the cultural heritage and integrity of Indian First Nations and enhance the special relationship between the Government and Indian peoples.

Many of the details of the restructured relationship will have to be worked out after careful consideration and full consultation with Indian people. Nevertheless, on some aspects of the restructured relationship early movement is possible.

The Government agrees with the argument put forward by the Committee that Indian communities were historically self-governing and that the gradual erosion of self-government over time has resulted in a situation which benefits neither Indian people nor Canadians in general. As the Special Committee reported, this Government has tried repeatedly over the last decade to turn this situation around, most recently by seeking and obtaining the approval of Parliament to

mandate the Special Committee itself. The Committee specifically recommended that the amendment of the *Indian Act* and an approach styled "Indian Band Government Legislation" developed by the Department of Indian Affairs and Northern Development be rejected as approaches to Indian First Nation Government. The Federal Government accepts these recommendations.

The Government, therefore, is prepared to acknowledge that effective movement toward self-government will require substantial restructuring of the current relationship between Indian people and the Government of Canada. Changes are clearly needed. However, it is important for us to recognize that any change in the relationship will affect not only the Federal Government and Indian peoples but also Provincial Governments and others.

The beneficial impact of self-government will ultimately be felt far beyond the Indian community, in Canadian society at large.

Because the effects of changes in the relationship are likely to be wide-ranging, long lasting and profound, they cannot be undertaken lightly. Each step toward self-government must be carefully considered through joint consultation to ensure that progress is steady and sure.

The Government recognizes, as the Committee has, that self-government can be furthered through non-constitutional as well as constitutional means. Indeed, if the principle of self-government were constitutionally entrenched tomorrow, the challenge of making self-government an effective and vital reality would remain. Effective government, as the Prime Minister said at the First Ministers' Conference on the Constitution in March 1983, will first be judged by how it impacts upon the daily lives of its constituents.

Non-constitutional measures toward the development of self-government involve the pursuit of new legislation and improved funding and administrative arrangements including the establishment of new structures, new fiscal arrangements and policy and program changes consistent with a new relationship. In the immediate future, the environment of economic restraint poses an additional challenge which must be faced directly

and which can be overcome through realistic planning for ordered change. In the long term, we believe there is real potential that federal expenditures in the context of a new relationship will result in greater benefit for Indian people and Canada as a whole, than is presently the case.

This response to the Committee's Report was prepared within the general time period prescribed by Standing Order 69(13) and attempts to be as comprehensive as possible and, in fact, deals with a substantial number of recommendations. It must be stressed that it only sets out a general Government policy approach to the Special Committee's report. Certain of the Special Committee's recommendations require further discussion and consideration. It is within both the letter and the spirit of the Committee's report that the implementation of some of its recommendations will take place over a period of years.

The Special Committee made a number of recommendations of a constitutional nature. In accordance with the 1983 Constitutional Accord between First Ministers and representatives of the aboriginal peoples of Canada, these issues will be addressed in a series of meetings to be held through to 1987.

The Special Committee recommended that the Government make an immediate commitment to constitutional entrenchment of Indian First Nation Government. At this time, the Government is seeking further clarification of the possible form and implications of such entrenchment, particularly through discussions with representatives of Indian First Nations and in the ongoing multilateral constitutional process.

In the immediate future, the Government is prepared to proceed with the primary thrust of the Special Committee's recommendations, that the Government, in concert with Indian First Nations and in consultation with Provincial Governments, develop legislation to provide for the recognition of the status and power of Indian First Nation Governments.

Many of the recommendations of the Special Committee called for consultation between the Federal Government and designated representatives of Indian First Nations on policy and legislative matters. It is intended that bilateral committees will be established to consider these matters.

The recommendations in the Report break down into three main categories for consideration: constitutional, legislative and non-legislative. The observations of the Government with respect to the recommendations of the Special Committee are grouped under the following headings:

1. Constitutional Proposals
2. General Framework Legislation
3. Other Legislative Proposals
4. Improvements under Existing Legislation.

The Constitutional Proposals.

The Special Committee made recommendations on specific constitutional matters in three broad areas:

1. Entrenchment of Indian Self-Government
2. Land and Resource Rights
3. Clarification of Special Federal Responsibilities with respect to Indian people and Indian First Nations.

Constitutional amendments can only be accomplished through the procedures laid down in the 1983 Constitutional Accord and in the *Constitution Act, 1982*, involving the Provincial Governments and representatives of the aboriginal peoples of Canada in addition to the Federal Government. The Government acknowledges that the Committee recommendations on constitutional matters are appropriate for consideration in the constitutional process, as well as in bilateral discussions between the Government of Canada and Indian First Nations.

Aboriginal self-government rights are already under active discussion among the participants in the ongoing multilateral constitutional process. While there is no doubt formal constitutional amendment is the surest way to achieve permanent and fundamental change in the relationship between Indian peoples and the Federal Government, this matter can only be resolved through agreement with Provincial Governments in the context of ongoing constitutional discussions involving First Ministers' conferences. The role of treaty rights under Section 35 of the *Constitution Act, 1982* may also be examined in this context.

Constitutional definition of the responsibilities of the Government for Indian First Nations, possible special representatives in Parliament for Indian people and a special tribunal for the resolution of jurisdictional disputes between governments are matters which also require consideration in connection with discussions of an aboriginal right to self-government.

As a general category, questions of aboriginal rights to land and resources are also under discussion in the constitutional process. The Special Committee's recommendations, or at least certain of them, are of more specific import, reflecting, for example, a need for Federal and Provincial Governments to divest their interests in Indian lands and resources in favour of Indian control and expansion of or access to the economic benefits arising therefrom. The specific recognition and implementation of rights based on treaties or aboriginal title to traditional hunting and trapping areas are also matters for discussion in the broader context of aboriginal rights as set out in the Constitution. The Government agrees these should be explored in a positive light in the constitutional process.

Canada is unique in the world in the constitutional status accorded to its aboriginal peoples, and in having constitutionalized processes established for the development and consideration of aboriginal rights. This process was begun with the constitutional recognition of the aboriginal peoples of Canada and the affirmation of their existing aboriginal and treaty rights in Canada's constitution. This was extended by the Constitutional Accord arising from the 1983 First Ministers' Conference with aboriginal representatives, and the constitutional amendments enacted in fulfillment of that accord.

General Framework Legislation

After appropriate discussions with representatives of the Indian peoples to work out the specific contents, the Government intends to introduce in Parliament legislation based on the principles and elements set out below to establish a framework for those Indian First Nations that wish to govern themselves and their lands in a way that is not possible under the *Indian Act*. The Government will welcome the views of Provincial Governments on the proposed federal legislation. While the Government has considered it important to be as clear as possible in this response, some issues remain open at this

stage and the Government remains open to discussion on the approach and content of the legislation.

The purpose of the legislation will be to continue and strengthen Indian First Nation Governments on Indian lands and to establish a framework within which Indian First Nations who wish to do so can exercise wide authority over their own affairs, within the context of the Canadian constitution and the rights of the aboriginal peoples there affirmed and recognized. These Indian First Nation Governments would be responsible first and foremost to their own members and would directly exercise powers of government on their own lands, in the interests of the general welfare of their members, the preservation of their culture, the protection of their rights and the use of their lands.

Any legislation must respect the provisions of the *Constitutional Acts 1867-1982* and thus, given current constitutional arrangements, not all powers envisioned by the Special Committee can be included in this framework legislation.

No final decision has been made on the following institutions recommended by the Committee to assist in the implementation of the legislation: Ministry of State of Indian First Nations Relations; independent secretariat; and the Indian First Nations Commission. These institutions will be subject to further consideration and discussion with representatives of the Indian peoples.

Consistent with the Committee Report, the primary purpose of the legislation is to establish a new relationship between the Federal Government and Indian First Nations. The legislation would be based on the following elements:

1. The legislation would be passed in the exercise of the special responsibilities of the Federal Government for Indian people.
2. The legislation would be flexible and respect the diversity of the Indian people and Indian First Nations.
3. The legislation would apply only to those First Nations who wished it to do so.
4. The Indian First Nations that could choose the legislation would be bands, groups of bands or other groups of Indian people with a common culture, history and language and with a clearly defined territory.

5. Indian First Nations seeking recognition under the legislation would develop internal constitutions containing political and financial accountability criteria and protecting individual and collective rights.
6. A Recognition Panel composed of Government and Indian representatives would be established to examine applications for recognition, work with the Indian First Nations on its preparations for recognition and transmit its opinion to the Governor in Council.
7. An Indian First Nation Government would be recognized as having certain powers defined in the Act.
The legislation would also provide for situations where an Indian First Nation Government is no longer able to function under the legislation.
8. Indian First Nation Governments could negotiate with the Government the exercise of additional powers in relation to a broad range of matters set out in the legislation and would be accountable to their membership for the exercise of these powers.
9. Indian First Nations could negotiate funding arrangements with the Federal Government to cover one-time preparation and negotiation costs and multi-year operating costs after recognition.
10. The legislation would not affect existing aboriginal and treaty rights as affirmed and recognized in S. 35 of the *Constitution Act, 1982*.

i) Special Responsibilities of the Government of Canada

The Government acknowledges and accepts its special responsibilities for Indian people and Indian lands. The legislation would respond to the needs and wishes of Indian people in relation to self-government to the greatest degree compatible with the Government's responsibilities under the Constitution for all Canadians. This legislation would be based on a reaffirmation of the Government's commitment to the preservation and enhancement of Indian culture and heritage, including Indian institutions, and the acceptance

of the Government's new responsibilities for Indian First Nations on Indian lands. In addition, Indian First Nation Governments themselves would have substantial responsibilities to their members.

ii) Flexible Legislation

The Government agrees with the Committee that the legislation must be framed so as to allow Indian First Nations to evolve within Canada in a way that is consistent with their own culture, history and philosophy. To this end, legislation would set out only a general framework within which specific arrangements could be made.

iii) Choice of Each Indian First Nation

The legislation will apply only to Indian First Nations that choose it. The *Indian Act* will continue to apply to other Indian bands. It would be important for members of Indian First Nations to indicate clearly that they choose the new legislation. Rules for this democratic process would be provided for in the legislation.

iv) Indian First Nations

The Government agrees with the Committee that the usual unit of self-government (Indian First Nation) is the band, but that in certain instances it may be considered desirable by Indian peoples to form other political units. This should be possible as long as the members have a common history, language and culture and provided that the legislation does not encourage division and instability among political units. It is also important that Indian First Nations seeking recognition have a clearly defined territory as their original base of jurisdiction.

v) Internal Constitutions: Accountability and Protection of Rights

Once an Indian First Nation has decided that it wishes to seek recognition, it will prepare itself to operate under new arrangements. The First Nation would draw up an internal constitution defining the roles and responsibilities of the government, its accountability to

members, internal restrictions on the exercise of power and the rights and responsibilities of members, and would determine its financial requirements.

Once the constitution is decided upon and a funding arrangement has been arrived at with the Federal Government, the membership of the Indian First Nation would be given an opportunity to demonstrate their support for adopting the constitution and being recognized as an Indian First Nation Government.

vi) Role of Recognition Panel

The legislation would establish a body called a Recognition Panel to receive applications for recognition from Indian First Nations. The Government has not yet decided on the precise manner in which the Panel should be appointed and how it should operate, and would like to enter into discussions with Indian leaders on this subject. The Panel's most important responsibility would be to ensure that the requirements of the Act had been met, that funding arrangements were in place and that an Indian First Nation was indeed in a position to operate in accordance with the requirements of the legislation and with the popular support of the community. If requested, it would also assist the Indian First Nation in this regard. Its opinions on recognition would go to the Governor in Council.

vii) Recognition

If the Governor in Council recognized the Indian First Nation Government, the name of the Indian First Nation would be inscribed in a register. The internal constitution would then come into effect. Once the membership had chosen its government in accordance with its internal constitution, the government would be in a position to exercise certain powers in relation to ownership of property, relations with other governments, internal management and administration, financial arrangements and social and economic programs. These powers would be defined in the legislation. It would also be able to establish its own membership

code, in accordance with the Charter of Rights, international covenants and respect for acquired rights. The *Indian Act* would no longer apply, except in particular instances to supplement provisions of the legislation.

The legislation would provide for situations where an Indian First Nation Government no longer wished or was no longer able to function under the legislation. The Government would like to discuss with Indian leaders how this issue should be addressed.

viii) Negotiations on Additional Powers

Before or after recognition, Indian First Nations could negotiate with the Government to obtain recognition of additional powers in relation to a wide range of matters set out in the legislation, such as land use, environment, public health, education, renewable and non-renewable resources (including wildlife), agriculture, taxation and other financial matters, public order, administration of justice, family law and property law.

The nature and extent of the powers to be exercised and the related responsibilities would be negotiated by the Federal Government and approved by the Governor in Council. Most powers would relate to Indian First Nation members and their lands, but provision would be made for arrangements with other governments for the possible exercise of jurisdiction elsewhere. The Indian First Nation Governments would be accountable to their own members for the exercise of their powers.

Amendments to these agreements could be made through negotiation at a later date.

The Indian First Nation Governments could, then, exercise a wide area of jurisdiction in accordance with the negotiated agreements, and some federal and provincial laws would likely not apply as a result. It is important to note, however, that federal legislation in areas of national concern would continue to apply. Furthermore, provincial legislation would continue to apply provided that it were not inconsistent with the *Constitutional Acts, 1867-1982*, the

framework legislation and the Indian First Nation Government's internal constitution and exercise of powers under the framework legislation.

The Government notes the Committee's thinking on the importance of addressing the question of the exercise of powers on adjacent jurisdictions of other governments and of Indian First Nation Governments in respect of each other. The Federal Government would like to explore this matter further in consultation with Indian First Nations and Provincial Governments.

ix) Funding Arrangements

To respect the need for diversity, the Government proposes to leave the details of funding arrangements to individual negotiations, establishing in the legislation only the principle that the Government is to provide necessary one-time funding for Indian First Nations to prepare for and to negotiate recognition and multi-year funding for Indian First Nations to operate according to the legislation. The funds would flow as grants, appropriated by Parliament, and Indian First Nation Governments would report to Parliament on the way the funds were spent.

x) Existing Aboriginal and Treaty Rights

The legislation would neither add to nor detract from existing aboriginal and treaty rights recognized and affirmed in the Constitution. The legislation would, however, be flexible enough to take account of and be compatible with constitutional changes in this area and would, of course, provide a new, stronger foundation for the protection and implementation of existing rights.

xi) Transitional Arrangements

The legislation would need to deal with a number of matters relating to the transition of Indian First Nation Governments from the *Indian Act*. Provision would therefore be made to allow for the transfer to the Indian First Nation Governments of funds held for them by the Minister of Indian Affairs and Northern Development and of federal property interests on their lands, subject to transitional arrangements.

Provision would also be made to ensure that existing laws remained in place until the Indian First Nation Government changed them in accordance with its constitution and powers.

xii) Role of Parliament

Because of the importance of the legislation and of the recognition of individual Indian First Nation Governments, it may be desirable that Parliament have a right under the legislation to be involved in the final stages of the Recognition Process, perhaps through a Parliamentary Committee.

xiii) Timing

The Government intends to introduce the legislation in the House of Commons at an early date. It is important to work with Indian leaders to ensure that legislation is acceptable to Indian people, and it is expected that these discussions, and those with interested Provincial Governments, can begin in the coming weeks.

Other Legislative Proposals

There are a number of other more specific legislative proposals which are still under consideration by the Government.

The Special Committee suggested that the Government remove the discriminatory provisions in the *Indian Act* and provide compensation to Indian First Nations which are affected by the reinstatement of members. The Government is giving consideration to this matter, in the light of the Committee's recommendation that Indian First Nations membership should be determined by the First Nations themselves.

The Special Committee made a number of recommendations for other legislation in respect of matters such as claims process, implementation of the Jay Treaty and possibly new fiscal arrangements. The Government notes these recommendations which will be subjects for further consultation with Indian First Nations.

In accordance with the principle of flexible accommodation of different government arrangements, the Federal Government is moving ahead with the Cree-Naskapi legislation pursuant to the terms of the James Bay and Northern Quebec and Northeastern Quebec Agreements.

Improvements Under Existing Legislation

The Special Committee recommended that any changes of policy possible under existing laws that would enhance self-government and that were acceptable to designated representatives of Indian First Nations should be taken without waiting for the enactment of new legislation. It also encouraged both the Federal Government and Indian First Nations to pursue all processes leading to the implementation of self-government, including the bilateral process.

The Government approaches any changes or improvements to be made under existing legislation from the point of view of the positive effect they will have on the daily community life of the Indian people and of the enhancement of self-government. The importance of seeking concrete results at the community level was stressed by the Prime Minister in his opening statement at the 1983 First Ministers' Conference. The Special Committee emphasized that there must be a comprehensive, determined and broadly based effort if the new relationship with Indian First Nation Governments as a centerpiece is to be implemented.

In line with the Special Committee's recommendations, the Government is prepared to take measures, in full consultation with Indian First Nations, that will ease current administrative constraints in respect of program and service delivery and that will remove impediments to effective community decision-making and financial planning.

The processes by which current policies and programs would be reviewed would be of a bilateral nature and would involve joint working groups under the aegis of the Minister of Indian Affairs and Northern Development. These working groups would take into account the wide diversity of Indian First Nations and would examine a broad range of policies, programs and procedures. In taking measures to institute these processes, the Government would give priority to changes that would have the effect of facilitating the transition to self-government, rather than reinforcing existing dependency.

In terms of funding priorities, the Special Committee recommended a high priority for economic development on Indian First Nations lands. A more specific recommendation was that the funding for the Native Economic Development Fund be available to capitalize a native development bank, if that approach should be preferred by aboriginal representatives. The Government has recently put the Native Economic Development Fund into operation for the benefit of all aboriginal peoples and will review its operations within two years.

The Special Committee recommended that the programs of the Department of Indian Affairs and Northern Development be phased out within a period of five years. The Government accepts the spirit of this recommendation but would want to reassure Indian peoples that no steps would be taken to dismantle the Department or phase out programs and services until the establishment of Indian First Nation Governments and their assumption of program responsibilities allowed for a reduction in the Department's activities.

Finally, it should be pointed out that the Special Committee's recommendations focussed on Indian First Nations south of 60°. However, the Committee noted that political development north of 60°, which should continue unimpaired by its Report, might benefit from some of the ideas set out in it. The Federal Government's current policy in the North will continue to promote political development in consultation with Northerners.

Conclusion

The Government of Canada is pleased to be responding at this time in a substantial way to the terms and spirit of the Special Committee's recommendations. The Government looks forward to working in concert with Indian First Nations and in consultation with the Provincial Governments to achieve the aspirations of the Indian people for political, economic, social and cultural development.