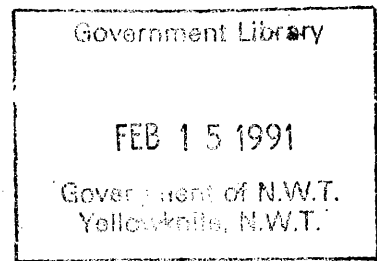


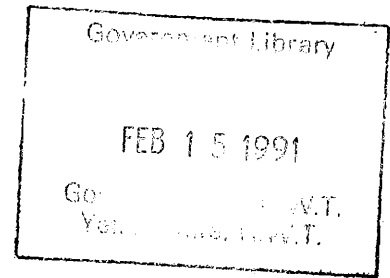
INDIAN SELF-GOVERNMENT IN CANADA

REPORT OF THE HOUSE OF COMMONS SPECIAL COMMITTEE

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1983





Handbook to  
**Indian Self-Government in Canada**  
based on the  
Report of the Special Committee  
of The House of Commons  
Published by  
The Assembly of First Nations

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This condensation is intended for use in conjunction with the report "Indian Self-Government in Canada". It is written in plain language and deals with topics in the same order as the report. So that one might read the condensation and then refer to the report for detail, there are subject headings, most of them taken from the report itself. In addition "challenge questions" have been added to stimulate discussion of the idea of Indian Self-Government.

"Indian Self-Government in Canada" is the result of cross-Canada hearings and reflects the evidence gathered from many First Nations People and Organizations.

## INTRODUCTION

### The Committee's Mandate

Parliament told the Standing Committee on Indian Affairs and Northern Development to appoint a sub-committee on Indian Self Government. The sub-committee's job was to make suggestions for new laws and better administration of band governments. In December of 1982 the committee was made into a Special Committee called "The Parliamentary Task Force on Indian Self-Government". The committee's job became so far-reaching that some witnesses thought that the committee would get in the way of the Constitutional Conference talks. However the two are separate, even though they deal with some of the same topics.

### Ex Officio and Liaison Members

The Assembly of First Nations, the Native Council of Canada and the Native Women's Association were asked to send someone to work with the committee.

### Relationship with Other Aboriginal Peoples

The Special Committee was created to deal only with Indian Self-Government. Inuit and Metis people were not within the scope of the committee.

### The Special Committee Process

The Special Committee got its information in three ways. The first was through what was said by witnesses at the

public meetings it held. The second was by written statements. The third was by special studies when the committee needed expert answers.

The meetings were held throughout Canada, on "Indian homegrounds", such as reserves, friendship centres or Indian offices.

The witnesses were selected with the idea of hearing people from as many bands, organizations and areas of Canada as possible.

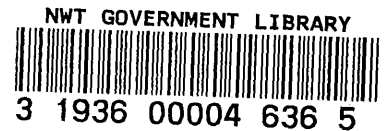
### Powers of Committees

The committee cannot make laws or bring their ideas into being. The committee can only make recommendations to the House of Commons and ask the federal government to reply to their report.

- 
- *What should we do to get the parts of the report we like adopted?*
  - *How can we organize our efforts for greater strength?*
- 

### Terminology

"Indian First Nations" was used instead of "Indian Bands" in the report because many witnesses call themselves members of First Nations.



### Indian First Nations

"Nation" is a word taken from early treaties, the Royal Proclamation and legal decisions. It applied to the many peoples who are members of First Nations.

### Conflicting Views of History

If First Nations people can overcome the ignorance of non-Indians about Indian history, all sides will agree that First Nations people are able to govern themselves.

### Social Conditions

The present relationship with the federal government has resulted in misery for First Nations people, in all aspects of life.

### Obstacles and Limitations

Federal government programs and the *Indian Act* have created problems for First Nations people. Often, they get in the way of solving problems.

### Governmental Complexity

It takes many federal government departments just to get basic services to First Nations people. They do not do this well because each has its rules and requirements to follow.

### The Indian Act General Concerns

The *Indian Act* has too much control over Indian life. There is no room for a government to exercise power. Band governments can do only what the *Indian Act* allows.

### Restrictions on Band and Band Council Powers

When Bands try to do things not taken into account in the *Indian Act*, they are subject to a large number of federal and provincial laws. These laws are considered stronger than band by-laws.

### Recent Attempts to Revise the Indian Act

Attempts to change the *Indian Act* have always left the Minister with great powers.

### The Policy of Devolution

When the Department of Indian Affairs gives band governments responsibilities, it keeps too much control.

### Departmental Views of the Indian Act

The Department of Indian Affairs also believes that the *Indian Act* does not allow some band governments enough power. But its proposed changes still left the Minister with great power.

### The Band Government Proposal

The Department has offered this proposal it says will pass along enough government powers extending to many areas. Witnesses at the Committee hearings said that this proposal was not enough. They said that it only allows the bands to administer old policies, not make new ones.

## THREE AREAS OF CRITICAL CONCERN

Witnesses state that in order to survive as First Nations, their governments must have control over three critical areas: education, child welfare, and health

### Education

In the past those in charge of educating Indians attempted first to "de-Indianize" them. They were removed from Indian environments. When the residential schools closed, no real local Indian control of local school boards resulted. Provincial schools were paid with Indian funds to educate Indian students, but the schools were not accountable to band governments. The schools were not under any pressure to teach Indian languages, histories, or culture. The schools Indians went to did not see to the needs of Indians. First Nations people must have the power to make education suit their own people.

- 
- *What programs or classes would you want taught?*
  - *How can your First Nation take over more responsibility for education?*
- 

### Child Welfare

It is true beyond a doubt that a large number of Indian children have been seized by provincial social services. Indians see this as an attack on the Indian family. Welfare agencies do not understand the Indian concept of family and disrupt what they do not understand. Without setting out to do so, they are practising assimilation. The best thing to do for all concerned would be to allow First Nations government input and administration over child welfare.

- 
- *What facilities would your band need to take over child welfare?*
  - *How can we take more responsibility for our children who need our help?*
- 

### Health Care

It is beyond question that for Indians, health is a major problem. In spite of huge sums of money spent on this problem, governmental programs have done very little. The causes of the problem are such areas as poverty, poor housing, lack of clean water, sewage and garbage disposal, poor diet. The solution to the problem would involve First Nations governments in taking control over all these areas.

First Nations people can only be healthy in a healthy community.

All three of these problem areas point to the need of First Nations governments to control what happens to their people on their land. This is the only way each reserve can have a responsive program made to solve the problems peculiar to itself.

- 
- *How can we organize ourselves to take on more responsibility for the good health of our people? What are the steps we must take?*
-

## SELF-GOVERNMENT FOR INDIAN FIRST NATIONS

### Need for a New Relationship

When Europeans first came to North America, they accepted the sovereignty of the self-governing nations they encountered. The Royal proclamation of 1763 did not presume to govern them — it was meant to govern Europeans in relations with First Nations. Slowly this attitude of the Europeans changed. By the time the *British North America Act of 1867* and the *Indian Act, 1880*, were made, the Canadian government felt justified in taking over First Nations governmental powers. The result was called "a legacy of injustices, exploitation, bureaucratic insensitivity and non-Indian self-interest". European governments may have worked well for Europeans, but were harmful to First Nations people. All evidence points to the need for a new relationship between Canada and the First Nations.

Now is the time to form this new relationship. The constitution and modern politicians accept the special status of First Nations. While constitutional talks are in progress, full allowances for a new government-to-government relationship can be discussed, agreed upon and entrenched in the Constitution.

The new relationship would be good for all concerned. For Canada, it would eliminate tensions, waste of federal money and the poor social conditions which keep First Nations people from contributing fully to Canadian life. For First Nations, improved social conditions would foster pride and political unity.

### International Experience

While other nations have not developed true self-government for their indigenous peoples, the attitude of the United States is encouraging. They accept the idea of Indian sovereignty, although First Nations people there are hardly better off than those in Canada. Let Canada show the world the way to live alongside strong self-governing First Nations.

In addition to aboriginal rights, there exists a legal right to First Nations self-government which should be recognized. That the *Royal Proclamation* recognized the right was recently confirmed by Lord Denning, a famous English judge. It was also confirmed by the Canadian Supreme Court in the *Calder v. Attorney General of British Columbia* (1973). The *Constitution Act, 1982* affirmed existing aboriginal and treaty rights. Nevertheless, it would be best to have the right to self-government stated and entrenched in the Constitution.

### The Courts

The Supreme Court of Canada may have to rule on the question of self-government, but a constitutional amendment would be faster and surer of success than depending on the courts.

### The Bilateral Process

Another possible route to explore would be direct negotiation with the federal government. Treaties are witness to a history of government-to-government relations. Discussions could define the eventual new relationship. Existing government powers could provide for immediate concrete action toward self-government for First Nations.

### Legislative Action Proposals for Legislation Presented to the Committee

The Minister of Indian Affairs presented a paper called *The Alternative of Optional Indian Band Legislation*. The Minister would still have control through discretionary powers. More to the point, Indian bands have discussed this idea for years, and no agreement with them was ever reached.

Several bands and organizations made suggestions to increase the power of band governments. Yet these ideas left the *Indian Act* still in place. What is needed is to end the *Indian Act* and build a whole new approach for those who wish to do so. No suggestion was far-reaching enough to meet the needs of *all* First Nations. They dealt with only one part of Indian life.

### Is Legislation Necessary or Useful?

If a law is to work and be accepted by all First Nations, it must be broad and flexible. It must be useful to any and all First Nations and apply to all First Nations needs. Most importantly, it must be made jointly by representatives of First Nations and the federal government.

### The New Context for Legislation

The *Constitution Act, 1982*, recognizes existing aboriginal and treaty rights. The Constitutional Accord opens the way to talks on self-government. Self-government rights can and should be entrenched in the Constitution as soon as possible. Until then, all routes to self-government should be used.

# STRUCTURES AND POWERS OF INDIAN FIRST NATION GOVERNMENTS

## The Starting Point

When settlers began to take large amounts of land, large groups of First Nations people were broken up. The smaller units which stayed together became known as bands. The bands are the starting point for self-government. Some smaller bands may merge to form a new First Nation. These First Nations must decide for themselves what form of government they want.

## Membership

First Nations must control their own membership. It must be up to them to decide who is and is not a member. Those who have been excluded from membership by the *Indian Act* should have a voice in deciding membership rules. This must be the first step in forming the new First Nation government.

The procedure could be like this:

1. Begin with the band list. Add to the list those who were excluded under the *Indian Act*.
2. These people would suggest members who might have been missed or whom they might wish to join the First Nation.
3. These people would then agree on the rules for joining the band or being taken off the membership list.
4. Then they would work out the processes for joining and being expelled.
5. The full, final group would decide on their form of government and apply for recognition.

## The General List

A two tier system was suggested for those who want a means to retain their Indian rights, but who do not apply for or are not accepted in First Nations membership. Some Indians would be citizens of First Nations, and attached to a membership list. They would receive their Indian rights through their First Nation. Others would be put on a general list of Indians without membership in any First Nation. They would receive Indian rights through the federal government.

## Flexible Arrangement

First Nations governments will need to be flexible. While the band, or First Nation will be the building block of the government, other alliances could often prove useful. First Nations with a common location, tradition or idea could form alliances for many purposes. The structure of governments must allow for this.

- 
- *Would alliances be formed on traditional tribal lines?*
  - *Would neighbouring First Nations combine for efficiency of service programs?*
  - *Should we join with another band to become recognized as a First Nation?*
- 

## Constituting Indian First Nation Governments

First Nations people must design their government to work the way they want it to. Still, these governments require recognition from the federal government. The Canadian government would need to be assured that the First Nations government was responsive to its people. An Indian First Nation Recognition Act would set out three basic points needed for self-government:

1. A vast majority of the people must show support for the government making application.
2. Some system of accountability.
3. A membership code, with allowance for appeal.

Other than these provisions, the federal government should have no role in community decision about self-government.

- 
- *Create enough unity so that we can show impressive support for a form of government.*
- 

## Accountability

First Nation governments need accountability. This means that the people must be sure that their government can and does operate for their good. Some features an accountable government has are:

1. Annual reports on how much money has been spent. These must be available and easy to understand.
2. Certain areas in which the government cannot make laws without the consent of the people.
3. A system to fire First Nations government officers.
4. A way to appeal decisions some may feel to be unfair.
5. Protection of individual and collective rights.

There are many ways these rules can be made, as well as more rules which may be considered. Each First Nation must write their own to suit themselves.

- *What rights should the people keep for themselves, rather than passing to leaders to decide for them?*
- *How can we be informed about the working of our government?*
- *How do we protect our rights and property under self-government?*

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## Setting Up First Nations Jurisdiction

The federal government must release its hold on First Nations people and withdraw the paternalistic arm. The federal government would take over jurisdiction which provinces now claim and then would vacate the field so that First Nations government could take control. Agreements would be made between First Nations governments and the federal government to detail the power to make laws in given areas. That way each Indian First Nation would take on only as much governing power as it felt it could handle. There would be no question over whether or not Indian First Nations governments had the authority to make laws in that area. Until these laws are passed, the federal policy should be to move toward Indian First Nations self-government as much as present laws permit.

- 
- *In which areas of jurisdiction would your First Nation government seek to take control first?*
- 

## Ministry of State for Indian First Nations Relations

First Nations people have a certain amount of distrust toward the Department of Indian Affairs and Northern Development. These governmental people also have long standing attitudes towards Indians and Indian government. Rather than break through resistance on both sides, a new, smaller ministry should be created, a Ministry of State for Indian First Nations Relations. It would be like the Federal-Provincial Relations Office. Linked directly to the Privy Council Office, this new Ministry could represent the federal government in the bilateral process and fiscal arrangements.

## Recognition

This Ministry would **oversee the recognition** of Indian First Nations governments. A **small committee** appointed jointly by the Ministry and Indian First Nations would recommend recognition to the **Governor General**, maintaining the link between Indian First Nations and the Crown. All the people of each First Nation would:

1. Decide upon the form of government wanted.
2. Work out the full framework and get the approval by an impressive majority of the people.
3. Seek recognition of the form of government set forth.
4. Select leaders under the form of government set forth.
5. Government functions as First Nation recognized by the federal government.

- *How soon could such a complex job be completed among your people?*
  - *How can we organize ourselves and get started?*
  - *How can we get more people involved?*
- 

## Special Funding

In order for Indian First Nations to arrange meetings needed and help to organize a government, the federal government must extend money to the First Nations for that purpose.

## Facilitating Negotiations

An Intergovernmental Secretariat should be set up to service First Nations meetings with other governmental bodies. The Secretariat would facilitate the meetings and keep records. The Secretariat would be funded and appointed by both the federal government and First Nations.

## The North

The innovative government structure being designed in the North, though excellent, is separate from other First Nations process and designed for the special situation of the Northerners.

## Scope of Powers

Indian First Nations Governments in every area would have jurisdiction. The governments would always be moving toward such exercise of power. Three things must result:

1. Each First Nation to have the ability to make laws concerning First Nations people and lands.
2. Each First Nation to have a negotiating process with other governments.
3. A guarantee that First Nations laws will be respected and obeyed by other governments.

In addition to making laws in such areas as would be necessary, First Nations governments must be able to set policy. Thus the laws governing land, social services, cultural development, education, taxes, economic development — all aspects of life — would be directed by the needs of the people enacting them.

Negotiations with governments nearby First Nations governments will be necessary. When First Nations actions influence — or are influenced by — decisions of federal, provincial, municipal or even other First Nations governments, discussions will prevent friction. Perhaps joint projects or joint control would be among solutions found to be satisfactory to all concerned.

Yet no government may ignore any other with impunity. Federal governments can not do so as they please in spite of provincial governments. Municipal governments can not



ignore federal or provincial points of view. When First Nations governments are at odds with other governments, neither side should act independently. But where disputes cannot be resolved, a special tribunal must be in place to hear both sides. This court should be designed jointly by First Nations and the federal government.

### **Non-Members Living Away From Reserves**

For a variety of reasons, there are a number of Indians who are not now associated with a band and would not become part of a First Nation. The federal, provincial, and First Nation governments should take steps to see that the needs of these people are met.

# THE ECONOMIC FOUNDATION OF SELF-GOVERNMENT

## Treaties and First Nation Economies

Europeans joined a trade system which the First Nation had already put in place. Treaties granting European settlement rights eroded the economic base of First Nations. For this reason, provisions were made in the treaties to sustain First Nations economies. These included protection of hunting, fishing and trapping rights; guns and ammunition; and livestock and farming implements. The Royal Proclamation of 1763 set limits to the erosion of the land base. When interpreting treaties, it should be kept in mind that one purpose was to support Indian economies.

That is not what happened. First Nations economies have grown dependent. The land base was severely reduced. Capital accounts have become smaller. Moreover, governmental interference has hindered First Nations economic development.

## Obstacles to Development Governmental Interference

1. Laws made in spite of treaty rights to hunt, fish, trap or gather — like the *Migratory Birds Act*.
2. Indians bands cannot incorporate without being taxed.
3. Provincial laws can apply to such corporations.
4. Government programs cannot provide enough money or expertise.
5. The multi-agency approach causes confusion and red tape delays.
6. Welfare, though a large and well-meaning expenditure, fosters dependency at the price of development.

- 
- *Once government interference stops, what more do First Nations need in order to develop a strong economy?*
- 

## Community Infrastructure

So much must be spent on providing basic needs to band members, that nothing can be given up to spend on investments or economic ventures.

## Case Studies

It was found that First Nations governments must control six areas in order to nurture economic growth. These are:

1. Land and resources,
2. capital,
3. labour,
4. organization,
5. planning, and
6. technology.

The study found that job creation must be a priority. Development must be carried out in each First Nation community, and must be controlled by it.

- 
- *Which of these do we control now?*
- 

## A Special Development Bank

The Indian share of the money in the Native Economic Development Fund should be used to set up a bank which would finance economic development projects which would foster self-government and on-reserve economies.

## The Jay Treaty

The Jay Treaty must be honoured in Canadian Law. It would allow First Nations members to cross the Canada/United States border with trade goods and carry on trade with one another.

## FISCAL ARRANGEMENTS

Indian First Nations governments must not be hampered by the lack of control of funds. Because this area is so important to self-government, the Committee hired the accounting firm, Coopers and Lybrand, to do a study called "Federal Expenditures and Mechanisms for their Transfer to Indians"

### Evolution of the Present System

Indian First Nations have moved from being self-sufficient to being utterly dependent on outside governments for their basic needs. As things are now, many First Nations administer programs and report back to DIAND. DIAND believes this reporting to be necessary because, in their opinion, First Nations governments are unable to administer the programs properly. Thus the reporting process is seen to be not only slow and costly, but also a remnant of paternalism. The result is that First Nations governments, without control of their funding, have no real decision-making power.

### Deficiencies of Present Arrangements

DIAND control over First Nations funds does not work. Even in cases where First Nations runs a program, it does not work well because the First Nation can not make money decisions.

This policy of Devolution has caused one great problem — the DIAND administrative structure. DIAND requires lengthy reporting procedures which consume lots of time and effort. Funding negotiations come to nothing and DIAND decides by itself who gets how much money. Even when arrangements are reached, the detail in reporting which DIAND wants has caused long delays in sending out money. This can cost the First Nations a lot of money in interest when they must borrow in order to keep a program going.

Make no mistake, the administration of programs costs First Nations a lot of money — money which could be spent on programs. The bureaucracy caused by watchdog watching watchdog grows each year. Yet when the DIAND administration budget goes up, the First Nation's does not. First Nations must do the same job DIAND did before with less money, less staff and more money wasted at DIAND offices. Accounting demands on First Nations' programs are greater than Treasury Board's on DIAND.

### Morale

Lack of control over money at the First Nations level saps the morale of the workers. Those with initiative can not exercise it.

Contribution agreements are not real agreements — they are imposed conditions which must be accepted in order to get local control of programs. They do not allow for new ideas outside the conditions.

First Nations cannot set their own priorities. Welfare money must be spent on welfare. It can not be spent on op-

portunities to develop work programs which would eliminate the need for welfare.

### Ultterior Motives

Some witnesses voiced suspicions about the reason for DIAND control. Some suspected DIAND used the control to benefit political favorites. Another reason may be the simple desire to keep First Nations dependent, assuring the continuance of DIAND jobs.

### Conclusion of Research Report

Here can be seen two sides blaming the other for program failures. Coopers and Lybrand studied the way First Nations and DIAND each were handling the devolution policy

### Transfer of Administrative Responsibility

1. First Nations take the same amount, or more to run programs, and DIAND adds to the amount with monitoring and advisory costs.
2. First Nations involvement in running the program increased their effectiveness.
3. It is worthwhile to give satisfying employment to First Nations members who have advanced education skills.

- 
- *What can we do to keep our skilled people among us to build our First Nation?*
- 

### Underlying Objectives of Transfer Process

4. DIAND staff does not believe there has been enough planning put into devolution.
5. DIAND has given the First Nations only duties, not controls or the power to make decisions for themselves

### Changes in Administrative Costs

6. Staff at the regional level cannot reduce costs when headquarters adds new responsibilities all the time
7. There is too much duplication of effort within DIAND and between DIAND and the First Nations.
8. Keeping control over money in the hands of a few people causes slow administration.
9. Accountability to higher levels has caused money and effort to be spent on record keeping instead of staff and funds for programs.

## DIAND's Difficulty in Coping with Change

10. DIAND staff now advise and monitor instead of giving services.
11. First Nations staff do not trust a DIAND worker who both offers advice as well as reports on their performance.

## Indian Band Administrative Capabilities

12. First Nations programs succeed through the efforts of their own leadership.
13. When First Nations efforts fail, DIAND does not succeed upon taking the program back.
14. DIAND is not set up to develop human resources.
15. First Nations could do a better job than DIAND. Some are already doing so.
16. Problems between DIAND and First Nations are caused by administrative process.
17. DIAND is not keeping up with First Nations administrative progress.
18. DIAND underestimates First Nations leadership.

- 
- *Design fiscal arrangements necessary for your First Nation to be able to operate according to your own priorities.*
- 

## Final Conclusion

Coopers and Lybrand decided that a new fiscal arrangement is needed in which First Nations would have control over their own affairs.

## Administrative Costs

Coopers and Lybrand were asked to try to figure out the cost of running the bureaucracy of DIAND. They concentrated on the Indian and Inuit Affairs program, the Department's biggest. The figures they arrived at were: \$250,000,000 to administer it (about a quarter of the budget); plus \$39,102,000 on general administration for DIAND; costs of First Nations reporting process would make the total even higher.

## Size of Departmental Staff

The policy of devolution has caused an increase in DIAND staff to oversee First Nations operation of programs. Coopers and Lybrand suggest dispensing with this watchdog function.

## Costs of Present Accountability Processes

The system for accountability is a complex chain. Money spent on First Nations projects is checked by DIAND at

many levels all the way back to headquarters. Coopers and Lybrand were set to study whether or not this was a necessary step and to determine the cost of this process. They concluded that this mountain of paper work would not be necessary. The cost of staff is tremendous. First Nations could take accounting short-cuts if they needed to report only to their members.

- 
- *How would your First Nation government report to its people?*
- 

## Effect of Accountability Processes on Bands

Coopers and Lybrand found that DIAND accountability processes were too complex, too often changed, too constant an activity and, because of this, too great a strain on the time and effort of staff who could be put to better use on other duties.

## Need for New Funding Arrangements

To continue with the present funding arrangements would be to continue to waste money. Self-government is the solution to this problem and new funding arrangements are necessary for self-government. Coopers and Lybrand stated: "The present departmental rules are appropriate for agents, not for governments", and

"Funding mechanisms are the key to reducing administrative and accountability burdens." Finally, "If accountability is to be reduced, Parliament's expectations of the Minister must also be changed." Self-government must be funded in a different way than before. First Nations accountability to their members must be of key importance.

## Basic Requirements of New Funding Arrangements

Indian First Nations governments must be free to make their own decisions about how to spend their money. They must, however, be accountable to their members for the ways this power is used. The federal government's ability to call First Nations government to account must be removed.

## Establishing Accountability

In order for true self-government to exist, First Nations government must be free of conditions imposed by outside governments. A grant from a federal agency, outlining broadly the government function it is to be spent on, could be the solution. The Minister would not be responsible to Parliament for moneys granted in this way.

## Source of Funds

The financial support of First Nations government will come from many sources. First Nations have made a tremendous contribution to Canada by the resources being exploited by all Canadians. This ought to entitle them to aid in operating their governments. Claim settlements, development of First Nations land base and new revenue-

sharing agreements should suffice to take care of long-range financial needs. First Nations governments would be entitled to federal equalization payments and other funding sources given to provincial governments. Such payments would come in the form of direct grants.

- 
- *What other sources of revenue are possible for us to run our government?*
- 

### **Funding Principles**

Direct transfer payments to First Nations governments would not be marked for any set purpose by the federal government. First Nations governments would decide in what areas to apply the money. The one exception would be funds set forth for the purpose of funding to correct deficiencies in First Nations community infrastructure, and for economic development.

Utilities and roads could be put in or repaired. The training of First Nations community members to administer programs would be of extra importance in the first few years.

### **Disbursing Funds**

With consultation between the federal government and First Nations representatives a more or less *per capita* formula could be worked out to determine the amount of direct transfer payment to each First Nation. This would be

done through a Canada/First Nation Fiscal Arrangements Commission which would decide on the amount of funding to be transferred. Certainly a Minister — perhaps the Minister of State for Federal/First Nations Relations — could negotiate a *global amount* of funding. Then the *global amount* would be divided into percentages to be directed to the broad governmental areas and to economic development. Then each First Nation could receive its disbursement from the resultant pool by a small federal agency. In order to make long-term plans, Indian First Nations governments would need assurance of long-range funding. Parliament would pass a law guaranteeing a five-year plan for revenue disbursements. Indexing could take into account inflation and population increase.

### **Funding of Bands Not Opting for Self-Government**

Special funding arrangements should be made, and a percentage of money set aside, for bands which move toward self-government more slowly. Their funding would be used to hire the governmental services required.

### **Conclusion**

The key to any funding arrangements is negotiation. First Nations governments must reach agreement with the federal government in an ongoing process. This process must be put in place quickly, however, so that funds can reach as far as possible.

## LAND AND RESOURCE BASE

### Introduction

It requires a deep understanding of Indian people to get to know how they feel about the land. They do not exploit it — they live in harmony with it. They do not try to own it — they live on it. The land transferred in treaties and surrenders was not being given up — it was being shared. Lands reserved by First Nations were not government grants. They were lands which were agreed upon as belonging only to Indians.

### Reserves

Non-Indian ideas have dominated laws such as the *Indian Act*, and legal decisions such as the *St. Catherine's Milling* case. This is not surprising since such laws were made by and for non-Indians. Provincial and federal governments contend with one another for lands without a thought as to whether or not there may be aboriginal title or rights attached.

The federal government, through the *Indian Act*, claims the right to manage reserve lands. They justify this with the fear that Indians might make poor dispositions of Indian land. Yet the Committee showed that the federal government disposed of large amounts of land without keeping in mind the concerns of Indians. The federal government is either a poor land manager or a reluctant Indian advocate. The committee believes that control of the land base is needed for Indian First Nations to achieve self-government.

### Indian First Nations Lands and Resources

Indian First Nations should exercise the kind of full control over their lands that other governments do. Indian First Nations would control whatever money was made by use of the land and resources. They would use the money in ways for which they would be accountable to their people.

Under First Nations ownership of land, title never can be sold. They can sell or lease land and yet retain the title. A man who buys property in Manitoba has not bought it away from the government. It is Manitoba land and Canadian land nevertheless. Indian First Nations land sales could work this way. To keep records straight, there must be an official Registry of Indian First Nations Lands.

### Indian Interest in Other Land

Indian witnesses put forth the idea that Indian lands did not stop at the reserve border. Some surrenders were intended only to share lands for settlement. Fishing, hunting, and trapping rights extended over all lands, including those not occupied. Indian First Nations need to have a voice in the control of such land areas. When large scale projects affect their hunting, fishing, or trapping rights compensation must be paid to First Nations. When natural resources in these areas are tapped, First Nations should share in the revenues.

- 
- *How would a fair settlement be determined?*
- 

### The North

The Dene in the North are working out arrangements to ensure that their people benefit from the resources found there.

### Expansion of Land and Resource Base

An expanded resource base could be a necessity for many First Nations. First Nations must have enough room for their members. Members now living off reserve may wish to return to First Nations. Those reinstated or added by changes in the *Indian Act* and new membership codes could put pressure on the space of present reserves. Keep in mind that living space is not all that would be required. The land base must be able to support economic growth.

The best way to provide First Nations with more land is to settle land claims. These must be settled as soon as possible so that community planning can start. Fulfilling debts and obligations to First Nations could be done by getting them new lands to take the place of disputed lands. This would be most necessary for those bands who do not have reserves at present.

Another way that First Nations might expand their territory is by buying up lands and adding them to their holdings. Including them in the Registry of Indian First Nation Lands would extend full First Nations control over them.

# LAND CLAIMS SETTLEMENT

It is necessary for a new land claims settlement policy to be created. Land claims is an important area because it is the key to the economic base of First Nations self-government. In spite of its importance, the present policy seems to encourage slow progress if any at all.

The present policy stresses *claim* not *settlement*. The Department of Indian Affairs and the Office of Native Claims put the onus on First Nations to present the claim. Being arms of the federal government, the ONC and DIA have made decisions based on federal self-interest. The federal government now is defendant, judge, jury, and executor of all claims. A conflict of interest is the result.

Such an unfair claims process came about because it was a unilateral government decision. First Nations people were not consulted — so First Nations concerns do not

enter into the process. The process was not created by law — so no judicial or parliamentary eye to fairness was involved in its making. A bureaucrat makes an arbitrary decision.

The committee recommends a new policy and a new process. The new policy must be one of settlement. The new process must be designed through two-sided discussions between First Nations and Federal Government. More importantly, the new process must be confirmed in law so that First Nations can rely on the process in spite of a change of government.

The committee is also critical of the policy whereby all rights and title are taken away in land surrenders. Agreements should be limited to only those matters specifically stated in surrenders.

## THE TRUST RELATIONSHIP

### Trust and the Crown

First Nations have always enjoyed a special relationship with the Crown. The Committee prompted a study to explore this relationship, *The Crown and the First Nations: Trust Relationship*.

In colonial times, First Nations and Europeans were equals in political dealings. The *Royal Proclamation* introduced in trusteeship, promising to protect Indian Nations, their rights and property.

In the following centuries, Canada's several governments began appropriating First Nations land despite the trust responsibility of the Crown. Hunting, fishing, and trapping rights have been eroded through provincial legislation.

Both sides now view with disdain the former treatment of First Nations. Even so, courts do not yet recognize the extent of the Crown's trust responsibility. A new trust relationship should be formed, one clear and explicit. This would involve:

1. Recognition of Indian First Nations governments as a distinct order or government.
2. Fiscal arrangements appropriate for governments, based on First Nations' contribution of resources and land.
3. A secure economic and societal base.
4. Fair claim settlements.
5. Legally enforceable agreements between First Nations and the federal government to implement the new arrangements.

The federal government must do more than recognize the new First Nations governments. It is their trust responsibility to provide the resources needed to bring them into being.

### Advocacy of Interest and Protection of Rights

The trust relationship would not end with First Nations self-government. The Minister of State for Indian First Nation Relations would be the ideal choice for the official assigned the duty to protect First Nations' interests. He should have the authority to do so without regard to other governmental interests.

To monitor the operation of this trust responsibility, a separate commission, a First Nations "Ombudsman"

office, should be created. Separate from all government departments, the commissioner should report directly to Parliament. The powers of this commissioner could be arrived at through negotiation.

Funds should be made available for some sort of advocacy office for First Nations interests.

- 
- *What power would you suggest?*
- 

### Trust Accounts

DIAND controls money held in trust for Indian First Nations. Money from land sales and, recently, oil resource sales have provided the balances of these accounts. DIAND acts as a trust company, holding the funds for the bands and paying interests.

The amount now held in trust for First Nations is approximately \$366 million of this, Alberta bands have \$326 million, British Columbia \$22 million and *all others* only \$18 million. Distribution within the provinces is even more lop-sided. Four Alberta bands hold \$260 million — \$32,000 per capita. 121 bands have less than \$8 for each member.

Trust funds were intended to provide an economic base for the bands. Clearly, most bands cannot finance their programs based solely on their trust funds. A possible reason for this is the long history of DIAND mis-management and poor record-keeping of the trust funds. This makes it even more necessary to get just and speedy settlements to land claims. Strong self-governments require sound financial backing.

### First Nations Control

DIAND must render up its control over trust funds to the First Nations. DIAND was designed to administer programs, not trust funds. Many mistakes have been made in distributing these funds — some leaving the Department open to suit for breach of its trust responsibility.

DIAND's mandate is to hold the money in trust for the bands. A simple distribution would not work. Money intended for a band would be expended in one generation when intended for *all* band members, even future ones. By transferring control over the funds to the bands the Minister will have done his duty. The First Nation could then lodge the accounts with a selected new trustee. A First Nation claim regarding mis-management of the fund could still proceed.



## CONCLUSION

### Indian Affairs

The Committee decided that the federal government must change the way they deal with First Nations. The *Indian Act* and the Department of Indian Affairs will wither away within five years and be replaced with:

1. A new ministry, the Ministry of State for Indian First Nations Relations, would be the federal interface with First Nations.
2. The new ministry would provide funding to First Nations governments.
3. A new agency would settle land claims.
4. First Nations would be recognized through a panel made of both Indians and federal government people.
5. Trust funds would be run by First Nations trust systems.
6. There would be a body to aid negotiations between the federal government and First Nations.
7. A commission reporting to Parliament would hear complaints and report on federal/First Nations dealings.

8. There would be a non-federal office to protect Indian rights and further Indian interests.
9. A special court would hear First Nations disputes with federal or provincial governments.

### Parliament and Indian Peoples

It was not thought useful to have a special seat in Parliament for Indians, since a single vote would have little power. At this time, self-government was seen as a greater force for Indian people. But since matters can change, the idea should be set aside for a later time.

### International Ramifications

Canada has signed the *United Nations Covenant on Economic, Social and Cultural Rights*, the *Covenant on Civil and Political Rights* and the *Helsinki Final Act of 1975*, which state that self-government is a basic human right. The committee agreed that putting this report into action is the best way to meet these standards where First Nations are concerned. Canada then would be a prime example for the world to follow.

## CONCLUSIONS AND RECOMMENDATIONS

### Self-Government

1. The federal government must recognize First Nation government.
2. The right of self-government must be stated and ensured in the constitution by an amendment.
3. The federal government and First Nations must move toward self-government by all avenues.
4. First Nations must be funded through claim settlement, economic development, and other long-term ways.

### Legislation

5. New laws moving toward self-government should be made if First Nations agree to them.
6. The *Indian Act* cannot be changed to make it fit the new self-government policy. It is better to make a new law.

7. The DIAND plan for band government was never agreed upon by Indian people. It must not be used.
8. The federal government must put First Nations self-government into the constitution. Until then, laws should be made which lead to self-government.
9. A neutral body must be created to help federal/First Nations talks.
10. Laws must be able to allow for all the powers needed by First Nations governments.
11. These three laws are needed to make First Nations self-government in the areas they want.
  - a. First Nations governments which are "accountable" must be recognized.
  - b. The federal government must be able to make agreements with the First Nations governments about government powers.
  - c. Provincial laws must not be in force on Indian lands.
12. A Ministry of State for Indian First Nation Relations must be made to stand between the federal and First Nations governments.

## **Membership and Federal Responsibility to Indian People**

13. The band would be the starting point for First Nations government.
14. The band must decide who belongs to the band. These band members alone must decide what form of government of a First Nation.
15. There must be a "general list" for Indians who are not members of a First Nation.
16. The government would continue to allow rights to those on the "general list."

## **Recognition**

17. The federal government should have an *Indian First Nations Recognition Act* allowing all the self-government now possible. Standards would be like:
  - a. A large majority of people make it clear that they want the form of government which is set forth.
  - b. To form of government set forth is accountable to the members.
  - c. A fair membership code must be set forth.

Funding for First Nations government development must be given by the federal government.

The Governor General would recognize First Nation government.

## **The North**

The Yukon and the Northwest Territories has its own special circumstances which must be considered in determining self-government.

## **Scope of Powers**

First Nations Governments must have full control over all matters having to do with Indian people, their lands and resources. In some cases, arrangements may have to be made with federal and provincial governments. A special court would decide upon disputes between First Nations and other governments.

## **Economic Foundations**

Each First Nation should have control of an economic base. Special funding must be granted them to enable First Nations communities to have a standard satisfactory to

them. With Indian consent the Native Development Fund could be used to found a development bank for First Nations.

## **Fiscal Arrangements**

First Nations must have full control over their money. The committee recommends that direct transfer payments be made to each First Nation for which the First Nation government would be accountable to its own people. The amount of these payments would be based on the number of people in the band. There would also be money for extra needs. The amount of the direct transfer payments would be determined every five years by Parliament.

## **Land and Resource Base**

Each Indian First Nation must have full control over its lands. These lands should be listed in an official Registry of Indian First Nation Lands. There must be a way for First Nations to get more lands should the need arise because of the reinstatement of the number of members. Land claim settlements should be the main way of doing this. Settlements must be made soon. Those First Nations without reserves must be given a land base with all haste.

## **Claim Settlement**

A new process stressing settlement of claims must be put in place. Surrenders should not give up all rights to lands, only those rights that need to be surrendered.

## **The Trust Relationship**

The Minister of State for Indian First Nation Relations must have the duty to see that Indian rights and interests are respected. An "Ombudsman" officer would act if the Minister failed to do his job. Trust funds should be sent by DIAND to each First Nation, to manage its own trust fund.

## **Conclusion of the Report**

Programs now operated by DIAND will cease to exist over a number of years. Instead, First Nations governments will get financial support to meet their governmental needs. New federal agencies will manage First Nations relations. There should be no delay — it could happen within five years if the government would act rapidly on the Report. First Nations would govern themselves as a distinct order of government. A special seat in Parliament would not be needed. With local First Nation Governments alongside federal and provincial governments, Canada would comply with world agreements on human rights and self determination.

For Further Information About

**"INDIAN SELF-GOVERNMENT IN CANADA"**

Call toll-free

**1-800-267-0321**