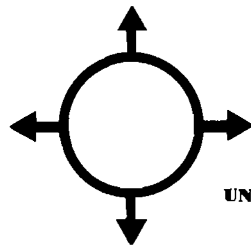

ABORIGINAL RIGHTS RESOURCE KIT

UNION OF BRITISH COLUMBIA INDIAN CHIEFS

Prepared by:

Union of British Columbia Indian Chiefs
Indian Government Portfolio
440 West Hastings Street
Vancouver, British Columbia
V6B 1L1

UNION OF BRITISH COLUMBIA INDIAN CHIEFS
ABORIGINAL RIGHTS POSITION PAPER
RESOURCE KIT

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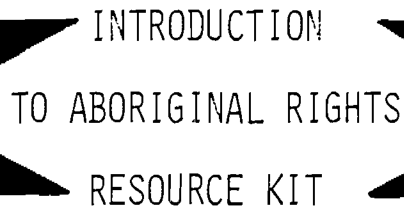

INTRODUCTION TO ABORIGINAL RIGHTS RESOURCE KIT

In 1969, when the White Paper Policy of the Trudeau Government threatened to terminate our aboriginal rights and Indian lands a number of Indian Chiefs in British Columbia got together to formulate a plan that would effectively oppose this policy. It was decided that the most effective way to counter termination practise and policy was to form a Chief's organization that would carry out the necessary work in combating anti-Indian legislation and strengthen our aboriginal rights. It was clear that there was a need to develop a strong and comprehensive position on aboriginal rights that both the Federal and Provincial governments would have to seriously contend with when considering legislation or policies that infringes on our lands, our resources and our aboriginal right to self-determination. After numerous meetings, assemblies and discussions a clear and definite position emerged. Our position is a statement of what we feel are our rights and what we feel is our place in the Canadian society. We have asserted that:

(1) We are the original people of the land,
(2) We have a right to determine our lives, our future,
(3) We have the right to expand our land base,
(4) We have the right to have adequate amounts of natural resources made available to us,
(5) We have the right to have a greater degree of authority and jurisdiction over our lives through our Indian Governments.

The vehicle or framework through which these assertions and aspirations may be realized is Indian Government. Indian Government is a form of government that will allow us as Indian people to assert our rights and exercise our power and our responsibilities.

The information contained in this resource kit is intended to acquaint us with the Aboriginal Rights Position Paper. We have included definitions of the more commonly used terms associated with aboriginal rights and Indian Government. Also, we have examined the concept of Aboriginal Rights and its place in our struggle today.

The twenty-four (24) areas of jurisdiction which Indian governments would have are also examined in some detail in this kit. Under each of these areas of jurisdiction is a listing of Band and UBCIC activities that illustrate how Indian Government is already being exercised within the existing framework of the Canadian Constitution. For example, the anti-pollution by-law that the Gold River Band is enacting derives its source of authority from Section 81 of the existing Indian Act. (This proves we can, as Indian people, implement Indian Government.)

Basic information on Band Indian Government Constitutions is provided; the purposes of a constitution are explained and the key elements are outlined.

The kit also contains background historical and legal information. Such information will hopefully place the importance and urgency of seeking and establishing an alternate form of government and a competent Indian policy in its proper light.

The section on aboriginal rights and sovereignty explores the basic ideas, beliefs, and facts on which Indian Government rests. This exploration tells us that the "right to choose"

and the "right to govern ourselves" are God-given rights, (if you will), and cannot be taken away from us.

Included in this background section is a chronological history of Canada's Indian termination policies; the sections of the BNA Act that deal with the powers of the federal and provincial governments; and, those sections of the Indian Act that spell out the powers and status of Band Councils.

The intent of this kit, is to provide you with the basic information on the Aboriginal Rights Position Paper; to raise questions and concerns in areas that are unclear or incomplete; and, to receive new directions and assistance from our people in exploring specified areas. All questions, concerns and suggestions will provide for the development of a more comprehensive framework within which our goals as Indian people can be realized.

Indian Government Portfolio
Union of British Columbia
Indian Chiefs

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COMMONLY USED
INDIAN GOVERNMENT DEFINITIONS

In speaking of our Aboriginal Rights and Indian Governments we will come across a number of different terms and it is important that we, as Indian people, become familiar with them. Many of these terms have a precise meaning and care must be taken that they are always used in the proper context. These terms are well known by government officials and our complete familiarity with them will reduce the chances of misunderstandings. Where applicable, these terms are defined according to International Law.

NATION

A people existing in an organized society, occupying a distinct piece of land, speaking a common language, sharing a common culture and history. They are different from all others because of race characteristics. They may live under the same government but not necessarily.

INDEPENDENCE

Independence is the state or condition of being free from dependence, subjection or control. A nation which is completely independent, not subject to the government, control or dictation of any external power is said to be "politically independent".

BRITISH NORTH AMERICA ACT

The B.N.A. Act is Canada's constitution. It is the basic set of rules, practices and principles of government accepted by the federation of provinces. It is that piece of legislation that the British Parliament used to create the Dominion of Canada in 1867. The B.N.A. Act lays out the powers and responsibilities that have been divided up between the provinces and the federal government. All the powers and responsibilities of the federal government are spelled out in Section 91. Provincial powers and responsibilities are contained in Section 92. The provincial and federal governments can only act within their responsibilities and powers. The B.N.A. Act is really the most important piece of legislation in Canada. All legislation ever made stem from it, such as the Indian Act.

INDIAN ACT

The Indian Act is an administrative act by which the Federal Government exercises its responsibility for Indians and Indian lands as specified by Section 91(24) of the B.N.A. Act. This Section, 91(24), vests the responsibility for Indians and Indian lands with the Federal Government and the Federal Government has gone ahead and, through the Indian Act, interpreted the extent and nature of that responsibility. Because of the way the Federal Government views Indian people, the Indian Act denies our right to self-determination and negates our full sovereign power. It lays down regulations on how our governments will be formed and how our land and resources

will be handled. It determines who will be citizens of our tribes and generally how all our affairs will be conducted.

ABORIGINAL RIGHTS

Aboriginal Rights is a birth right that stems from original inhabitation of the land. Aboriginal Rights is passed from generation to generation giving the descendants a right to control and manage lands, resources and governing authority for the existence and the development of a cultural lifestyle. The term "aboriginal rights" encompasses lands, resources and governing authority. (Land Claims is included in this.)

AUTHORITY

Authority is the lawful delegation of power by one body of people to another. This authority rests with the people. It is they who must choose the degree of power that they will retain or give and through what vehicle it will be expressed. Indian people basically have five (5) types of authority that can be chosen from. The five types of authority that exist are as follows:

i) Sovereign Authority - According to International Law societies which have a separate and unique culture, with self-sufficient social, economic and political systems, and a specific land base are entitled to sovereignty. Sovereignty is the right to govern, to exercise jurisdiction of a given territory and the citizens within.

Sovereign power comes from within a people and cannot be taken away.

ii) Third Order of Government Authority - A Third Order of Government is an addition to the federal and provincial governments. It will assume within our defined territories all the authority of a municipal government, most, if not all, the jurisdictional authority of the provincial government and some of the authority of the federal government.

iii) Indian Provincial Authority - Indian Provincial Authority refers to a form of government having the same degree of authority, covering the same sixteen areas of jurisdiction the provinces have, and having the same type of relationship the provinces have with the federal government.

iv) Indian Act Authority - Indian Act Authority means basically remaining the same in that the Federal Government, through the Department of Indian Affairs, would retain the authority to give final sanction to the jurisdictional authority our Indian Governments possess.

v) Municipal Government Authority - Municipal Government Authority would mean opting out of Federal Indian Authority and assuming the status of a municipal government under the jurisdiction of a provincial government in the same way as any other municipality in Canada. In other words, total assimilation.

SELF-DETERMINATION

Self-determination is the right to choose. For

self-determination to exist a group must be "homo-
geneous", which means they must share a language,
and a common set of customs and beliefs. They must
be aware of their uniqueness and their separateness.
Generally they should have a territory. By exercising
the right to self-determination, a people are free
to determine whether they will be independent or
whether they will assimilate.

INDIAN GOVERNMENT

Indian Government is the vehicle through which we, as Indian People, can develop, enhance and exercise our inherent aboriginal rights. Indian Government does not define the degree of authority or the shape or form that that government will take. That task is in the hands of those who belong to that particular Indian Government. The term "Indian Government" is also used in reference to the governing body, e.g. Chief and Council and citizens of an Indian Band.

JURISDICTION

Jurisdiction is the power or right to regulate, to rule within defined areas within a given territory.

CONSTITUTION

A constitution is the basic law of government, written or unwritten. It establishes the nature and ideals of the government. It lays down the principles by which its internal life will be conducted. It organizes the government, and regulates and distributes the different functions. A constitution

spells out the degree to which sovereign power will be exercised and the way in which it will be exercised.

POLICIES

Policies are guidelines for making decisions which are in keeping with a government, organization or company's overall viewpoint. They can be regarded as general laws to be interpreted by people and not specific and detailed orders or instructions. In matters where questions often recur policy guidelines make it easier to reach an understanding and make decisions.

ADMINISTRATION

Administration is the meaning or conduct of an office of employment; the performance of the executive duties of an institution, business or the like.

PROCEDURES

Procedures are specific rules which show how everday administrative matters must be processed so that everyone in the organization is following the same pattern. Administration flows much easier when everyone follows the procedures.

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ABORIGINAL RIGHTS DEFINITION

Indian Government Portfolio
Union of British Columbia Indian Chiefs
3rd floor - 440 West Hastings Street
Vancouver, B.C. V6B 1L1

INDIAN GOVERNMENT

CITIZENSHIP · BAND CONSTITUTION · LAND · AIR · WATER · FORESTRY · OIL AND GAS · WILDLIFE · MINERALS

MINERALS · WILDLIFE · OIL AND GAS · FORESTRY · WATER · AIR · LAND · BAND CONSTITUTION · CITIZENSHIP

MIGRATORY BIRDS · FISHERIES · CONSERVATION · ENVIRONMENT · ECONOMIC DEVELOPMENT · EDUCATION · SOCIAL DEVELOPMENT · JUSTICE

UNION OF BRITISH COLUMBIA INDIAN CHIEFS

ABORIGINAL RIGHTS

ABORIGINAL RIGHTS MEANS THAT WE COLLECTIVELY, AS INDIAN PEOPLE HAVE THE RIGHT WITHIN THE FRAMEWORK OF THE CANADIAN CONSTITUTION, TO GOVERN THROUGH OUR OWN UNIQUE FORM OF INDIAN GOVERNMENT (BAND COUNCILS) AN EXPANDED VERSION OF OUR INDIAN RESERVE LANDS THAT HAS AN ADEQUATE AMOUNT OF ASSOCIATED RESOURCES AND IS LARGE ENOUGH TO PROVIDE FOR ALL THE ESSENTIAL NEEDS OF ALL OUR PEOPLE, WHO HAVE BEEN DEFINED AS OUR CITIZENS OR MEMBERS THROUGH OUR INDIAN GOVERNMENTS.

MIGRATORY BIRDS · FISHERIES · CONSERVATION · ENVIRONMENT · ECONOMIC DEVELOPMENT · EDUCATION · SOCIAL DEVELOPMENT · JUSTICE

LAW ENFORCEMENT · LOCAL AND PRIVATE MATTERS · CULTURAL DEVELOPMENT

INDIAN GOVERNMENT

COMMUNICATIONS · HEALTH AND WELFARE · MARRIAGE · TAXATION

INTRODUCTION TO UNION OF BRITISH COLUMBIA INDIAN CHIEF'S ABORIGINAL RIGHTS POSITION PAPER

ABORIGINAL RIGHTS TODAY

We, as Indian people, must understand that our aboriginal rights are inherent rights and can in no way be extinguished, sold or traded. Our aboriginal rights were bestowed upon us by our Great Creator, extended over generations and will continue on in perpetuity.

Our right as Indian People to choose and determine how we shall be governed, how our lands and our resources shall be managed stems from our inherent aboriginal rights. Aboriginal rights stems from our status as the original inhabitants of this land. As aboriginal people we had uncontested, supreme and absolute power over our territories, our resources and our lives. We had the right to govern, to make laws and enforce laws, to decide citizenship, to wage war or make peace and to manage our lands, resources and institutions. We had our own political, legal, social and economic systems. According to International law people who live together, who share a common language and a common culture, complete with a philosophy of life, values and institutions, have a right to govern themselves, to be sovereign. They are complete unto themselves and it is this status that gives them the right to be sovereign. The power to govern rests with the people and, like our aboriginal rights, it comes from within the people and cannot be taken away, they may exercise their rights and responsibilities whenever they choose.

However, over the years, many of our people have been led to believe that our aboriginal rights have been

curtailed, restricted or taken away. This belief exists because foreign power, meaning the Canadian federal and provincial governments, have assumed authority over our lives resources and our lands. The key word is ASSUME because that is how it was done. The problem that exists now is that many of our people have also assumed that the foreign powers have the right to control and manage our affairs.

We need to understand this for it is our will, our determination, and our faith in our aboriginal rights that will bring back Indian Government in the form we wish it to be expressed in this day and age. It is possible to reassert our aboriginal rights over those areas that we wish to do so. Our aboriginal rights were not created by the Canadian Government or any other foreign body. Rather Indian Goverments are vehicles and political units through which we can exercise our inherent rights.

Indian people still maintain:

1. The right to determine our own form of government,
2. The right to decide upon and regulate citizenship,
3. The right to make and enforce law,
4. The right to decide how land, resources and property will be used and distributed,
5. The right to act on all internal and external matters relating to the continued well-being and security of the band.

Although the foreign powers have to a large degree exerted control over and managed our affairs, Indian people have tenaciously resisted almost 300 years of assimilationist policy and practice. Systematic attempts to eradicate our culture, identity, lands and resources have failed. Instead we see a strong move towards establishing Indian control over lands, resources and our lives. Throughout the province different Bands are gradually resuming and reasserting their responsibilities and their rights.

PRINCIPLES

The following five articles are the basic principles upon which our position rests:

1. We are the original people of this land and have the absolute rights to self-determination through our own unique forms of Indian Governments (Band Councils).

2. Our Aboriginal Right to self-determination, through our own unique forms of Indian Governments are to be confirmed, strengthened and expanded or increased, through Section 91(24) of the British North America Act.

3. Our Indian reserve lands are to be expanded to a size that is large enough to provide for the essential needs of all our people.

4. Adequate amounts of land, water, forestry minerals, oils, gas, wildlife, fish and financial resources are to be made available to our Indian Governments on a continuing basis and in sufficient quantities to ensure domestic, socio-economic self-determination for peace, order and good government of Indian people.

5. Our Indian Governments (Band Councils) or Legislatures are to have the authority to govern through making laws in relation to matters coming within specified areas of jurisdiction that have been defined by our people.

INDIAN AUTHORITY

It is ourselves, the Indian people who must define the degree of authority we would feel appropriate to

exercise through our Indian Governments. This means defining the amount of power that we consider necessary to control, develop and manage our own affairs. There exists for Indian people five choices: sovereign authority, third order of governing authority, Indian provincial authority, Indian Act authority and municipal authority.

INDIAN JURISDICTION

It is we, the Indian people, who must define the specific areas of jurisdiction over which our Indian Government will exercise authority. Some of the areas that have been defined as being essential under the jurisdiction of our Indian Governments include:

1. Constitution
2. Citizenship
3. Lands
4. Water
5. Air Space
6. Forests
7. Mineral Resources
8. Oil and Gas
9. Birds
10. Wildlife
11. Fish
12. Conservation of Land, Waters and Resources
13. Management of the Environment
14. Economy
15. Education
16. Social Order
17. Health and Welfare
18. Marriage
19. Culture
20. Communications

21. Taxation
22. Justice
23. Law
24. General Matters

INDIAN GOVERNMENT

Indian Government is the citizens of Indian Bands exercising their collective power over their lands, resources and themselves through their chosen governing body. This would not alienate us from Canada or alter our special relationship with the Federal Government. Section 91(24) of the B.N.A. Act does not bestow upon us our Aboriginal Rights it merely confirms our Aboriginal Rights.

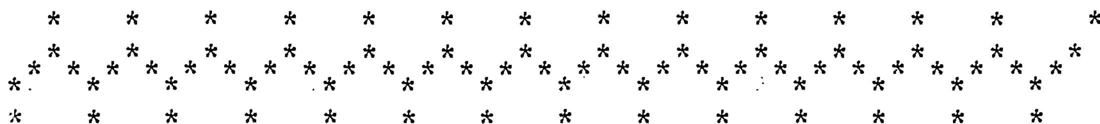
The process of exercising our aboriginal rights through our Indian Governments is simply a matter of exercising or acting to re-establish our hereditary right to govern our lives, our lands and our resources.

UNION OF BRITISH COLUMBIA INDIAN CHIEFS: ABORIGINAL RIGHTS POSITION PAPER

UBCIC has developed an Aboriginal Rights Position Paper which establishes the goal and sets out the framework to pursue that goal. Through considerable work, research and consultation we have developed a greater, in-depth understanding of our peoples' position with respect to Aboriginal Rights. We have found that our people have no desire under any circumstances to see our Aboriginal Rights extinguished. In fact, our people are adamant that our Aboriginal Rights are to be recognized, expanded, enhanced and developed to its fullest potential, on our terms and within the framework of Section 91(24) of the British North America Act. It is abundantly clear that to our people no sum of money would be sufficient to extinguish our Aboriginal Rights.

We have taken the position that Aboriginal Rights gives us, as Indian people, the right within the framework of the Canadian constitution to govern through our own unique forms of Indian Governments (Band Councils) an expanded version of our Indian reserve lands that has an adequate amount of associated resources and is large enough to provide for all the essential needs of all our people who have been defined as our citizens or members through our Indian Governments.

Many Bands are pursuing the goals and objectives set out in the position paper. We introduce to you the Aboriginal Rights Position Paper with specific examples of Bands exercising their inherent aboriginal rights.



ARTICLE I

WE ARE THE ORIGINAL PEOPLE OF THIS LAND AND HAVE THE ABSOLUTE RIGHTS TO SELF-DETERMINATION THROUGH OUR OWN UNIQUE FORMS OF INDIAN GOVERNMENTS (BAND COUNCIL).

ARTICLE II

OUR ABORIGINAL RIGHTS TO SELF-DETERMINATION, THROUGH OUR OWN UNIQUE FORMS OF INDIAN GOVERNMENTS ARE TO BE CONFIRMED, STRENGTHENED AND EXPANDED OR INCREASED, THROUGH SECTION 91(24) OF THE BRITISH NORTH AMERICA ACT.

ARTICLE III

OUR INDIAN RESERVE LANDS ARE TO BE EXPANDED TO A SIZE THAT IS LARGE ENOUGH TO PROVIDE FOR THE ESSENTIAL NEEDS OF ALL OUR PEOPLE.

ARTICLE IV

ADEQUATE AMOUNTS OF LAND, WATER, FORESTRY, MINERALS, OILS, GAS, WILDLIFE, FISH AND FINANCIAL RESOURCES ARE TO BE MADE AVAILABLE TO OUR INDIAN GOVERNMENTS ON A CONTINUING BASIS AND IN SUFFICIENT QUANTITIES TO ENSURE DOMESTIC, SOCIO-ECONOMIC SELF-DETERMINATION FOR PEACE, ORDER AND GOOD GOVERNMENT OF INDIAN PEOPLE.

ARTICLE V

OUR INDIAN GOVERNMENTS OR LEGISLATURES ARE TO HAVE EXCLUSIVE JURISDICTION TO MAKE LAWS IN RELATION TO MATTERS COMING WITHIN CLASSES OF SUBJECTS, HEREAFTER REFERRED TO, WITHOUT LIMITING THE SCOPE OF THE POSSIBLE SUBJECTS TO BE UNDER THE JURISDICTION AND AUTHORITY OF OUR INDIAN GOVERNMENTS (BAND COUNCILS) INCLUDE:

SECTION I

THE DEVELOPMENT OF A CONSTITUTION AND THE AMENDMENT, FROM TIME TO TIME, OF THE CONSTITUTION OF OUR INDIAN GOVERNMENTS.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- UBCIC INDIAN GOVERNMENT PORTFOLIO'S Aboriginal Rights Resource Booklet, has specific information on the writing of a constitution. This information is contained in the following pages.

INDIAN GOVERNMENT CONSTITUTIONS

PURPOSE OF A CONSTITUTION

The constitution lays out the basic rules, practices and principles accepted by the people as a means of governing themselves. It outlines the powers and responsibilities of the governing body and the rights of the group. It defines the internal and external relationships of Indian Government.

SOURCE OF AUTHORITY

The authority to govern is given to the governing body by the people. The people give this right because it is they as a collective who hold sovereign power and possess aboriginal rights.

RATIFICATION

The constitution of an Indian Government must be ratified by the people it represents. Ratification can be brought about by a consensus of all the members of the band or by a majority of votes.

FINANCIAL CONSIDERATIONS

In order to operate an effective government, a careful examination must be given to the financial aspects. Funding can be generated from a number of sources: i) revenues derived from economic development and businesses, lease payments and royalties from natural resource development; ii) direct taxation of its citizens or non-Indian interests and enterprises located within the territory and jurisdiction of the Indian government; iii) Federal Government appropriations and grants; and iv) possible Federal Government equalization payments similiar to those given to provinces.

ESSENTIAL COMPONENTS OF AN INDIAN GOVERNMENT

There are a number of areas that an Indian Government

must control in order to effectively protect and strengthen the rights of its citizens. These are:

1) The determination of citizenship.
2) Complete jurisdiction over lands in order to protect the land base and to increase its size to suit the needs of the community.
3) The authority to negotiate on behalf of the members of the community, with Federal, Provincial and other Indian Governments as well as the private and corporate sector.
4) Control over natural resources in terms of:
   (a) which resources should be developed.
   (b) at what pace should development take place.
   (c) the utilization of capital generated from natural resources in order to develop from resources. Therefore, the economic primary and secondary benefits remain in the community.
5) The justice system, no matter what form, must be reflective of traditional values. It must be understood that there will eventually be an interface with contemporary justice systems.
6) To levy taxes on either Indian or non-Indian interests and enterprises located within the territory and jurisdiction of the Indian Government. The right to levy taxes is a basic element of any government and a means of supporting it.
7) The power to amend its constitution and laws.

ADDITIONAL POWERS

Depending upon the current and anticipated needs of the community all other jurisdictional powers such as those outlined in the attached paper on "Elements of an Indian Government Constitution" must be incorporated into your Indian Government Constitution as the situation warrants.

CONSIDERATIONS

Before embarking on the task of determining what should be included in a Band's Indian Government Constitution the following are a few things to bear in mind:

1) An Indian Government Constitution must be responsive to the needs of the citizens. Therefore, we must look at who we are and where we want to go in order to develop a constitution that will meet the needs, values, traditions and customs of our people.
2) It is vitally important that Indian Government Constitutions define all areas of Indian jurisdiction or we run the risk of Federal and Provincial Governments continually infringing on areas of jurisdiction which may not be prioritized in your Indian Government Constitution.
3) A balance must be maintained which reflects traditional Indian culture and contemporary society. eg. existing political systems.
4) An Indian Government Constitution must be flexible in order to make room for changes and the extension of powers. eg. moving into the area of energy policy or water rights.
5) The total community must be represented by your Indian Government. Total representation leads to good decision making and more importantly, the implementation of those decisions. Whatever form of government structure your Indian Government embodies, i.e. it is imperative that the total community be represented to ensure the integrity of your community is protected.
6) There are a number of elements that will help you determine to what extent your Indian Government wishes to be self-determining. These are: (a) resource availability: land, natural and human (b) the location and access to services (c) the political will of the community (d) leadership (e) internal communication (f) ideology - common and futuristic.

* * * * * * * * * * *

ELEMENTS OF AN INDIAN GOVERNMENT CONSTITUTION

PREAMBLE:

Name of Indian Government.
The purpose of the Indian Government Constitution should identify and clarify the:

- Source of authority and power as derived from the people.
- Protection and preservation of Treaty & Aboriginal Rights suitable to the needs and size of the community.
- Enforcement of laws passed under constitution.
- Management of our own affairs.
- Exercise of our rights through self-government to the advantage of the citizens of our community.

TERRITORY:

The Indian Government will have full jurisdiction over Indian territory which includes: territory presently recognized as Indian Lands, territory to which there is an Indian land claim, traditional Indian hunting, fishing, trapping and gathering tracts, and any additional lands that from time to time may be established under the jurisdiction of Indian Government.

MEMBERSHIP:

Shall consist of those persons who meet the qualification of membership as stated in this constitution.
Things to consider:

1. Present citizenship
2. Children born prior to ratification of the constitution.
3. Future citizenship after the ratification of the constitution.
4. Adoption of Children

5. Rules of procedure for distribution of assets.
6. Appeals
7. Transfer of citizenships.

GOVERNING BODY:

- name of Indian Government.
- composition
- apportionment (representation by population)
- tenure (term of office)
- traditional, hereditary, contemporary or other form of government.

NOMINATIONS, APPOINTMENTS, ELECTIONS AND VACANCIES:

I. Nominations
   - criteria for nominations eg. residence, age, personal character.

II. Appointments
   - In the event of hereditary or traditional Indian Government, traditional appointments would apply. eg. clan mothers appointing chiefs.

III. Elections
   - when (date after ratification of constitution)
   - term (for how long?)
   - voting (criteria?)
   - rules and regulations for voting and election procedures
   - "all nominations and elections and filling of vacancies will be held in accordance with this constitution".

IV. Vacancies
   - death
   - resignation
   - removal due to neglect of duty, gross misconduct
   - leaving the immediate area (out of jurisdiction)

- how to fill the vacancy.

POWERS OF GOVERNING BODY:

1. To legislate Indian laws for the purpose of maintaining law and order and regulating activity within Indian jurisdictional boundaries.

2. To legislate for the establishment of an Indian justice system to legislate, administer and adjudicate Indian law.

3. To legislate and empower an Indian law enforcement mechanism that suits the needs of the community and reflects Indian values.

4. To legislate and enforce Indian laws regulating the domestic relations of members of the community and reflecting hereditary and traditional systems.
    a) Indian marriage
    b) Indian divorce
    c) Indian adoption
    d) Indian child welfare
        - illegitimacy
        - guardianship

5. To legislate Indian laws to regulate for wills, estates and inheritance.

6. To negotiate with other governments on behalf of the community in order to provide the resources necessary to fulfill the requirements of the Indian Government Constitution.

7. To legislate Indian Laws to provide for the spiritual, mental and physical health needs of the citizenship of the community.

8. To legislate Indian laws to provide housing, infrastructures and community facilities to meet the needs of the citizens of the community.

9. To legislate for an Indian educational system that provides vocational, academic and cultural education opportunities for our people.

10. To legislate Indian Laws for the sound physical and mental well-being of the entire community through sports and recreational activities.

11. To legislate the economic well-being of the citizens of the Indian Government through management, control, regulation and licensing of all economic affairs and enterprises and to undertake any programs or projects that enhance the economic well-being of the community citizenship.

12. To legislate for the levying of taxes upon citizens of the Indian Government and non-Indian interests and enterprises located within the territory and jurisdiction of the Indian Government.

13. To legislate for the development and placement of communication systems within the territory and jurisdiction of the Indian Government (cable, telephones).

14. To legislate for the trade and commerce within the territory and jurisdiction of the Indian Government.

15. To legislate for the development, sale and lease of renewable and non-renewable resources ensuring that an equitable share is received from such resources

within the territory and jurisdiction of the Indian Government.

16. To legislate for the labour standards and practices within the territory and jurisdiction of the Indian Government.

17. To legislate for the protection and preservation of the natural environment for the physical, social and cultural well-being of the people:
a) land b) water c) air d) wildlife.

18. To legislate for preservation and protection of the existing land base and any purchased or acquired land that has been entrusted to the Indian Government by the Creator and to increase the land base or regulate interests in the land on behalf of the Indian Government. eg. a) lease b) land claims c) purchase d) allotment - public and private.

19. To legislate Indian laws for the preservation, protection and conservation of wildlife within the boundaries of our Indian Reserve Lands, and within any additional lands that may from time to time be established under the jurisdiction of our Indian Governments.
eg. a) fur-bearing animals b) fowl.

20. To legislate Indian Laws to regulate and protect Indian hunting, fishing, trapping and gathering within Indian Government jurisdictional boundaries.

21. To legislate for external affairs with other governments.

BILL OF RIGHTS

The following should be considered by the Indian Government to ensure the human rights and freedoms of the Indian Government as whole and more so the individual members of the Indian Government. a) religion b) press c) speech d) assembly e) equal protection before the law f) due process of the law g) appeal.

JUDICIAL SYSTEM:

The entire judicial system that is developed to administer Indian justice must reflect our unique Indian values.

Under an Indian judicial system, laws will be enacted to maintain law and order in the community and regulate activity within Indian Government territory and jurisdiction.

A justice system must be complemented by a law enforcement mechanism of their choice.

REFERENDUM:

A mechanism to enable the populace to request, petition and vote on matters of importance to the entire community. eg. referendum on land purchases, developments and leases.

AMENDMENTS TO CONSTITUTION AND LAWS:

The Constitution and laws may be amended according to procedures adopted by the tribe. eg. percentage of voters required to amend.

RATIFICATION OF CONSTITUTION AND LAWS:

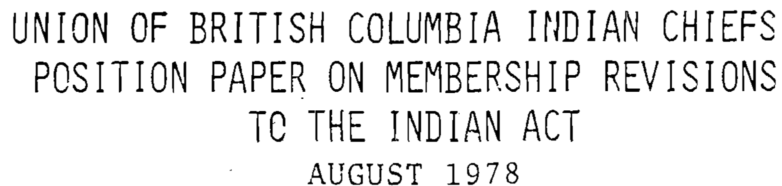
This constitution and laws upon ratification by a procedure established by the Indian Government, shall be binding upon the Indian Government and shall establish the internal and external relationship of the Indian Government.

SECTION 2

THE ESTABLISHMENT AND MAINTENANCE OF REGULATIONS PERTAINING TO WHO SHALL BE A CITIZEN OR MEMBER OF OUR BANDS UNDER THE JURISDICTION OF INDIAN GOVERNMENT.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- UBCIC has developed a position on Indian citizenship (membership) and presented it to the Federal Government. Briefly the position states that the authority to determine Band membership must rest with Chiefs and Band Councils. We refuse to accept any revision to the Indian Act that undermines the right of our Indian Governments to self-determination.
- UBCIC INDIAN GOVERNMENT PORTFOLIO has sent out to the Bands an outline of points to consider in developing an Indian Citizenship Position. Keep in mind that Membership is one of the key components in writing up a Constitution.
- Neskainlith Indian Band has developed a policy on Citizenship.



UNION OF BRITISH COLUMBIA INDIAN CHIEFS POSITION PAPER ON MEMBERSHIP REVISIONS TO THE INDIAN ACT

AUGUST 1978

INTRODUCTION

This paper introduces the Union of British Columbia Indian Chief's position on the determination of membership in Indian Bands. We are representing the view of our membership, of Chiefs' Council and of the two senior provincial Indian women's organization, the British Columbia Native Women's Society and the Indian Homemakers Association.

By this position we seek to strengthen the distinct cultural identity of Indian communities and to foster respect for an enhancement of local self-determination (Indian Government). These are goals which the Union of British Columbia Indian Chiefs has always fought for, and which the Minister of Indian Affairs, the Honourable Hugh Faulkner, has publicly supported. (see: House of Commons Debates, Government of Canada, Official Report for Thursday, June 15th, 1978, pp. 6452-53).

The UBCIC views the *Indian Act* as the main vehicle for the advancement of our aboriginal right to Indian Government (provided for under Section 91(24) of the *British North America Act*). The changes resulting from the current revision to the *Indian Act* will be vital to the advancement of Indian self-determination. Our position on the question of Band membership should therefore be understood as fundamental to our claim to aboriginal rights.

UBCIC POSITION

Traditionally Indian Governments had the power to exclude members, and thus to control their membership. Under the Indian Act in force today, total authority over membership rests with the Federal Government, which appoints a Registrar to decide who is entitled to be registered as an Indian according to the Indian Act. Bands have absolutely no authority to determine their own membership and are therefore severely restricted in achieving self-determination.

The Union of B.C. Indian Chiefs is advocating legislative changes which will return to Indian governing bodies (Band Councils) their original authority to determine and control their own membership. We submit that this position is in agreement with the stated primary objective of the Indian Act revision process, which is "to enlarge the powers, functions and responsibilities of Bands to enable them to take charge of their own affairs in ways and means of their own choosing."

The proposal we are making is neither new nor radical. In the United States Indian tribes have been able to establish at least the Indian Reorganization Act of 1934. In Canada, several proposals to achieve this position have been advanced in recent years. In November, 1971, (while the Lavell case was under appeal) the UBCIC passed a resolution asking that the question of membership be left up to the individual Bands. The Manitoba Indian Brotherhood in the same year asked that the responsibility for membership be given to the reserve communities. The National Indian Brotherhood General Assembly in September of 1973, noted a number of problems concerning the membership system and indicated the need for Bands to have a voice in questions relating to membership. In April of 1978, a General Assembly of the Union of B.C. Indian Chiefs confirmed our position that individual Bands must determine their own membership.

Band Councils are the recognized governing bodies closest to the communities which they serve and represent. They are best able to assume responsibility for the effective administration and the financial needs of their communities. They are therefore also in the best position to consider all the factors which affect Band membership.

The UBCIC is proposing that the democratically elected Chiefs and Band Councils be given the authority to set membership criteria according to the will of their members. Band members may affect policy through consultation by lobbying and ultimately through the electoral process. If control over membership is returned to the Bands, membership policies may change over time, but will always serve the needs and desires of the Band members. In addition, those Indian people who have unjustly lost their status will have the opportunity to reapply to their respective Bands, and any problems can be resolved through an internal appeal procedure. This process will strengthen Indian government and Indian control of our resources, and will meet the particular needs and concerns of individual communities. The UBCIC cannot accept the Federal Government's intention to define one membership system for all Indian Bands in Canada, let alone British Columbia. Membership <u>must</u> be determined by individual Bands.

We appreciate that there is a concern that this policy may stimulate an unreasonable expansion of Band membership and create a strain on the land base. However, the UBCIC contends that Band Councils would not jeopardize their communities' resources by drastically inflating their membership. We are confident that given the authority to do so, Bands would define their own membership criteria based on the interests of all their members. At the same time, we recognize the need for Bands to obtain additional resources to accommodate those who are eligible for Band membership but had unjustly lost their status.

The concern may also arise that this system of membership determination would prolong the discrimination on the basis of sex which currently exists under Section 12 (1)(b) of the Indian Act. It should be remembered, however, that this concept in the Indian Act did not come from our people, and that the UBCIC has never supported this inequality. There is no reason to assume that Band control of membership would uphold this unequal status.

SUMMARY

The authority to determine their own Band membership is the aboriginal right of Indian people and the transference of this authority from the Federal Government to the Chiefs and Band Councils is a requisite step in the process of self-determination. It is the position of the Union of B.C. Indian Chiefs that if the Federal Government supports the goal of Indian self-determination, legislative changes to achieve this end must be forthcoming.

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SECTION 3

THE MANAGEMENT OF ALL INDIAN RESERVE LANDS, INCLUDING ALL OTHER INDIAN LANDS OR INDIAN RESOURCE AREAS THAT WILL, FROM TIME TO TIME, BE ESTABLISHED UNDER THE JURISDICTION OF INDIAN GOVERNMENT.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- St. Mary's Indian Band claims 2,500 acres of land in compensation for the eroded land resulting from dike construction by the railway.
- Musqueam Indian Band is taking on the Federal Government in a court case regarding Shaughnessy Golf Course.
- Deep Creek and Soda Creek Indian Bands were successful in getting back a small portion of an old road that the Department of Highways took over under the Order-in-Council 1036.
- The Songhees Indian Band has a By-law to provide for the provision of mobile home parks or mobile home subdivisions on Indian Land.
- St. Mary's Indian Band has a By-law for the trespassing of railway operations on their reserve.

SECTION 4

ALL WATERWAYS AND BODIES OF WATER ASSOCIATED OR DEFINED AS BEING ASSOCIATED WITH OUR INDIAN RESERVE LANDS, INCLUDING ANY FORM OF WATER RIGHTS THAT, FROM TIME TO TIME, WILL BE ESTABLISHED UNDER THE JURISDICTION OF INDIAN GOVERNMENT.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- A number of Bands are beginning to research all waterways and bodies of water associated or defined as being associated with our Indian reserve lands.

Spotted Lake - a well-known Indian sacred spiritual lake located in the Okanagan area.

SECTION 5

ALL AIR SPACE OVER AND ABOVE ALL INDIAN RESERVE LANDS, BODIES OF WATER AND INDIAN RESOURCE AREAS ESTABLISHED UNDER THE JURISDICTION OF INDIAN GOVERNMENT.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- A number of Bands are beginning to do research on all air space over and above all Indian reserve lands.

SECTION 6

ALL FORESTS THAT ARE LOCATED ON INDIAN RESERVE LANDS INCLUDING ALL OTHER INDIAN FOREST RESOURCE RESERVES THAT WILL, FROM TIME TO TIME, BE ESTABLISHED UNDER THE JURISDICTION OF INDIAN GOVERNMENT.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- Mount Currie Indian Band has given notice to Canadian Forest Products to stop logging on their reserve.
- A number of Bands are developing forestry resource management plans to ensure the forestry resource is not depleted because of poor management practises.

Our people attempting to control their forest resources on Indian Land.

SECTION 7

ALL MINERAL RESOURCES LOCATED UNDER, AND WITHIN BOUNDARIES OF ALL THOSE LAND, WATER AND RESOURCE AREAS ESTABLISHED UNDER THE JURISDICTION OF INDIAN GOVERNMENT.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- A number of Bands are beginning to research all mineral resources located under and within boundaries of Indian reserve lands.

SECTION 8

ALL OIL AND GAS RESOURCES LOCATED WITHIN THE BOUNDARIES OF OUR INDIAN RESERVE LANDS, AND WITHIN ANY ADDITIONAL LANDS THAT FROM TIME TO TIME MAY BE ESTABLISHED UNDER THE JURISDICTION OF INDIAN GOVERNMENT.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- A number of Bands are beginning to research all oil and gas resources located within the boundaries of their Indian reserve lands.

SECTION 9

THE CONSERVATION MANAGEMENT OF ALL MIGRATORY BIRDS THAT PASS THROUGH INDIAN RESERVE LANDS, INCLUDING THOSE INDIAN MIGRATORY BIRD SANCTUARY RESERVES THAT WILL, FROM TIME TO TIME, BE ESTABLISHED UNDER THE JURISDICTION OF INDIAN GOVERNMENT.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- A number of Bands are beginning to research the conservation management of all migratory birds that pass through Indian reserve lands.

SECTION 10

ALL THE WILDLIFE RESOURCES CONTAINED WITHIN INDIAN RESERVE LANDS AND ALL OTHER INDIAN WILDLIFE RESOURCE AREAS THAT WILL BE NEGOTIATED AND AGREED TO BY FEDERAL, PROVINCIAL AND INDIAN GOVERNMENTS AS BEING UNDER THE JURISDICTION OF INDIAN GOVERNMENT.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- Francis Haines Case - Judge affirms Indian right to hunt.
- Blueberry, Doig, Halfway, Fort Nelson, East Moberly and West Moberly Indian Bands have done extensive maps showing their hunting, trapping, fishing territories, camp-sites, berry-picking areas and gathering places.
  St. Mary's, Columbia Lake, Lower Kootenay and Tobacco Plains Indian Bands are also mapping their hunting and trapping areas. These maps will be used, in part, to defend traditional territories against negative non-Indian development.
- A number of Bands are developing integrated resource management plans to ensure wildlife are not depleted or driven away because of poor management practices.

SECTION 11

ALL FISH RESOURCES CONTAINED WITHIN THE WATERWAYS AND BODIES OF WATER THAT ARE ESTABLISHED AS BEING ASSOCIATED WITH OUR INDIAN RESERVE LANDS.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- The Squamish Indian Band has established a Fishing By-Law to provide for the preservation, protection and management of fish (on their reserve).
- The Nicola Indian Band Fish By-Law.
- The Lillooet Indian Fish By-Law for their district.
- Bradley Bob Case, Debolt Decision - Judge Debolt affirms that Indian people have a legal right to fish under the condition that sound conservation management regulations are established by the Indian people.
- The Tahltan Tribal Council developed a By-Law which provides for the preservation, protection and management of fish within bodies of water that have been associated with Tahltan Indian Band.

SECTION 12

THE GOOD CONSERVATION OF LAND, WATER AND RESOURCES ESTABLISHED UNDER THE JURISDICTION OF INDIAN GOVERNMENT.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- A number of bands are establishing integrated resource management plans to ensure lands, water, and other resources are utilized to their maximum potential.

SECTION 13

THE PRODUCTIVE MANAGEMENT OF THE ENVIRONMENT WITHIN THE BOUNDARIES OF ALL LANDS, WATER AND RESOURCE AREAS THAT HAVE BEEN ESTABLISHED UNDER THE JURISDICTION OF INDIAN GOVERNMENT FOR THE BENEFIT OF ALL INDIANS IN BRITISH COLUMBIA AND OTHER CANADIANS.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- Nishga Indians have developed their own Forestry Management Policy.
- The Mowachaht Indian Band is in the process of establishing a Pollution By-Law which will set the permissable levels for all forms of pollution on the reserve, including air, water, and noise pollution.
- St. Mary's Indian Band claims 2,500 acres of land in compensation for the eroded land (result of dike construction by railway).
- The Lytton Indian Band has developed a By-Law to regulate the use of Recreational and off-highway vehicles on their reserve lands.

SECTION 14

THE ESTABLISHMENT AND MANAGEMENT OF THE ECONOMY THROUGH THE DEVELOPMENT, IMPLEMENTATION AND ENFORCEMENT OF REGULATIONS, ON SUCH MATTERS AS TRADE, COMMERCE, AND THE INCORPORATION OF COMPANIES WITHIN THE FRAMEWORK OF INDIAN GOVERNMENT OBJECTIVES.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

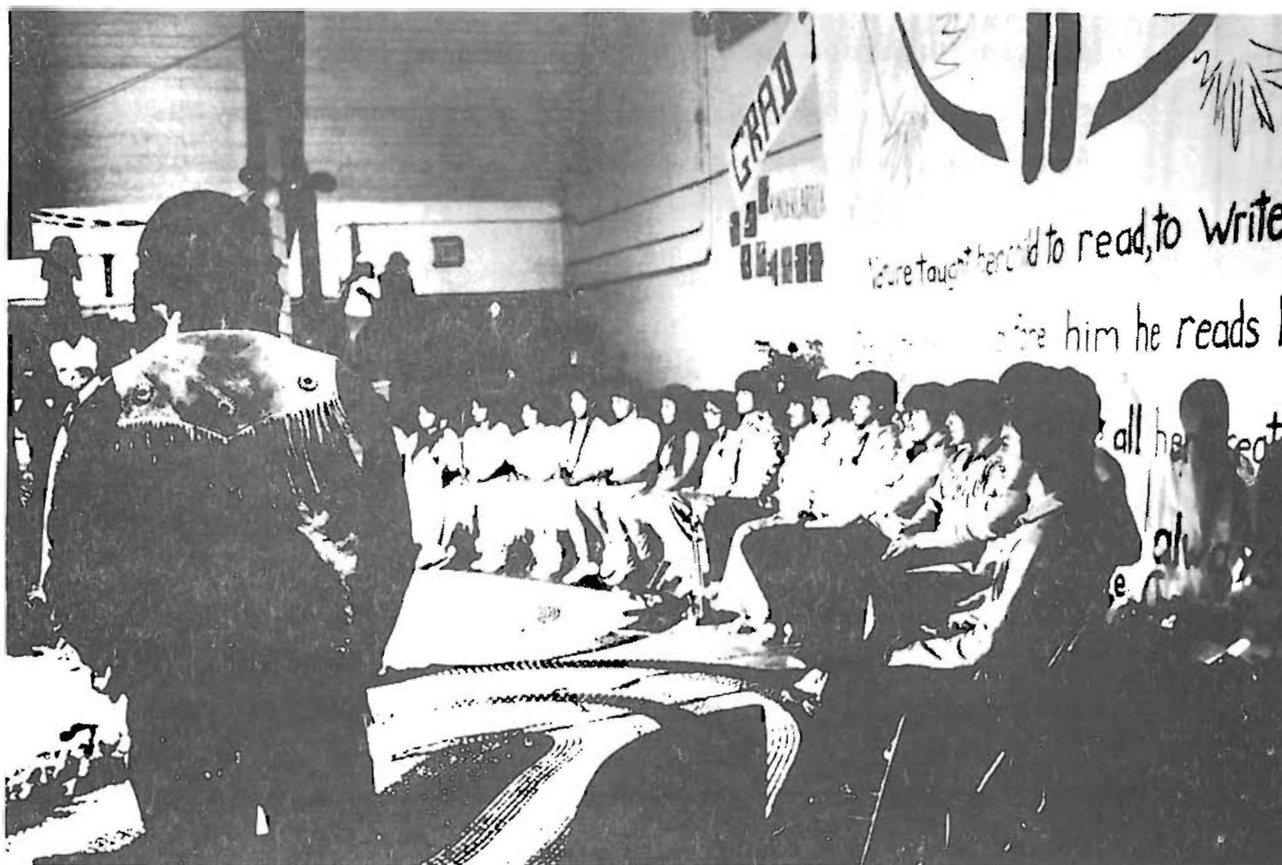
- Cowichan Indian Name Rights.
- Lytton Indian Band organizes summer camp.
- Bella-Bella - Central Native Fisherman's Co-op.
- Campbell River Indian Boat Marina.
- Indian Mushroom Gatherers are organizing.
- Sumas Indian Band has evicted a company which has been manufacturing clay bricks on their land. The Band has control of the clay industry.
- The Neskainlith Indian Band has established a goal of self-sufficiency which has facilitated a planning process which involves: (1) examination of existing resources on reserve, their potential in terms of generating revenue to the band and employment opportunities for its citizens. (2) examination of the economy of the surrounding area outside of the reserve for the purpose of determining potential, available economic ventures that can be engaged by the band.

SECTION 15

THE GOOD AND PROPER EDUCATION OF ALL OUR PEOPLE WITHIN THE FRAMEWORK OF INDIAN GOVERNMENT OBJECTIVES.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- Indian Lawyers: Six graduates in B.C.
- Band operated Schools: Bella Coola
  Masset
  Mt. Currie
  Nitinaht
  Shulus
- Bands with their own School Boards: Nishga
  Saanich
  Kispiox
- Port Alberni Alternate School
- The establishment of Youth Organizations by many of the Bands.



Mt. Currie Indian graduation ceremonies of their all-Indian controlled school.

SECTION 16

THE MAINTENANCE OF SOCIAL ORDER WITHIN THE FRAMEWORK OF INDIAN GOVERNMENT OBJECTIVES.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- The Stuart Trembleur Indian Band has a By-Law to provide for the observance of peace and good order within all the band land.
- The Lower Kootenay Indian Band has a By-Law to establish eviction of undesirables from the band land.
- The establishment of Youth Organizations by many of the Bands.

SECTION 17

ALL MATTERS PERTAINING TO THE PROPER HEALTH AND WELFARE OF OUR PEOPLE, INCLUDING THOSE NOT RESIDENT ON INDIAN RESERVE LANDS.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- Indian Para-medic Program.
- Alert Bay Indian Band charges doctor with negligence.
- Nishga Indian Club self-raised $1,600 to pay for 'low aid glasses' for band members.
- Stalo Indian Housing Society.
- Mount Currie Indian Band members were successful in getting 12 mobile homes without ministerial guarantee.
- Indian Photographers and Artists have held an informal gathering in Kamloops, August 1979 to exchange ideas.

An Indian Doctor curing a young boy.

SECTION 18

THE SOLEMNIZATION AND DISSOLUTION OF MARRIAGE WITHIN THE CHARTERED INSTITUTIONS OF TRADITIONAL INDIAN RELIGIONS.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- A number of Bands are beginning to research traditional marriage ceremonies on their Indian reserves.

SECTION 19

ALL MATTERS PERTAINING TO THE DEVELOPMENT AND ENHANCEMENT OF OUR CULTURE, INCLUDING SPIRITUAL AND LANGUAGE DEVELOPMENT.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- Kwakiutl got back 100 of their potlatch artifacts, also opened Kwakiutl Indian Museum.
- A number of bands have developed cultural programs which include historical research, curriculum development and language courses.

SECTION 20

THE ESTABLISHMENT AND MAINTENANCE OF COMMUNICATING SYSTEMS WITHIN THE FRAMEWORK OF INDIAN GOVERNMENT OBJECTIVES.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- Indian Newsletter: Nicola Valley Newspaper, UBCIC Newsletter and numerous Band Newsletters.
- Spallumcheen Band forced a motel chain to remove an illegal advertising sign.
- UBCIC Fishing Bulletin
- Indian Radio Training Program

SECTION 21

THE COLLECTION OF ALL FORMS OF TAXES WITHIN THE FRAMEWORK OF OUR INDIAN RESERVE LANDS AND ON INDIAN PEOPLE WITHIN THE BOUNDARIES OF CANADA.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- The Cape Mudge Indian Band has a By-Law to allow taxing on the reserves.

SECTION 22

THE IMPOSITION OF APPROPRIATE PENALTIES FOR THE VIOLATION OF ANY LAW OF INDIAN GOVERNMENT IN RELATION TO ANY MATTER COMING WITHIN ANY OF THE CLASSES OF SUBJECTS ENUMERATED IN THIS SESSION.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- UBCIC successful in defeating the National Energy Boards Application that they could not be sued by UBCIC.

SECTION 23

THE ADMINISTRATION OF JUSTICE, INCLUDING THE CONSTITUTIONS, MAINTENANCE AND ORGANIZATION OF INDIAN GOVERNMENT COURTS.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT:

- Number of Bands are researching this area with the view in mind of establishing Indian Courts and policing service.

SECTION 24

GENERALLY, ALL MATTERS OF A MERELY LOCAL OR PRIVATE NATURE ON INDIAN RESERVE LANDS, INCLUDING OTHER LANDS AND RESOURCE AREAS THAT WILL, FROM TIME TO TIME BE ESTABLISHED.

WAYS INDIAN PEOPLE ARE PRACTICING INDIAN GOVERNMENT

- The Gitlakdamix Indian Band has a By-Law to provide for the control, licencing of, and protection from domesticated animals.

- The Stoney Indian Band has a By-Law to provide for protection against and prevention of trespass by cattle and other domestic animals on Band Land.

INDIAN GOVERNMENT WITHIN CONFEDERATION

When we talk of Indian Government we are talking about a Third Order of Government within Confederation. Indian Government does not alienate us from Canada and does not cancel our relationship with the Federal Government. Indian Government is a reinterpretation of Section 91(24) of the BNA Act, "Indians and Lands Reserved For The Indians." The nature and scope of those seven words will be determined by the Indian concept of aboriginal rights.

Through renegotiating the terms of our relationship with Canada, the Canadian Constitution will provide for and recognize Indian Government. Indian Government is the exercise of full internal sovereignty. This means that Indian Government is responsible for all persons, resources and lands within Indian Territory. It must provide peace, order and an appropriate form of government within its territory.

RELATIONSHIP TO THE FEDERAL GOVERNMENT

The Government of Canada is responsible for providing the land and the resources that will allow Indian Governments to become self-sufficient. The Government of Canada must fulfill its obligations in accordance with aboriginal rights, rights that are confirmed by the Royal Proclamation of 1763, the Treaties and the Trust Relationship.

Economic self-sufficiency goes hand in hand with political and cultural self-determination; without it political and cultural development would be affected. A revised Indian Act would be the means whereby these rights are once again ratified and administered. The act would not dictate how local affairs will be administered, as it does now. What it would do is provide for the establishment of Indian band constitutions that determine how local power will be delegated and how local affairs will be conducted.

QUESTIONS THAT MAY ARISE DURING DISCUSSIONS ON INDIAN GOVERNMENT

1. WHAT WOULD BE THE ROLE OF THE DEPARTMENT OF INDIAN AFFAIRS IN TERMS OF INDIAN GOVERNMENT?

   The role would be of "advice and support" to Indian Governments rather than "control and supervision."

2. HOW CAN WE AS A SMALL BAND WITH LIMITED RESOURCES FUNCTION AS AN INDEPENDENT GOVERNING BODY?

   No government, regardless of size and resources is totally independent. Even large nations are dependent upon others for certain resources.

   Agreements could be made between other Indian Governments as well as the Federal and Provincial Governments for services. Alliances with other Indian Governments can be established for economic development, social advancement, etc. An Indian Government should look at its land base to develop its self-sufficiency.

3. WHAT ARE THE LEGAL, HISTORIC, AND INHERENT RIGHTS TO INDIAN GOVERNMENT?

   The right to self-government is not given by any piece of foreign legislation, but is an inherent right of a people.

   Historic - Indian Government existed prior to contact with Europeans and exists today, i.e. Six Nations Confederacy. An example of the recognition of that government was the signing

of the treaties, and that also establishes the International law application, i.e. signing treaties with foreign nations.

4. WHAT AFFECT DOES INDIAN GOVERNMENT HAVE ON:
   1) INDIAN ACT?
   2) BRITISH NORTH AMERICA ACT?
   3) OTHER LEGISLATION?

1) *The Indian Act, whatever its form will remain operative for Bands who choose to apply it.*
2) *The BNA Act must entrench and enhance the Aboriginal and Treaty Rights of Indian people. It's anticipated from this recognition that a third form of government or Indian Government will establish the separate legal and jurisdictional base for Indian Self-Government.*
3) *Other legislation would require amendments to comply with the recognition of Indian Government as a thrid order of Confederation.*

5. DIFFERENCES BETWEEN CONSTITUTION AND CHARTER SYSTEM (DIA)?

The difference between an Indian Government Constitution and the Department of Indian Affair's Charter System is that in an Indian Constitution the power and authority rests with the people whereas in the Charter System, the power lies in the Charter Commission and with the Minister of Indian Affairs.

6. AS THE CONSTITUTIONAL DEBATE AND INDIAN ACT REVISION PROCESS IS BASICALLY LONG TERM, WHAT PRACTICAL SHORT-

TERM ROUTES CAN BE FOLLOWED IN ASSERTING INDIAN GOVERNMENT?

- *Talk about what form of Indian Government you want.*
- *Study community needs.*
- *Initiate community development.*
- *Initiate feasibility study for Indian Government, i.e. exame resources, land claims, future planning, etc.*
- *Act where there are jurisdictional vacuums between the Indian people and Federal and Provincial Government, i.e. social services adoptions, etc.*

7. METHOD TO USE IN WRITING A CONSTITUTION, i.e. ORGANIZE A GATHERING.

- *Politicize community.*
- *Organize community.*
- *Study groups to examine various aspects of community needs, i.e. education needs.*
- *Obtain assistance from Provincial/Territorial organizations and National Indian organizations.*
- *Conduct workshops for community/communities at various levels.*

8. WHY DO WE NEED THESE TRIBAL CONSTITUTIONS?

- *Protection and preservation of treaty and aboriginal rights.*
- *To ensure the needs of community are met.*
- *To ensure that the laws that are passed by the community are enforceable.*

- *To establsih an organization for the management of affairs.*
- *Exercise the right of self-government to the advantage of community members.*
- *To put the will of the people into a working mechanism.*
- *Define internal and external relationships, territory and jurisdiction.*

* These questions and answers are by no means complete; they are for discussion purposes only.

* Reproduced from N.I.B.

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OUR ABORIGINAL RIGHT TO INDIAN SOVEREIGNTY

THE FOLLOWING TWO PAPERS DEAL WITH ABORIGINAL RIGHTS AND SOVEREIGNTY, ONE DEALS WITH THE CONCEPT OF SOVEREIGNTY AS UNDERSTOOD AT THE INTERNATIONAL LEVEL AND AS IT APPLIES TO THOSE INDIAN TRIBES LIVING UNDER U.S. AMERICAN RULE. THE OTHER PAPER DEALS WITH OUR SITUATION IN CANADA. THE RIGHTS OF INDIAN PEOPLE IN CANADA, TO CHOOSE THEIR DESTINY AND TO GOVERN THEMSELVES AND THEIR LANDS STEMS FROM "ABORIGINAL RIGHTS" AND SOVEREIGN POWER.

THESE PAPERS ARE INTENDED TO PROVIDE BACKGROUND INFORMATION; HOPEFULLY THEY WILL SUPPLY THE READER WITH A BROADER AND MORE DETAILED UNDERSTANDING OF "THE RIGHT TO CHOOSE" AND THE "RIGHT TO GOVERN", PARTICULARLY AS IT APPLIES TO CANADA.

OUR ABORIGINAL RIGHT TO GOVERN THROUGH OUR OWN UNIQUE FORMS OF INDIAN GOVERNMENTS

The right of Indian bands or tribes to choose and determine how they shall be governed, how their lands and resources shall be administrated stems from their ABORIGINAL RIGHTS AND TITLE to the land.

> "Prior to colonial settlement in North America...we as Indian people had uncontested dominion over the tribal territories and all the people therein. We governed, made laws, waged war and had established our own political, social, cultural, economic institutions and systems. Each tribe had absolute control over the resources and products of its land. In other words the tribes had political sovereignty. To Indian people their title to their tribal lands was explicit in this political sovereignty."[1]

When the white man arrived he gradually assumed political control over that land and the Indian people. Although the colonial legal systems accepted the existence of Indian sovereignty and aboriginal title, it imposed its own concept of Indian rights. Nonetheless our Indian aboriginal rights continue to exist, in the 'fullest sense', regardless of the restrictions the colonial powers impose upon them.

THE CONCEPT OF SOVEREIGNTY

Kirk Kickingbird of the Institute for the Development of Indian Law has this to say of sovereignty:

> "Sovereignty" is a difficult word to define, because it cannot be seen or touched. It

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1. NIB Aboriginal Title, A Position Paper, p.2, 1971

> is very much like a great power, a strong feeling or an attitude of the people. What can be seen however, is the exercise of sovereign power. A good working definition of sovereignty is: The supreme power from which all specific political powers are derived. Sovereignty then is absolute and comes before nations, governments and politics."[2]

Sovereignty comes from within a people or culture. People who live together, who share a common language and a common culture complete with a philosophy of life, values and institutions, have a right to be sovereign. They are unique. They are complete unto themselves and it is this special status that confers upon them SOVEREIGN POWER. Because sovereignty is of the people one group of people cannot give sovereignty to another group. Sovereignty rests with the people and they can assert it when they choose.

Our aboriginal right to sovereignty allows us to choose our own form of government such as a democracy, a monarchy or a dictatorship. It allows us to decide how our government will operate whether it will be based on a written constitution or on customary or spiritual laws.

Even if we change our form of government from a form of, say, monarchy to a democracy our aboriginal rights will not be affected because it will be us the people who make that decision. How much of our aboriginal rights we exercise will depend on the will and needs of our people; the history and religion of our people, the internal and external economics and politics.

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2. Kickingbird, K. Indian Sovereignty, p. 1 1979

We, the Indian people of North America, had supreme absolute and uncontrollable power by which we governed ourselves. We had the right and power to regulate our internal affairs without interference. We made laws and enforced them. We decided how we would make material gains for ourselves, who would work and who would benefit. We decided whether we would make peace or war. We made peace or trade treaties with other tribes. We never surrendered nor extinguished our aboriginal rights and we can exercise any or all of these rights if we so wish.

EUROPEAN RECOGNITION OF ABORIGINAL RIGHTS AND INDIAN SOVEREIGNTY

Once Europeans made contact with the Indian people of America they had to deal with the situation. Many assumed that because we did not share their views, values and practices we were inferior civilizations. This is how they justified assuming control over our lands, our resources and our people.

A brief look at the early stages of contact we find that, in the early 1500's a Dominican priest, Bar t'holme' de las Casas argued that:

> "all men are endowed with natural rights, that Europeans had no right to enslave Indians, that the Indians of the Americas had a right to live."[3]

Las Casas persuaded the Council of the Indies to suspend all expeditions to the New World until the legal, religious and moral issues raised could be resolved.

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3. Barber, L., Native Rights in the New World, p. 3, 1979

Another supporter of aboriginal rights was a Spanish international lawyer and theologian, Franciscus de Vittoria. In his lectures at the University of Salamanca he stated:

> "...Unbelief does not destroy either natural law or human law, but ownership and dominion are based either on natural or human law; therefore they are not destroyed by lack of faith."[4] (Referring to Indian people)

In essence what Vittoria meant was that the aboriginal rights of Indian people comes from within them, in accordance with natural law, and that sovereign power cannot be destroyed simply because a foreign nation denies its existence.

Based on the presentation of these scholarly men, Pope Paul III issued a document, a Papal Bull entitled "Sublimus Deus" (The Transcendent God) decreeing that Indians were men and entitled to their freedom and property:

> "...Indians and all other people who may later be discovered by Christians, are by no means to be deprived of their liberty or the possession of their property, even though they may be outside the faith of Jesus Christ; and...they may and should freely and legally enjoy their liberty and possession of their property; nor should they in any way be enslaved; should the contrary happen, it shall be null and of no effect."[5]

Ignoring the Christian egotism, British high authority

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4. Badcock, W. Who Owns Canada? p.4, 1976
5. Ibid

had formally recognized our claim to the universal rights of freedom and self-determination. In essence the Papal Bull had affirmed the existence of our aboriginal rights and title to the land.

Initial European contact was concerned primarily with commerce and did not seriously threaten our Indian aboriginal rights. As an all important party to the fur trade Indian people dealt with the Europeans largely on their own terms. As sovereign people we chose our allies for commercial and military reasons with discretion. It is evident that the European nations realized this for in 1760 when France was defeated by the English, they sought to maintain good relations with the Indian allies of the French by refraining from any retaliatory action. Article 40, of the Articles of the Capitulation of Montreal reads:

> "The Savage or Indian Allies of his Most Christian Majesty shall be maintained in the lands they occupy if they wish to remain there: they shall not be disturbed on any pretext whatever for having taken arms and served his Most Holy Majesty."[6]

Even if they wished to, the English at this time were not in any position to infringe upon the sovereign Indian nations. As more colonists arrived to settle in the area Indian sovereignty began to be threatened and was met with military confrontation. Realizing the military might of the Indian tribes the colonial powers sought to standardize a policy by which they could negotiate with Indian tribes to extinguish their aboriginal right to the land and surrender it to the English. The policy that was eventually formulated was enunciated in the Royal Proclamation

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6. Badcock, W. Who Owns Canada? p.5, 1976

of 1763, signed by King George III of England. The Proclamation established the boundaries for the provinces of Quebec, Florida and Grenada and dealt with immigration and Indian land.

> And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies that the Several Nations or Tribes of Indians with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories as, not having been ceded to or purchased by us, are reserved to them or any of them as their Hunting Grounds - We do therefore, with the advice of our Privy Council, declare it to be our royal will and pleasure, that not Governor or Commander in Chief in any of our Colonies of Quebec, East Florida, or West Florida, do presume, upon any pretence whatever, to grant warrants of survey or pass patents for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean from the West and North West, or upon any lands whatever, which, not having been ceded to or purchased by us, as aforesaid, are reserved to the said Indians, or any of them.
> And we do further declare it to be our Royal Will and pleasure, for the present as aforesaid, to reserve under our sovereignty, protection, and dominion, for the use of the said Indians, all the Lands and Territories not included within the limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the sources of the rivers which fall into the Sea from the West and North West as aforesaid;
> And we do further strictly enjoin and require all persons whatever who have either willfully or inad-

> vertently seated themselves upon any lands within the Countries above described, or upon any other lands which, not having been ceded to or purchased by us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such settlements.
>
> Given at our Court at St. James the 7th day of October 1763, in the Third Year of our Reign.

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The Proclamation of 1763 expressly recognizes Indian sovereignty, aboriginal title to the land and all rights stemming from it. It has never been repealed and has the force of a statute. The treaties which were an implementation of this policy reaffirm our Indian aboriginal rights to the land, resources and governing authority.

Although the colonial powers had recognized the existence of sovereign powers and aboriginal title, they gave that recognition a perverted twist, and described Indian interest in the land as a "usufructory right". This meant that Indian people had rights as complete as that of a full owner of property with one major limitation. The Indian people could not transfer its title; it could only agree to surrender to the Crown or limit its right to use the land. Such a definition of Indian title was made arbitrarily and in the interests of the colonial powers.

Biased as it was, the Royal Proclamation should have the basis of all future action and decision made on Indian title but such was not the case. As the British gained in military and political strength they were able to ignore or comply only in part with the rules of their own legal system. For this reason some areas such as much of

British Columbia were settled without extinguishing Indian title.

While the Supreme Court has never ruled favourably on Indian title perhaps for the exception of the 1970 Calder Case, Indian rights do not cease to exist. Because like sovereignty, aboriginal rights are inherent, and exist regardless of whether a foreign nation accepts or denies them.

ABORIGINAL RIGHTS TODAY

We as Indian people must understand that our aboriginal rights are inherent rights and can in no way be extinguished, sold or traded. Our aboriginal rights were bestowed upon us by our Great Creator, extended over generations and will continue to do so in perpetuity.

Many of us have been led to believe that our aboriginal rights have been curtailed, restricted or taken away. This belief exists because foreign powers meaning the Canadian federal and provincial governments have assumed authority over our lives, resources and our lands. The key word is ASSUME because that is how it was done. The problem that exists now is that many of our people have also assumed that the foreign powers had the right to control and manage our affairs.

We need to understand this for it is our will, our determination, and our faith in our aboriginal rights that will bring back Indian Government in the form we wish it to be expressed in this day and age. It is possible to reassert our aboriginal rights over those areas that we wish to do so. Our aboriginal rights were not created by the Canadian Government or any other foreign body. Rather Indian Governments are vehicles and political units through which we can exercise our inherent rights.

Indian people still retain these rights:

1. The right to determine our own form of government

2. The right to decide upon and regulate membership
3. The right to make and enforce law
4. The right to decide how land, resources and property will be used and distributed
5. The right to act on all internal and external matters relating to the continued well-being and security of the band/tribe.[7]

Today there is a difference between how much aboriginal power different bands/tribes wish to exercise. Some are prepared to resume full responsibility, most of us require expanded lands, guaranteed resources and technical aid.

The exercise of our aboriginal rights has lain dormant for the last 300 years because the colonial powers have restricted our freedom most times by force of might. Consequently a dependency mentality on the part of Indian people, fears and a reluctancy to exercise aboriginal authority has been created.

The denial of our aboriginal rights and the assault on Indian land is based on belief that Indian civilizations are lesser civilizations than European ones. The Canadian Governments' Indian Policies are aimed at assimilating Indian people through a systematized assault on our culture and our land. Indian people however, have tenaciously resisted all attempts to wipe out our aboriginal rights. Throughout North America there is a definite move to reassert our Indianness, a move to regain and control our lands and our lives. The Union of B.C. Indian Chiefs state:

> "We are the original people of this land and have the absolute right to self-determination through our own unique forms of Indian Governments."[8]

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7. Kickingbird, K. Indian Sovereignty p. 4, 1979
8. UBCIC, Aboriginal Rights Position Paper p. 2, 1978

Aboriginal Right to Govern

Some Bands in the province have begun to exercise their aboriginal rights by passing laws for the management of fishing and anti-pollution laws. They are assuming responsibility for their resources and their environment through an exercise of their aboriginal rights. In the U.S. some tribes who have had long standing disagreements are entering into peace treaties for the purposes of a strong unified front to resist anti-Indian U.S. legislation. Other tribes are entering into treaties for the purposes of trade. In this regard, Indian Governments are already exercising their aboriginal authority today. Indian Government is already a working reality. We do not need any foreign European nation, or colonial government to say yes, you may exercise the right to choose, the right to govern yourselves within your territories, we only have to assume our rights that stem from our aboriginal rights. Like our breath no one can take our aboriginal rights from us without committing a violence against the aboriginal people of this land.

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"INDIAN SOVEREIGNTY"

SPEECH BY

KIRK KICKINGBIRD

APRIL 4, 1979

INDIAN GOVERNMENT DEVELOPMENT CONFERENCE

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INSTITUTE FOR DEVELOPMENT OF INDIAN LAW

"Sovereignty" is a word that is used with a great deal of facility. Our standardized mental image of the word calls for a white-haired gentleman in an ice cream suit with a black string tie shouting in a heavy southern accent, "...The great sovereign state of Alabama casts its votes for the next president of the United States..." the word appears in virtually every daily newspaper and weekly news magazine. For those who shun the printed word, the term "sovereignty" is heard with regularity on the evening news as countries in Africa and the Third World modify political relationships among themselves and with the rest of the world. Consequently, "sovereignty" is displayed with a maximum of use within a variety of circumstances. What sovereignty needs is to be placed in a context which provides some meaning.

"Sovereignty" is a difficult word to define. Sovereignty is a difficult word to define because it is intangible, it cannot be seen or touched. It is very much like an awesome power, a strong feeling, or the attitude of a people. What can be seen, however, is the exercise of sovereign powers.

Sovereignty is also difficult to define because the word has changed in meaning over the years. For our purposes, a good working definition of sovereignty is: THE SUPREME POWER FROM WHICH ALL SPECIFIC POLITICAL POWERS ARE DERIVED. Sovereignty is inherent; it comes from within a people or culture. It cannot be given to one group by another. Some people feel that sovereignty, or the supreme power, comes from spiritual sources. Other people feel that it comes from the people themselves.

Although the modern concepts of sovereignty were formally developed and written about European philosophers and political scientists, the ideas associated with sovereignty are part of many cultures. Throughout the world, people who live together, who come from similar cultural backgrounds, and who share common attitudes towards life feel they have the right to be sovereign. Thus, the word is used today to mean the special quality that

nations have which enables them to govern themselves.

Does sovereignty mean complete independence? Again in the ideal sense, sovereignty means the absolute or supreme power of a people to govern themselves, completely independent from interference by or involvement with other sovereign nations. Yet no nation in the world today is completely independent. Our industrialized world of mass communications, global transportation, and soaring populations makes national isolation virtually impossible. Economic and political considerations, such as the need for raw materials or military assistance, make nations dependent upon each other. In reality, the economic dependence of one nation on another often leads to political limitations as well. Consequently, even such large and powerful countries as the United States and the Soviet Union are limited in their capacity to act by the small oil-rich nations of the world. This dependence has been continually demonstrated during the energy crisis of recent years.

Some people fall into the trap of equating sovereignty to nationhood, government or politics. While sovereignty, nationhood, government, and politics are related, it is important to remember that sovereignty is absolute and comes before nations, governments, and politics.

Sovereignty has the most meaning in a practical sense when we look at the sovereign powers exercised by a government. So the most basic power of a sovereign people is the power to select their own form of government.

What kind of government it is or how it functions does not affect the sovereignty of the nation. Throughout the world, democracies, monarchies, theocracies, and dictatorships all exercise sovereign powers to one extent or another.

The exact methods of governing also vary widely. Some governments operate under written constitutions, others under customary or spiritual laws handed down from generation to generation. Some have highly struc-

tured institutions, others have relatively simple, informal organizations. Many nations operate under a system which allows for orderly change in leaders and powers. A change in the form or procedures of government or in one of its institutions, however, does affect the sovereignty of a nation.

There is no magic formula about how many and which of these powers a nation must exercise in order to be sovereign. How and if a nation uses any or all of these powers is dependent on many things, including: 1) the will and needs of the people; 2) the history and religion of the people; 3) internal and external economics; 4) internal and external politics.

All of the colonial powers, and later the United States also recognized the sovereignty of Indian nations by entering into over 800 treaties with Indians. Under international law, treaties are a means for sovereign nations to relate to each other, and the fact that Europeans and the United States made treaties with Indian nations demonstrates that they recognize the sovereignty of Indian nations.

In Worcester v. Georgia, the United States Supreme Court said that "...the very fact of repeated treaties with them recognizes (the Indians' right to self-government) and the settled doctrine of the law of nations is that a weaker power does not surrender its independence - its right to self-government - by associating with a stronger, and taking its protection." The power of Indian nations to wage war was pointed out by the Supreme Court on several occasions as evidence of their sovereign character. And when critics complained that Indian tribes were not "nations" in the European sense, the Court responded that:

> "The words "treaty" and "nation" are words of our language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians as we have

applied them to other nations of the earth.
They are applied to all in the same sense."

While the exercise of sovereign powers by Indian governments has been restricted to some extent there can be no doubt that the United States and other nations have recognized the inherent sovereignty of Indian nations and their right to self-government. Consequently, we know Indian governments are sovereign because:

1. Indians feel they are sovereign.
2. Indian governments have exercised sovereign powers.
3. Other nations have recognized the sovereignty of Indian Governments.

The distribution of governmental powers between the Federal Government on the one hand and the original 13 states on the other hand was made in the United States Constitution. The states delegated certain powers to the Federal Government and retained others. Included in this delegation was the power to make treaties with Indian nations.

The distribution of governmental powers between the United States government and each Indian nation was somewhat similiar. It may be viewed as a process of dividing up a bundle of sticks. Each stick represented a sovereign power. So there was power to declare war, a power to impose taxes, a power to regulate property, and so forth. Originally the tribe held the entire bundle of sticks and so had complete power over the geographical area it controlled and the people living within that area. It was an absolute sovereign.

Over the decades and for various reasons, each tribe granted certain of those powers to the United States government in exchange for certain benefits and rights. This was done by treaty or agreement or statute.

The point to remember is that all of the powers were once held by the tribes, not the United States government. Whatever powers the Federal Government

may exercise over Indian nations it received from the tribe not the other way around.

United States law is clear, however, that an Indian nation possesses all the inherent power of any sovereign government except those powers that may have been qualified or limited by treaties, agreements, or specific acts of Congress. Therefore, while tribes have lost some of the "sticks in the bundle" they retain all the rest. So they can and do exercise many sovereign powers.

Included among these inherent powers of Indian governments are the following:

1. The power to determine the form of government.
2. The power to define conditions for membership in the nation.
3. The power to administer justice and enforce laws.
4. The power to tax.
5. The power to regulate domestic relations of its members.
6. The power to regulate property use.

The United States Congress has played a major role in the continuing relationship between Indian nations and the United States government. This is clear from the fact that American Indians have been the subject of more federal legislation than any other single group in the United States. Since 1790, when the first Indian Trade and Intercourse Act was adopted, Congress has approved more than 4,000 treaties, agreements, and statutes relating to Indian Affairs. Some of these represented good faith attempts by Congress to deal with Indians honourably. Some were only thinly disguised measures designed to take Indian lands and destroy their governments. Many have limited, directly or indirectly, the power of Indian nations to exercise their sovereign rights.

The function of the United States courts is, in part, to interpret the laws passed by Congress and to determine the constitutionality of those laws and the legality of acts by federal officials administering those laws, have sometimes been challenged in the federal courts when they interfered with the exercise of Indian sovereign rights.

Generally, the federal courts have permitted both the Congress and the President broad latitude in their powers to deal with Indian nations.

But while the courts have generally upheld the United States powers in Indian matters, they have also recognized the inherent sovereignty of Indian nations. The main principle that emerges from court decisions is that Indian Governments may exercise all their inherent powers unless Congress has restricted the use of those powers or the Indian nations have voluntarily given up those powers in a treaty or agreement.

The courts have also developed rules for interpreting federal laws dealing with Indians which may limit interference with Indian sovereignty. For example, the courts have held that agreements with Indian nations should be interpreted in the way in which they were understood by the Indians and that federal laws should be interpreted in favour of the Indians, if possible.

Concepts about Indian sovereignty were discussed by the United States Supreme Court in two landmark cases in the 1830's. The two cases were Cherokee Nation v. Georgia (1831) and Worcester v. Georgia (1832).

In Worcester the United States Supreme Court recognized that Indian nations were "distinct political communities, having territorial boundaries, within which their authority is exclusive and having a right to all the lands within those boundaries..." Since the Cherokee Nation retained its inherent sovereignty, the state of Georgia could not impose its laws over the Cherokee Nation. Instead, the relationship between the Cherokee Nation and citizens of the United States were

strictly a matter between the Cherokees and the Federal Government.

The Supreme Court statement in Worcester v. Georgia is still referred to, in cases today, in support of the inherent sovereignty of Indian nations.

Today Indian nations are sovereign and do not exercise many sovereign powers. They are not mere social organizations, any more than any other legitimate governmental unit is. They are not artificial creations of the United States Government any more than the governments of foreign nations are. On the contrary, Indian governments are viable functioning political units which exercise inherent sovereign powers.

There are, of course, great differences among Indian nations in their abilities and desire to actually exercise their sovereign powers. Some have well-developed and sophisticated governmental institutions which function efficiently and exercise power wisely. Other Indian Governments are in great need of technical assistance, training programs, and a stable source of funding in order to function to their full potential and serve the needs of their people. When we recognized that almost 83% of all United States "federally recognized tribes" have very small populations and limited resources, it is readily apparent that the practical problems of exercising sovereign rights are formidable for many Indian nations. There are, however, modern developments which encourage optimism and confidence in the future of Indian nations.

There are basically two reasons why many Indian sovereign powers have not been fully exercised since the early 1800's: (1) suppression by non-Indians; and (2) a reluctance on the part of many Indian Governments to press for reforms and exercise the powers which they retain.

Historically, the non-Indian attitude toward Indian self-government was influenced by the pervasive belief that Indian culture, social institutions and governmental

forms were inferior to those of European immigrants. The hope was that after enough "education", the Indian would realize this, abandon his more traditional ways and embrace the non-Indian culture. This would eventually lead Indian Governments to wither and disappear. As we have seen, a great deal of federal legislation throughout the 19th and early 20th centuries was designed to encourage this policy. But the survival of Indian nations today is resounding proof of the shortsightedness and lack of understanding inherent in that belief and the policies it nurtured.

While the belief that Indian nations may disappear still lingers in the minds of some people, there has been a growing acceptance within the United States government in recent decades of the strength of Indian nations and their determination to re-establish meaningful control over their lives and resources.

The other reason why Indian sovereign powers have not been fully exercised in this century is because of reluctance of the Indian people to do so. Perhaps because of a fear that the United States Government will return to its policies of suppression and termination or perhaps because of an overall lack of confidence, Indian Governments have not exercised many of the sovereign powers which they retain. But this also is changing. Today Indian nations are realizing that the best way to prevent interference in their internal affairs is to take firm control of those governmental functions which are crucial to their continued survival. An example of this increased awareness is the American Indian Declaration of Sovereignty adopted by the National Congress of American Indians since 1974.

This land base and natural resources of Indian nations continue to be important today as a means of preserving Indian sovereignty. Through control over Indian lands and resources, Indian nations can regain

a degree of economic self-sufficiency necessary to Indian self-determination.

Until recently, United States Indian policy in the administration of law and order had evidenced little concern for Indian traditions, cultural values, and self-determination. The dominant law and order influences on reservations have frequently been either the Bureau of Indian Affairs or other Federal or State entities. But recent years have shown an important trend toward Indian nations regaining control over law and order systems on reservations.

There are, to be certain, some problems arising with imposition of these expanded powers of self-government. Resistance by the states is the major one. Other problems are evident, such as decisions about cross-agreements, too much B.I.A. control in ratification of governing documents, gaining the general co-operation of surrounding non-Indian governments, and a low priority by the nation itself when dealing with law and order matters. All these problems slow down the process of returning to a form of law and order administration tailored to the unique situation of each Indian community.

Indian nations have resumed the use of treaties to relate to each other in recent years.

The Comanche and Ute Nations are using a treaty to mend old wounds. Traditional enemies in the past, they are currently finalizing negotiations of friendship and trade between each other.

In the Pacific Northwest, Indian nations are currently in the process of negotiating treaties between each other in relation to the conduct and management of fishing rights in their traditional fishing places.

Even this short review should be enough to show that Indian sovereignty is a far-reaching and vigorous reality today. As a former Commissioner of the Bureau of Indian Affairs stated: "(The) will for self-determination has

become a vital component of the thinking of Indian leadership and the grassroots Indian on every reservation and in every city. It is an irreversible trend, a tide in the destiny of American Indians that will eventually compel all of America...to recognize the dignity and human rights of Indian people." He also could have added that this will spring naturally from the sovereignty of the Indian people and their tenacious refusal to surrender it.

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CHRONOLOGICAL HISTORY OF THE FEDERAL GOVERNMENTS INDIAN POLICIES

INTRODUCTION

THIS NEXT SECTION DEALS WITH A CHRONOLOGICAL HISTORY OF THE FEDERAL GOVERNMENTS INDIAN POLICIES. RESEARCH HAS UNCOVERED NUMEROUS PIECES OF LEGISLATION ENACTED BY THE FEDERAL GOVERNMENT AIMED AT TERMINATING OUR HEREDITARY RIGHTS AND OUR LANDS. OVER THE YEARS THE FEDERAL GOVERNMENT HAS SOUGHT WAYS TO DEAL WITH INDIAN PEOPLE AND THE PROBLEMS CREATED BY THE EFFECTS OF EUROPEAN ENCROACHMENT ON INDIAN LANDS AND INDIAN LIVES. THESE PLANS HAVE RANGED FROM PROTECTION TO ABANDONMENT AND HAVE INCLUDED: CIVILIZATION AND ASSIMILATION.

THERE WAS A CONTINUOUS EVALUATION OF THESE PLANS AND AS NEW GOVERNMENTS CHANGED SEATS THEY SOUGHT TO DESIGN A MORE COMPREHENSIVE AND A MORE EFFECTIVE INDIAN POLICY: ONE THAT WOULD ASSIMILATE INDIAN PEOPLE AND TERMINATE INDIAN RIGHTS AND INDIAN LANDS.

THIS INFORMATION SHOULD FAMILIARIZE OUR ELECTED REPRESENTATIVES AND OUR INDIAN CITIZENS WITH THE MENTALITY OF THE SENIOR LEVELS OF GOVERNMENT AND SENSITIZE THEM TO THE INTENT BEHIND MUCH GOVERNMENT (DIA, NHW, ETC.) POLICY, PROGRAMS AND PRACTICES.

MOST POLICIES AND PROGRAMS ARE DESIGNED TO EVENTUALLY FULFILL THE LONG TERM GOALS OF A LARGER, OVERALL INDIAN POLICY AIMED AT TERMINATION.

* THIS PAPER WAS RESEARCHED AND WRITTEN BY THE FEDERATION OF SASKATCHEWAN INDIANS AND REPRODUCED WITH THEIR PERMISSION.

THE HISTORY OF THE FEDERAL GOVERNMENT'S INDIAN TERMINATION POLICY

This next Paper is broken down into seven sections which clarifies the time frames in which the Federal Governments Indian policies evolved from that of protection to civilization to assimilation. These sections are as follows:

A. THE ERA OF PROTECTION 1755 - 1830

B. THE ERA OF CIVILIZATION AND PROTECTION 1830 - 1857

C. CIVILIZATION AND EVENTUAL ASSIMILATION 1857 - 1876

D. AGGRESSIVE CIVILIZATION 1876 - 1906

E. FORCED ASSIMILATION 1906 - 1944

F. ALLIANCE FOR ASSIMILATION 1944 - 1969

G. ABANDONMENT OF GOVERNMENT RESPONSIBILITY FOR THE INDIAN 1969

From the earliest days, even prior to the creation of the Dominion of Canada in 1867, British and Canadian Parliaments have sought to weaken Indian sovereignty and the rights of Indians and self-government.

There seems to have been an effort to "protect" Indians from incursions by whites through legislation. But as the political demands upon Parliament increased, its motives became more apparent to satisfy its constituents.

A dichotomy has developed between the goal of Canada's Indian policies and its end products. Although every Canadian Government has sought to bring about the assimilation of Canada's Indian peoples with the rest of Canadian society, this goal has never been achieved, in large part because of the policies formulated to bring Indians into the mainstream of Canadian life.

The fact that Canadian people have always recognized Indians as being different and have tried to legislate away that difference has only served to reinforce the differences and make assimilation all the more difficult to achieve.

Moreover, the belief that the differences were not merely those of different ethnic backgrounds, but of different levels of social, political, moral and cultural development, with Indians always at the lower level, has meant that Indians have been treated as inferior persons if regarded as persons at all. It has meant that legislative efforts to bring about assimilation have always had two purposes:

(1) the upgrading or "civilizing" of Indians to the "superior" level of Euro-Canadians; and
(2) only secondarily, the achievement of assimilation.

This attitude towards Indians, and the two-pronged basis of Canada's efforts to eliminate Indian sovereignty and assimilate Indians has been characteristic of Canada's Indian policy since the colonial period of Canadian history when Britain controlled Indian administration. Only in the last few years have attempts to "civilize" Indians changed, however, the goal of assimilation has not.

A. <u>THE ERA OF PROTECTION - Britain's Policy</u> 1755 - 1830

1. Contact between British subjects and the Indigenous peoples of North America began with the establishment of Britain's colonial empire. During the first century of this contact, the regulation of the relationships between Indian and white was left in the hands of the colonial governors. They were the persons who had to reach agreements with the Indians in regard to the Indians rights to land, and trade between the two groups. As a result there was no unified or systematic approach throughout the British colonies on how to deal with the Indian.

2. In the 17th century most colonies made arrangements to secure land through purchase, but as the colonies grew in population, and people moved out of the settled areas, it became extremely difficult to secure the surrender of the Indians' rights to lands occupied by the colonist. Moreover, as the colonists' appetite for land appeared over the insatiable, the Indian people grew more reluctant to accommodate them. Thus, conflicts became more serious and were complicated by the wars for empire between Britain and France.

3. During these wars, both sides actively sought the

aid of the Indian people, and used them as military allies. Because of the problems the Indians had with the French the colonies realized the danger this presented, and being desirous of receiving a sense of obtaining security and defence, convened a conference at Albany to deal with the problem.

4. The Albany Congress of 1754 attributed the difficulties the colonists were having to the lack of a centralized and uniform administrative system in dealing with the Indians. The Indians' hostility to the colonists was attributed to the fraudulent and irregular purchases of Indian lands which were characteristic of colonial control of Indian Affairs. Therefore, the Albany Congress recommended that Indian Affairs should be supervised by a Superintendent of Indian Affairs; a centralized system, through colonial union, be established to control western lands, manage the Indian trade, and administer the purchase and sale of Indian lands.

5. One of the proposals was immediately acted upon by the Commander of British Forces in America, General Edward Braddock, when he appointed William Johnson Superintendent of Indian Affairs. Johnson was given responsibility and authority for all Indian relations.

6. Johnson, in fulfilling his role, tried to see that all Indian grievances about their lands were rectified, sought to prevent fraudulent trading practices and to make the Indians friends and allies of the British through the annual distribution of presents. This policy, designed during

a time of military crisis and conflict, remained the basis of British Indian administration for the next half century.

7. The Imperial Government considered the question of Indian administration during the war with France of 1754-1761, and resolved to unify its management and to protect the Indians in the use of their lands from white encroachment. Thus a boundary line was to be established between Indian and white settlement, which could be altered as needed, but only after treaties with Indians were made to get the Indian title for the Crown. In addition, the Imperial authorities took it upon themselves to regulate trade with the Indians in order to protect them from fraudulent and other unjust practices.

8. However, these decisions were not made law until after the outbreak of an Indian war with the colonists who pushed into the Ohio Valley after the end of the war with France. Then they were set forth in the Royal Proclamation of October 7, 1763.

9. The Proclamation of 1763 organized the territories ceded by France to England throught the Treaty of Paris of 1763. Thus, two thirds of it deals with matters unrelated to Indians. However, the sections concerned with Indians were designed both to provide security for the colonists and allay Indian fears about loss of their lands. Thus, it stipulated;

> *Whereas it is just and reasonable and essential to our Interest and the security of our Colonies, that the Several Nations or tribes of Indians with whom we are connected, and*

> *who live under our protection should not be molested or disturbed in the possession of such parts of our Dominion and Territories as, not having been ceded to or purchased by us, are reserved to them, or any of them, as their Hunting Grounds.*

10. The Proclamation went on to state that all the King's subjects were forbidden to trade in that area or make any purchase or settlement on these reserved lands, without permission of the Crown, and that the Indians could only dispose of their lands to the Crown. In effect, the Proclamation of 1763 made Indian Affairs an Imperial responsibility and removed the colonial governments from this sphere of activity.

11. The instrument which the Crown used in administering Indian Affairs was the Indian Department control of which during the next half century vascillated between the army and civilian authority. However, the paramount goals remained keeping the Indians as military allies, protecting their rights in their lands, and regulating trade with them to see that they were not defrauded.

12. When after 1815, Britain was no longer able to protect their allies' interests south of the Great Lakes, many who lost lands because of their alliances with Britain were given new lands in Canada. However, before giving land to their allies who moved into Upper Canada, the British had purchased it from those Indian peoples who had used it as their hunting grounds.

13. The British practice in Upper Canada was to purchase Indian lands whenever it appeared European settlement would expand into an area. This policy was made easy by the slow growth in population, and lack of population pressure. Later as such pressure increased larger tracts were purchased for the purpose of economic exploitation of the region, a practice which became a characteristic of the later Canadian treaty system.

14. However, until 1830 the treaties were designed primarily to get land for settlement, and to get the surrender of the Indians rights to the land. Therefore, British policy can be characterized as having a two-fold purpose:
    1) protection of the Indians from colonial exploitation.
    2) and to keep the Indians as allies of Britain for the purpose of defence.

15. After 1815, however, the British did not need military allies in North America. The possibility of British conflict with any European power, or even the United States, was greatly reduced, and the distribution of presents to the Indians to preserve their friendship came to be regarded as an unnecessary expense that should be ended. Moreover, a new attitude was developing towards the American aboriginee, and at the same time was fraught with dangers to his existence. The Indian came to be regarded as a "noble savage" in need of "civilization." The Indian was a fellow human who was in need of development to reach the level of the European. If this were done, he would no longer

be in need of protection, for he could be integrated into the life of the colony.

B. THE ERA OF "CIVILIZATION" AND PROTECTION 1830 - 1857

1. With their loss of value as military allies, the Indians found that Britain's relationship with them also changed. No longer in need of courting the Indian's way of life, the British Government and Indian Affairs administrators came to be largely influenced by the views of missionaries and writers about the need to develop the Indian. As a result many of these ideas were incorporated into Britain's Indian policy after 1830.

2. Of great importance for the change in Britain's Indian policy was the propaganda carried on by the Churches and the missionary societies. Since the beginning of the 19th century the Protestant churches were on the throes of a revivalist and evangelical movement that stressed carrying Christianity not only to the unchurched European, but also to the non-Christian. This was particularly true in North America, especially in the United States, and led to the creation of missions among the Indians, like the Catholics had been carrying on for centuries. For the Protestant missionary, conversion to Christianity meant not only the acceptance of a new religion, it meant also the adaptation among non-European societies, of European values. If they were American missionaries, it meant the principles of democracy and republicanism. Realizing this, and seeing the work of these missionaries and their apparent successes in getting the Indian to farm

and educating him, the British thought steps might be taken by which the Government might do the work of "civilizing" the Indian, and at the same time thwart the growth of republicanism that American Missionaries were preaching.

3. Another movement that had an impact on Britain's new Indian policy was the wave of humanitarianism in regard to the treatment of non-European peoples in the British Empire that swept Britain at this period. This feeling found practical expression in the abolition of slavery throughout the Empire, and in groups like the Aborigines Protective Association, which advocated better treatment and the "civilization" of native peoples in the colonies.

4. Finally, the Government was also cognizant of the growing belief on both sides of the Atlantic, in the Indian as the "noble savage," - the last example of man in a "state of nature" who should be not only protected, but instructed in the better features of European Civilization not destroyed or pushed further back into the wilderness, as both the United States and British Government were doing.

5. All the non-frontier groups spoke about the need to "civilize" the Indian, so that this became one of the two goals, - protection from exploitation being the other - of Britain's Indian policies in various trial programs.

6. The new program for Indian Affairs called for collecting the Indians and settling them in large villages where they would be taught to farm and encouraged to do so. In addition,

the Indians would be given religious instruction and an education which were regarded as the essentials of civilization.

7. Thus under this policy the reserve was essential; it was the key to the program of civilization for it provided the necessities to make the program work. It centralized the Indians into enclaves where teachers and missionaries could work. It met the requirements of a policy for "civilizing" the Indians; a policy which it was hoped would make the Indian into a Christian with European values capable of competing in European environment.

8. To facilitate the goals of the program and to continue the policy of protection that was implemented in 1763, legislation was passed in the legislature of Upper Canada. This legislation not only tried to protect Indian lands and reserves from white encroachment and trespass, but also sought to see that Indians were not debauched by certain accoutrements, such as liquor, of white society. This was the reason for the first ban on sale of liquor to Indians, a prohibition included in all subsequent legislation for more than a century. In so doing, the Indians were being given special status in the colony through legislation.

9. Although determined to use the reserve system to civilize the Indians, the British vascillated between establishing the reserves in areas of settlement, or to implement the program in areas isolated from European settlers in

order to keep the Indian protected from the vices that accompanied European settlement. However, by 1840, the decision was reached to civilize the Indian in isolation from the rest of colonial society. Thus huge reserves were established far from settlements for those Indians who newly surrendered their lands.

10. In order to protect these reserves, further legislation prohibiting trespass was enacted by the legislature of the Canadas. For the Indians of Lower Canada, a Commissioner of Indian Lands was appointed to manage Indian lands and to see that they were not cheated in their land dealings with Canadian settlers. His responsibility extended only to the lands held by:

> All persons of Indian blood reputed to belong to the particular Body or tribe of Indians interested in such lands, and their descendants:
>
> All persons intermarried with such Indians and residing amongst them, and the descendants of such persons.
>
> All persons residing amongst such Indians whose parents on either side were or are Indians of such Body or tribe, or entitled to be considered such.
>
> All persons adopted in infancy by such bands....

11. Here for the first time the legislature, or any government body, defined who was an Indian, and did so in a sweeping definition; - all persons of Indian ancestry, or married to such a person, belonging or recognized as belonging to an Indian band, and living with that band. Variations, or more limited definitions were to come later,

but of importance is that the legislation, or in other words the government, determined who was an Indian. In so doing it was designating who the individuals were who had to be 'civilized' and protected from the rest of society.

12. The legislation passed for Upper Canada for protection of the Indians differed markedly, from that of Lower Canada. The Upper Canadian law did not define who was an Indian, leaving that to the band and individual person to determine on their own. However, the protection of Indian lands enacted was much more comprehensive, for it provided for fines and imprisonment as part of the penalty for seizure of unsurrendered Indian lands. To protect the Indian from fraudulent and unscrupulous efforts by settlers to get Indian land, the Upper Canadian law stipulated that Indian lands could not be taken for non-payment of debts, unless the Indian had title to it in fee simple. Moreover, because Indian land and the reserves were held in trust by the crown, the Indians were freed from paying tax on it, therefore, such lands could not be taken for the non-payment of taxes.

13. There were features of the 1850 Law of Upper Canada that demonstrated that it was not purely a measure to extend protection to the Indian, but that it also was to serve the purpose of civilization. Thus, the law prohibited the purchase and seizure of Indian chattel and moveable property, which was given to the Indian as a "gift" for the purpose of encouraging "agriculture and other civilizing pursuits." These prohibitions were designed primarily to allow the Indian to develop a concept of private property; one of the foundations of "civilized society".

14. Despite such legislative enactments and isolation from the vices of civilization, the reserve program for "civilizing" the Indian did not appear to be working. In 1856-57 a re-evaluation of the policy led to the conclusion that the experiment in isolation was impractical, and doomed to failure. However, the reserve idea, and the use of it as a school in "civilization" was not found at fault; it was the implementation of that plan that produced poor results. Looking across the border into the United States, the British and Colonial Governments thought they saw success could be had with the reserve system, for in Minnesota where reserves were surrounded by settlement, Indians appeared not only to become "civilized", but were assimilated into the community that bordered on the reserves.

15. Thus, in Canada, the policy changed to promote small reserves for individual bands, which would be located near Canadian communities, which it was thought could help facilitate the "civilizing" process taking place on the reserve, and into which the Indian would eventually be assimilated.

C. CIVILIZATION AND EVENTUAL ASSIMILATION. 1857 - 1876

1. The decision to keep the reserve policy, but to change the future location of reserves, was accompanied by a clearer understanding of the ultimate goal of the Indian Affairs policy. Thus, the Indian was not merely to be civilized, he was to be assimilated. For this purpose the Indian would receive special status for only a limited

time - until he was "civilized" then he would be incorporated into Canadian society, so that ultimately there would be no Indian people.

2. This was the avowed purpose of a bill passed in the Canadian Legislature in 1857, entitled: "An Act to encourage the gradual Civilization of the Indians in this Province, and to amend the Laws respecting Indians." As the preamble makes clear, the act wanted to encourage civilization in order to remove all legal distinctions between Indians and other Canadians, and to integrate them fully into Canadian society.

3. However, having set out assimilation as the goal, the legislature proceeded to enact legal distinctions between Indians and Canadians. Thus, any persons of Indian ancestry, or inter-married with such a person, acknowledged as a member of Indian band or tribe, and residing on a reserve of lands unsurrendered to the Crown was to be regarded by law as an Indian. As such he was to be subjected to this law, and could not be accorded the rights and privileges of a Canadian until he could demonstrate that he could read and write either the French or English language, was free of debt, and of good moral character. Having proved that these criteria could be met, the person then could be given an allotment of land, fifty acres, from his bands reserve, and extended the franchise, or the vote after a one year probationary period.

4. This was the means by which an Indian became "enfranchised", and when he did so, his entire

family also lost their Indian status. However, the land given to an enfranchised Indian was not given in fee simple, but as a life estate, which meant he could sell it, he only had exclusive use of it, as did his descendants. However, even though the enfranchised person did own the land, he did have to pay taxes on it.

5. The dichotomy in Canada's Indian Affairs administration became a noticeable characteristic at this time. The legislation which enacted to remove all legal distinctions between Indians and other Canadians, established such distinctions by requiring the Indian to be a literate Christian, and free of debt before admitted into white society.

6. In other words the Indian had to be "civilized" although persons of European background did not, for they could be illiterate and still have the right to own property and vote. The contradiction between the goal and practice of Indian administration became more marked when responsibility for Indian matters was turned over to the colonies in 1860, for rather than divide responsibility for the various parts of Indian administration among several ministers, one man, the Commissioner for Crown lands was made solely responsible for Indian affairs. This minister became the new Superintendent General for Indian Affairs because he was responsible for most of the economic features in the Government that needed to be regulated on Indian reserves.

-eg. land, timber, fishing, hunting, etc.

7. The turning over of Indian Affairs to the colony of the Canadian, led to the passage of another piece of legislation relating to Indians. This was entitled "An Act respecting the Management of the Indian Lands and Property". This bill provided for who was to be the new Superintendent General of Indian Affairs, and included provisions for how Indian lands were to be administered.

8. Much of the bill reiterated the protective features of earlier acts, but a few new sections on how Indian lands might legally be alienated were added. Before Indian lands could be sold, a majority of the Chiefs of a band or tribe had to agree to give up the land at a meeting called for that purpose, and an affidavit certifying the vote was needed before the Crown would accept the surrender as valid.

9. Before the decade ended, the Indians' special position and distinctness from other Canadians was re-emphasized through Confederation, for in the British North America Act of 1867, Section 91 subsection 24, the Government of the Dominion of Canada was given exclusive jurisdiction over "Indians and Lands reserved for the Indians."

10. However, this did not mean that the goals for protecting, civilizing, and eventually assimilating the Indians were abandoned, for the Dominion Government adopted them. Most of the laws of the Province of Canada concerning

Indian lands were incorporated into the act setting out the duties of the Secretary of State of Canada, who was made responsible for Indian Affairs.

11. The major difference between the old and new laws was a new definition of who was an Indian, for the Dominion Government excluded non-Indians living as Indians and married to Indians, and non-Indian children adopted by Indians. Although these persons were no longer classified as Indian, they were permitted to continue to live on the reserves. The only changes were minor adjustments to the penalties for trespass on reserves and Indian lands.

12. The acceptance by the Dominion Government of responsibility to "civilize" and assimilate the Indians was demonstrated in 1869 with the passing of "An Act for the gradual enfranchisement of Indians..."

13. This legislation enacted essentially the same enfranchisement procedure that the Province of Canada had passed in 1857. However, the categories of persons who were to use this process was limited, for Indians were defined in the same manner as in the 1868 Acts and even further delineated by excluding women married to non-Indians, and the products of such marriages. It was probably assumed that the non-Indian would "civilize" his spouse, and that by marriage she had become assimilated.

14. The Dominion's enfranchisement bill differed from earlier legislation in a more important

manner, for it also provided the Dominion Government with instruments to train the Indians in "civilization" and prepare for eventual assimilation. Thus, a large portion of the 1869 legislation empowered the Governor-in-Council to impose the elective system of Government on those bands and reserves thought far enough "advanced" to use it properly. Provision was made for assuring that elected Indian leaders were fit for office, for those who were proven to be dishonest, intemperate, or immoral could be removed by the Government of Canada.

15. The authority of such elected councils was limited to building and maintaining roads and bridges, making regulations for public health, public meetings, trespass, public morality and drunkenness.

16. However, before such regulations could be enforced on the reserve, the Superintendent General of Indian Affairs was empowered to punish violators of Christian morality by withholding annuity of interest money from any male Indian who deserted his wife and children and to use such monies to support the deserted family.

17. The 1869 Act was designed for assisting the Indians in making the transition from their old culture to the institutions and values of Canadian society. It was designed primarily for those Indians such as the Six Nations, who had long contact with persons of European back-ground and European values; that is for Indians who had for a generation or longer, missionaries

working amongst them and schools for their children. These were the people who had the rudiments of "civilization", and who only need training in the fine points of European culture-such as self-government and acceptance of white morality. With the polish that training in these areas would provide, these persons could easily qualify for enfranchisement and be assimilated into Canadian Society.

18. It was a program designed for gradual assimilation, which depended heavily on the reserve policy to provide the preliminary training in "civilization." Only after most persons had this basic training would the experiment in paternalistic self-government be undertaken.

19. During the decade of the 1870's, provision was made to fit the Western Indians into the Canadian Indian policy. After the purchase of Rupert's Land from the Hudson's Bay Company, treaties were made with the Indians of that area to take surrender of their title to the Land.

20. Thus the policy initiated in 1763 regarding the respect for the protection of the Indian rights in their lands was continued. Moreover, the goal of "civilizing" the Indian was also incorporated into the treaties, for the "Numbered Treaties", as they are called, all provide for the institution of the reserve system in the West.

21. All the Treaties stipulate that the reserves were not only a place where they would live,

but where they would be taught to farm and given assistance for the purpose. Moreover, the treaties all include provisions for schools and education. Understood, but not mentioned, was the fact that missionaries would also be working among the Indians, so that within a generation or two the Western Indian would also have the rudiments of civilization and could be made ready for assimilation. Thus, through the treaties the western Indian were to be brought under the same system as those in the east.

22. To integrate the Western Indians fully into the administrative system required changes in the existing legislation. However, when making these alterations, the Government decided to revise and consolidate all legislation regarding Indians into one Act.

23. Therefore in 1876 "An Act to amend and consolidate the laws respecting Indians", or as it was short titled, "Indian Act of 1876" was enacted.

24. This law differed substantially from earlier Acts for the Minister of Interior, an office established in 1873, was made Superintendent General of Indian Affairs.

25. Moreover, it was more comprehensive, for it was concerned with not only protecting Indian lands and the persons of the Indians, and establishing a mechanism for gradual assimilation,

but it also was very much concerned with the details of "civilization" and how it could be encouraged and directed in a beneficient manner.

26. The protective features of the "Indian Act of 1876" differed little from those of earlier legislation. More stringent requirements were made for granting leases for extraction of timber and other natural resources on lands; and in order to surrender reserve lands for lease or sale the approval of a majority of the adult male band members, not just the Chiefs, was now required.

27. Other than these modifications the protective features of the "1876 Indian Act" were essentially the same as in earlier legislation. The major change was in who was to be protected, for the new Act included half-breeds who had taken treaty in Manitoba and the North-West, and illegitimate children of Indians accepted by the band as band members, in the new definition of who was an Indian.

28. Moreover, Indian women marrying non-Indians were no longer completely cut off from their Indian rights, for although they lost their rights in the Band's lands, they retained their rights to the band's monies and annuities, as long as they did not voluntarily enfranchise through the process of commutation. However, children of these women were not to be regarded as Indians.

29. The break with the trend to narrow the definition of who was an Indian, that was a characteristic of Dominion Indian policy since 1868, came

about because of protests from the Indians in the older provinces, and because of the fact that the treaty commissioners had decided to admit half-breeds living with Indians into the treaties made with western Indians. In order to placate the eastern Indians, and to legitimize what had been done in the west - i.e. avoid controversy and administrative chaos - the definitions of status and those entitled to the rights of Indians were accordingly modified.

30. The Indian Act of 1876 expanded the rights of "civilized" Indians. Thus, the section on elections was altered to stipulate that it would only be imposed if a band asked that they be allowed to choose their leaders through elections, rather than in their traditional manner.

31. However, to make it more attractive, the 1876 Indian Act went into more detail on the electoral provisions, extending the franchise for band elections to all adult males, and established the electoral period and formula to be used to determine the number of Chiefs and Band councillors a band might have.

32. Moreover, the authority of the elected band council was extended to include the assignment of reserve property to individuals. This power was an important one, for the government in its efforts to promote civilization wanted the Indians to develop the concept of private property that the rest of Canadian society had.

33. Therefore the Superintendent General was given authority to have reserves surveyed into lots, and to give "location tickets" giving Indians allotted reserve lands by the Band council, title, or a life estate in that land - i.e. effective ownership without the power to sell the land to a non-Indian.

34. The institution of the location ticket system was essential for the working of the Act's assimilationist provisions. To become enfranchised an Indian needed this ticket, which he could only get with the approval of the Band, after applying for enfranchisement. Before being given such a ticket, an investigation was made into the applicant's fitness to be enfranchised - to learn the degree to which he was "civilized". On being granted a location ticket, the "civilized" Indian would then begin a three year probationary period, during which he had to prove that he was fully qualified for membership in Canadian society. At the end of the probationary period, the man could be enfranchised and given full title in fee simple to his land, thus, be legally regarded as a Canadian citizen. However, if an Indian had gone to university and earned a professional degree, on application to the Government he would be automatically enfranchised for he had shown that he could function in Canadian society.

35. The Indian Act of 1876 was carefully constructed to provide the mechanisms by which the Indian could eventually be assimilated. It defined who was subject to the Act and protected the property of such a person and the reserve on which he lived. As well it provided the "civilization" process that

could take place on that reserve, for in protecting the moveable property of the Indian, it safeguarded the tools and equipment for farming or other economic activities which would make the Indian self-supporting.

36. Moreover, by including provisions for guided self-government, and the imposition of Christian morality in regard to the family, for women who deserted their husbands and children were now punished in the same way as men, the reserve community was being brought into line with the values and institutions that were found in non-Indian settlements.

37. Finally, the act provided for the eventual disappearance of the reserve and the Indian as a distinct cultural entity for through the process of enfranchisement, whether by individuals or entire bands, the reserve would be given out as private property to persons who had become assimilated.

D. AGGRESSIVE CIVILIZATION. 1876 - 1906

1. Although the "Indian Act of 1876" was designed eventually to do away with the special position of the Indian and the reserve system, this was to be a gradual process, which would proceed at varying paces for the different bands of Indians. Thus most of the Act was not applied west of the Great Lakes, for the Indians of the west were thought to be not far enough advanced in "civilization" to implement more than the protective features of the Act. Before they could

be fully encompassed by the Act, they had to be educated, Christianized and taught Canadian values through the reserve policy.

2. Only in the east, where this process was in operation for several generations could the polish of civilization through the elected band councils and location tickets be introduced. However, dissatisfaction with the speed and willingness of the eastern Indians in making application for the more advanced features of the Indian Act, caused the Government to re-evaluate their Indian policy, and to try to hasten the process of civilization.

3. Thus, through amendments to existing, and new Indian Acts, the Government tried to direct the civilization process to allow for more rapid progress towards enfranchisement. However, the essential features of the "Indian Act of 1876" remained constant despite subsequent amendments or new Indian acts during the following two decades, for most of the changes during that period fell into the categories of increased protection, or directed civilization.

4. After 1876, the protective features of the Indian Act were increased or altered to provide protection for the persons of the Indians.

5. Already by 1877, the Government thought it necessary to try to prevent exploitation of Indian women by whites by enacting penalties for non-band members moving into reserves to live "immorally" with Indian women, and to prevent the white man from making prostitutes

of Indian women.

6. Therefore in 1879 the Indian Act was amended to forbid and punish keepers of public houses who allowed Indian women in their places of business if the women were thought or known to be there for purposes of prostitution. In 1884, non-Indians were forbidden to be on a reserve after sunset because those that were found there in the past were usually there for immoral purposes.

7. Most of the protective measures adopted after 1876 were principally for the western Indians. Thus, in order to enforce the trespass provisions of the Indian Act, amendments were made to increase the number of police officials who would enforce the Act, and the judicial officials who might be used to hear cases of breaking of these sections of the Act, until the Indian Agents themselves were empowered to try the cases involving trespass on Indian reserves. This was done because of the inaccessability of most officials designated in the original Act to hear such cases.

8. Penalties for trespassing were made increasingly severe, so as to protect the reserves and their resources. Moreover, penalties for supplying "intoxicants" to Indians were increased, and the access of non-Indians to reserves after sunset was limited in order to protect the Indian from vices of "civilization".

9. Many of these protective measures also served the purposes of "civilization," for they were a means of imposing Christian moral values, and the Christian concept of marriage. Thus, the ban on

non-band members on reserves after sunset was a means not only to prevent prostitution, but also of limiting the Indian marriage practices, just as the imposition of penalties and extension of them for desertion of spouse and children were means of preventing divorce.

10. In addition the penalties imposed for being a parent of an illegitimate child were designed to enforce European sexual morality.

11. Moreover, one of the reasons for giving the Indian Agent the powers of a Justice of the Peace and extending his authority to encompass parts of the Criminal Code, was to allow the Government to use repressive measures to keep the Indians on the reserves where they could be taught the value of work, and prevented from loitering about towns.

12. As can be seen these measures were instruments to be used to impose "civilization" on the Indians, and a means of directing and speeding up the adoption of European moral values.

13. Increasingly after 1876, the Government of Canada sought to impose European values on the Indians, and to do this the Government regarded as their duty the destruction of the tribal culture of the Indian.

14. What they were trying to do was prevent the perpetuation of the tribal system, and the institutions that made the Indian different from the European. Thus the provision for introducing the elected Band council, to replace the traditional political organization. Thus the introduction of the location ticket system to break up the trad-

tional property holding system.

15. The Indians understood the intent of the provisions for the elective system, and protested against it. They understood that if the elective system were adopted, the Superintendent General would not only have supervisory or veto power over their by-laws, but could make them enact measures with which the band council did not want to concern itself, for the Indian Act of 1876, gave power to the Superintendent General to coerce the elected council to deal with the areas over which it had responsibility.

16. Therefore many bands made clear that they would not request an elected system of government, and wanted the powers of the Superintendent General reduced, for they did not wish to be managed and governed by the Government of Canada in doing band business.

17. These protests were for nought, and may in fact have made the Government more determined to replace the traditional leaders. Thus the subsequent amendments and new Indian Acts all gave the Superintendent increased authority to interfere in band and personal affairs of the Indian people.

18. To demonstrate the importance attached to the administration of Indian Affairs, the Government created a new department of civil service, known as the Department of Indian Affairs.

19. The legislation establishing this new department, in 1880, was in the guise of a new Indian Act which modified the Indian Act of 1876 by giving the minister responsible for the department, who was still called the Superintendent General, the

power to impose the electoral band council system whenever he thought a band was ready for it.

20. By the provisions of this Indian Act of 1880, the Superintendent General could declare that only the Chiefs and Councillors elected under the provisions of the act, were to be the leaders of a band, and that all other chiefs selected in any other manner were deprived of their leadership roles.

21. Later, after such a system was imposed on several bands, and the old chiefs reacted by making a farce of the electoral practice, the Indian Act of 1880 was amended to allow the Superintendent General to declare elections void, and ban those suspected of electoral rigging or malpractice from running for office for a period of six years.

22. The elected band council was the means by which the Government hoped to destroy the old "tribal system" in bands that were regarded as having progressed towards civilization. Therefore, a separate act especially for this purpose was drafted and passed in 1884.

23. This was "The Indian Advancement Act of 1884", or more properly "An Act for conferring certain privileges on the more Advanced Bands of Indians of Canada with the view of training them for the exercise of municipal affairs."

24. The purpose of the Indian Advancement Act, was made clear in its longer title, and the bands to which it applied would be those designated by Governor-in-Council.

25. For use as a tool of directed "civilization" and undermining the power of the traditional political system, the "Indian Advancement Act of 1884" was well designed. Not only did it give the Superintendent General the power to divide the the reserve into electoral districts of equal size from each of which a band councillor was to be elected for a one year term, but it also gave the Minister the power to depose elected officials for the same vague reasons stipulated in the Indian Acts - intemperance, dishonesty, immorality, and incompetence.

26. The council meetings were called by, presided over, and recorded by a person appointed by the Superintendent General, who usually was the local Indian Agent. Moreover, this deputy of the Superintendent General was allowed to participate in the meeting in all ways, except he could not vote. Adjournment of a council meeting was at this man's discretion as well.

27. The matters over which a band council operating under the Advancement Act could make regulations were those listed in the "Indian Act of 1876." To these were added wider authority over construction and maintenance of roads, water courses and other public conveyances; provision of penalties for violation and land by-laws, regulation of school attendance, and authority to raise money "for any or all of the purposes for which the council is empowered to make by-laws..." by assessments and taxation on the lands of persons holding location tickets.

28. However, this power was circumscribed by the need

for the Minister's approval before the by-laws could be enforced, and by the provisions of the Advancement Act stating how and when the tax was to be imposed, and the maximum rate.

29. Therefore no real additional power was conferred to the band, but much more authority to direct the affairs of the reserve was placed in the hands of the Indian Agent and the Government.

30. "The Indian Advancement Act of 1884" was in reality an instrument to break the power of the traditional political system of the Indian bands, and as such was regarded as a means to facilitate the "civilization" and eventual enfranchisement of the Indian.

31. Few bands were brought under the Indian Advancement Act either of 1884, or that of the revised Statutes of Canada of 1886. However, many of the leaders elected were not satisfactory to the Government, so that many were deposed. However, since they were not guilty of fraudulent electoral practices, they were eligible to stand for re-election in the contests to replace themselves, and most were re-elected.

32. Therefore, to prevent this practice, which was regarded as working against the goal that the electoral system was designed to achieve, those persons deposed from office were forbidden to be a candidate for band office for three years after their deposition.

33. However, these powers were found not to be wide enough, for deposition was allowed only for elected

chiefs, and this system was not used in the west because the western Indian was not far enough advanced in "civilization" to allow such practices. Nevertheless, the traditional chiefs were found to be hindrances to the "civilization" policy, and to remove this check the Indian Act was amended to allow the deposition of all chiefs no matter what form of band government was used.

34. Interference in a band's political affairs in order to direct them, also led to an increase in the Government's power to manage the resources of the band and the reserve.

35. Because the bands usually objected to the loss of land to enfranchised Indians, or to allow such persons to lease their land, the band's authority over allotment of lands was eventually put entirely in the hands of the Superintendent General.

36. Moreover, because of many bands' reluctance to alienate any part of their reserve, they usually refused to permit persons holding location tickets to lease their lands for revenue purposes by not agreeing to a surrender for lease.

37. To remedy this situation, the Superintendent General was given authority to lease such lands without first taking a surrender, just as he was allowed to lease reserve lands to provide an income for the aged, sick, or orphaned, for whom he acted as guardian. Thus, the bands were prevented from hindering the use a "civilized" Indian, could make of his land.

38. Control over band funds also fell increasingly

into the hands of the Government, often because the bands refused to make use of them for the purposes which they were empowered to spend money; particularly the purpose of maintaining roads, and schools.

39. Thus between 1876 and the turn of the century, the Indian Acts were modified to allow the Governor-in-Council to use them for purposes they thought necessary.

40. In addition, because bands were thought not prepared to take the necessary steps to protect their reserves, the Superintendent General was empowered to grant leases to non-Indians to cut wild hay and fall timber on reserves, without first getting a surrender.

41. In addition, Indians were to be prevented from despoiling their reserves or acting on behalf of non-Indians by cutting and selling timber, by being required to take out a licence if they intended to sell the resources of the reserve.

42. Special efforts were made to "civilize" the Indians of British Columbia and the west. Their religious and political practices often interfered with the policy of "civilizing" them, or worked against their development of the value of private property, which was needed if they were to be assimilated.

43. Therefore during this period, "Potlatches", "Sun Dances", and all "give away" ceremonials were outlawed because they not only preserved the old religious values and hindered the work of the missionaries, but they also were thought to be

"barbaric" practices and were not conductive to the development of the concept of private property.

44. Moreover, because the Plains Indians were not adopting the practice of saving part of their crops for use as seed, or were prevented from increasing their cattle herds by selling off their cattle, prohibitions on the sale of produce and livestock from the reserves were added to the later Indian Acts as a means of teaching them to husband their resources, and to prevent them from being defrauded by unscrupulous whites.

45. Such regulations and discontent over the fact that the Government was not fulfilling the terms of the treaties in the manner the Plains Indians understood the treaties, caused alarm, for the Plains Indians appeared to be willing, actively and forcefully, to get the Government to listen to their grievances.

46. To prevent this resistance, and avoid possible violence, amendments were made to the Indian Act to forbid anyone to incite the Indians to take direct action against Government employees or officials. Moreover, their ability to use force to get their views across was limited by the band on sale of fixed ammunition.

47. By the middle of the decade of the 1890's, the western Indians were thought to have had adequate time to adjust to their changed circumstances, and to have made some progress towards "civilization." However, it was found that resistance to the "civilizing" features of the Government's Indian policies was still strong, and that the old chiefs

and councillors were in the fore-front of this resistance.

48. Therefore the Government was empowered to depose these men as mentioned above. Moreover, the western Indians' ability to practice their traditional form of livelihood through hunting and fishing slowed their transition to a farm economy and prevented their children from regularly attending schools, thus slowing their progress towards "civilization".

49. This led to the amendment which allowed the Governor-in-Council to declare the game laws of the North-West territories and Manitoba to be applicable to the Indians.

50. The matter of attendance at Indian schools was of grave concern to the Government's desires of quickly "civilizing" the Indians. Since attendance at day schools were thought to be rather ineffective instruments for "civilization", the Government adopted the practice of establishing industrial and boarding schools.

51. However, the Indians were reluctant to send their children to such schools. To remedy both the problem of attendance at the day schools, and a shortage of pupils for the boarding schools, the Governor-in-Council was given the authority to make whatever regulations for any Indian band on the school question, that he thought necessary. In addition, he was given the power to legally commit children to the boarding and industrial schools he founded.

52. Although most of the alterations made to the Indian

Act were designed to direct and hasten the "civilization" process, some provision was made to reward or encourage those Indians who showed some progress towards civilization.

53. Already in the Indian Act of 1876, Indians were given one of the rights of non-Indians; they were allowed to sue one another and non-Indians for damages, and allowed to give evidence in courts.

54. However, as the emphasis on "civilization" increased, those who showed evidence of being in accord with the policy were rewarded by being given location tickets without band approval: by having their land leased for revenue purposes without the band first agreeing, and protected from trespass on their property by members of the band.

55. Later because of protests from these people who held location tickets, they were allowed to make wills, although this right was heavily circumscribed at first, and only made slightly less stringent by subsequent amendments and acts.

56. Enfranchisement also received some attention, and efforts were made to make the process more easily attained by those Indians thought capable of being assimilated by Canadian society.

57. Therefore one of the first amendments to the Indian Act of 1876 was to allow half-breeds who had taken treaty in the west to leave the treaty without having to go through the enfranchisement procedure, and subsequent amendments made this step easier and more attractive.

58. For the eastern Indians enfranchisement was facilitated by taking away the power of the bands to deny civilized Indians land allotments and location tickets.

59. Moreover, the band no longer was required to approve an application for enfranchisement, so that this impediment was removed. However, to protect the enfranchised person's interests in the land he received, he no longer got title in fee simple but as a life estate. As compensation for this loss of rights, the land was not allowed to be taxed.

E. FORCED ASSIMILATION 1906 - 1944

1. The era of directed civilization came to a close in 1906. In fact the last major thrust in this direction was made in 1898. For eight years, no new Indian legislation was passed. Then in 1906 the Statutes of Canada were revised and the Indian Act consolidated.

2. This new Indian Act remained in force until 1927, and with its passage a new era in the administration of Indian Affairs begins. It was an era that brought about a reversal in part of the general policy on Indian Affairs. Thus we find an increasing de-emphasis on the reserve system as a tool to bring about civilization of the Indian.

3. In fact the reserve was often regarded as the institution which prevented assimilation, so that most of the amendments made to the Indian Acts after 1906 were designed either to remove protection for the reserve or to force the people off the

reserve through compulsory enfranchisement.

4. Assimilation was no longer regarded as a long range goal for most Indians, but a state that could be attained immediately if the Indian were forced out of protective environment of the reserve, which the Government hoped would soon be abolished.

5. The beginning of the process of removing some of protection given the reserves might be said to have started with the leasing of lands from the eastern reserves for revenue purposes, already instituted in the early part of the decade of the 1890's. Such practices removed the invisible barrier that the boundaries of Indian reserves had established between the Indian and the non-Indian communities.

6. Then in the later part of the decade, when settlement began to increase in isolated areas, and particularly in the prairies, desire for good agricultural land was at a premium. Since much good land was included in Indian reserves and appeared not to be "used", much interest in acquiring such land for settlers was awakened.

7. Pressure was exerted on the Government to get the Indians to surrender this land so that it could be farmed by non-Indians. To accommodate those who wanted land, amendments were made to the Indian Act of 1898 and 1906, which made it easier to take a surrender by allowing affidavits of the validity of surrenders to be sworn by Justices of the Peace in the west, and by allowing a cash distribution of as much as 50% of the probable purchase price to be used as an inducement for the

Indians to surrender large tracts of their reserves.

8. By the end of the first decade of the twentieth century, disillusionment with the reserve policy had become quite strong, for rather than being a transitory feature of a policy designed for eventual assimilation, the reserves seemed to be becoming a permanent institution through which the Indian was able to resist assimilation. As such they were regarded as undesirable, because they were holding back the progress of the Indians, and where they were in areas of heavy settlement or an urban environment, they were seen as retarding development and growth.

9. To alter this situation, surrenders were facilitated and economic exploitation of the reserves by non-Indians was allowed. The Governments of the twentieth century would not allow the reserves to retard the economic development of the rest of the country, and therefore altered the protective features of the Indian Acts to permit non-Indian use of these Indian lands, in return for compensating the Indian for that use.

10. This change in attitude towards the reserves, led to amendments which permitted provincially chartered railway companies the same rights to expropriate reserve lands for right-of-ways, that nationally chartered railways possessed.

11. The following year, because of a growing controversy in Victoria, British Columbia and Sarnia, Ontario over the undesirability of those reserves that were located in the heart of the towns or on their boundaries to be allowed to remain where they were,

the Indian Act was amended to allow the Government to abolish such reserves, and establish new ones if after an enquiry by the Exchequer Court such action was found to be in both the Indian's and general publics' interests.

12. Subsequent changes to the act allowed the Superintendent General to grant leases on Indian reserves for mineral exploration without taking a surrender for that purpose, as a result of several bands having refused to make such surrenders.

13. Moreover, because on many reserves not all the farm land was being used for the purpose, the Superintendent General was given authority to lease it to non-Indians without taking a surrender.

14. For the same reasons, the Government sought and got surrenders of large tracts of reserves to use for Soldier Settlements after World War I, and made special provision in the Indian Act to administer the Soldier Settlement Act for Indian veterans through the Department of Indian Affairs.

15. The dissatisfaction with the reserve system was in large part due to the fact that it only succeeded in part in its purpose preparation for assimilation. The reserve was useful for imparting "civilization" but only to a point, for those living on the reserve refused to become enfranchised.

16. In the period between 1857, when the first

provision for enfranchisement was made, and 1920 only slightly more than 250 persons used this channel for assimilation.

17. Therefore consideration of measures to remedy this situation were undertaken, and in 1918 the Government decided to amend the Indian Act to allow Indians living off the reserve to become enfranchised if they were willing to give up their rights to any land on the reserve. However, they would be paid their share of the band's funds to give them some capital in this new situation.

18. This change had the desired effect for within a two year period after the passage of the amendment more than 500 people became enfranchised.

19. The success of this measure, and the desire to assimilate all Indians thought fit to be enfranchised, led to further steps to promote enfranchisement.

20. Thus the half-breeds who had taken treaty in Western Canada, found it easier to leave treaty and be enfranchised, while Indian women who married non-Indians were to be given, without band consent, their share of the band's funds, and ten years worth of annuity money if they entirely gave up their Indian status.

21. This was done because in the past, bands had refused to allow such women to have their share of band money if they left the reserve through marriage.

22. For the "civilized" Indian living on the reserve, compulsory enfranchisement was to be instituted;

for otherwise these people would not leave the reserve, and both the Indian and the reserve would become a permanent feature of Canadian society.

23. The Government was determined that this should not happen, and only wanted to break up the reserve, but also wanted "to make a final disposition of the individuals who have been civilized into the ordinary life of the country..."

24. Assimilation no longer was to be a voluntary act on the part of the Indian, for the Superintendent General, at his discretion, was empowered to establish boards of inquiry to examine the fitness of Indians for enfranchisement. These boards could nominate persons for enfranchisement, even if they had made no application, and present a report on these people's qualifications to the Superintendent General, who in turn would recommend that those found qualified be enfranchised by the Governor-in-Council.

25. Such persons if enfranchised would then be given title to the land they occupied on the reserve, and be paid their share of the band's monies. However, to be enfranchised in this manner, land holding was no longer a prerequisite.

26. The outcry and protests that resulted after these amendments was so great that two years later, the Government modified the sections to the point that boards of inquiry would only be appointed when a band made application for such a board.

27. However, the government was determined to enfranchise

those Indians thought capable of being assimilated and in 1933, returned the power to establish boards of inquiry for enfranchisement to the Superintendent General; - that is, compulsory enfranchisement was re-enacted.

28. Forced assimilation was the goal of Canadian Indian policy for the Indian people east of Lake Superior. In the west, where the Indian people were not considered to be as advanced, the policy was that of directed civilization, for it was only during the twentieth century that most of the provisions the Indian Act for this purpose were applied to them to hasten their development so that they too could be assimilated.

29. In addition, special amendments or new sections were added to the Act especially for this purpose. Thus the Superintendent General's authority in school matters was expanded, until compulsory school attendance was incorporated into the Indian Act.

30. Because earlier provisions for encouraging the idea of private property and "husbanding" of resources among the western Indians were found inadequate the sections relating to the sale of produce from the reserves in the prairie provinces were modified to cover a wider range of articles and stricter penalties.

31. Stronger efforts were made to put an end to the Plains Indians' practice of old ceremonials, so that a prohibition against appearing in aboriginal garb and performing the traditional dances at fairs and stampedes, under the guise of entertaining the non-Indian community were put in the act.

32. Later this section was amended to disallow such dances anywhere in any type of garb, unless prior approval was given by the Department of Indian Affairs.

33. To facilitate farming and proper use of the reserve, the Superintendent General was authorized to use band funds to purchase machinery for individual Indians who wanted to, or were farming, and to use all the funds of a band which had less than $2,000 in their account for general improvements on the reserve.

34. Later the Superintendent General was authorized to make loans to bands or groups of Indians for the purchase of machinery, or to start small businesses.

35. All these amendments were made to aid the Indian to become economically self-supporting so that he could eventually be enfranchised.

36. Some of the protective features of the Indian Act were also designed to close the gap between the Indian and the rest of Canadian Society. Therefore because many non-Indian communities protested the holding of sporting events and the opening of amusement and recreation facilities on reserves on Sundays, where provincial or local laws forbade such practices for the non-Indian communities, the Indian Act was amended to allow the Superintendent General to regulate and eventually to close such facilities or forbid the Sunday sporting events, according to the practices of the communities surrounding the reserve.

37. Moreover, in order not to be in conflict with provincial laws on specific topics for which the Dominion Government could make regulations for Indian bands, such as motor vehicle laws, the Indian Act was amended to authorize the Governor-in-Council to proclaim provincial laws on such topics to be applicable on reserves, and that such laws would have the same effect as if they had been incorporated into the Indian Act.

38. Not all the amendments to protect the Indians served this purpose, for others regulated peddlers and hawkers on the reserve, limited Indian's power to make contracts so as to protect them from fraud, opened channels for them to contest disputed land claims, provided for guardians for insane persons, and regulated their contact with lawyers so as not to have them defrauded for presenting land claims which they had no chance on winning.

39. Moreover, alterations were made in the sections regarding wills and the property of persons who died intestate.

40. Nevertheless, the general direction of Indian Affairs policy during the first third of the twentieth century was to promote and, if necessary, force assimilation of the Indian into Canadian Society in as rapid a manner as possible.

F. ALLIANCE FOR ASSIMILATION 1944 - 1969

1. Having re-enacted compulsory enfranchisement the Government of Canada appears to have lost interest in Indian policy. An interregnum sets in that lasted from approximately 1938 to 1945. In that per-

iod no new Indian legislation was enacted, and no serious consideration appears to have been given to any major new amendments to the existing Indian legislation.

2. The loss of interest, or neglect of Indian Affairs can be explained by the fact that during this period Canada was fighting a war, and the attention of both Government and the general public was focussed on prosecuting that war to the fullest extent and in doing this they had the support of the Indian people of Canada.

3. As a result of the Indian contribution to Canada's war effort, interest to an unprecedented degree was awakened in the Canadian populace in the Government's Indian policy. For the most part this interest took the form of objecting to the treatment of the Indian as a second class person and the fact that the Indian did not have the same status as other Canadians.

4. Veteran's organizations, churches, and citizen groups across the country called for a Royal Commission to investigate the administration of Indian Affairs, and the conditions prevailing on Indian reserves. All wanted a complete revision of the Indian Act and an end to discrimination against the Indian.

5. No Royal Commission was appointed, but a Parliamentary Joint Committee of both the Senate and House was created in 1946 to study and make proposals on Canada's Indian Administration, and the revision of the Indian Act. After two years of hearings, the Joint Committee recommended:

a) The complete revision or repeal of every section of the Indian Act.

b) That Canada's Indian Act be designed to make possible the gradual transition of the Indian from a position of wardship to citizenship. To achieve this goal the act should provide that:
   i. Indian women be given a political voice in band affairs.
   ii. Bands should be allowed more self-government.
   iii. Bands should be given more financial assistance.
   iv. Indians should be treated the same as non-Indians in the matter of intoxicants.
   v. Indian Affairs officials were to have their duties and responsibilities designed so as to assist the Indians attain the full rights of citizenship and to serve the responsibilities of self-government.
   vi. Bands be allowed to incorporate as municipalities.

c) The Guidelines for future policy were to be:
   i. The easing of enfranchisement procedures.
   ii. Indians should be given the vote.
   iii. When possible co-operate with the provinces in delivering services to the Indian people.
   iv. Indian education should be geared for assimilation; therefore it should take place with non-Indian students.

6. In essence, the Joint Committee approved the goal of Canada's Indian policy - assimilation - but disapproved of the earlier methods to achieve it. In addition, they assumed that the work of "civilization" was virtually completed, and all that was needed in that area was a little polish before the Indian was ready for enfranchisement. The assumption was still made that the Indian and the reserve was only a transitory feature of Canadian society, and within a few years time would disappear.

7. In 1951 a new Indian Act was passed. It met for the most part the criteria established by the Joint Committee. It differed greatly from all the preceding acts back to 1880, for not since 1876 were the powers of the minister so greatly reduced.

8. The minister and Government's role was limited to supervision primarily through his veto power. He no longer was the director of band government. Instead the band councils were given back political control of the reserve.

9. Thus control of the land in the reserve, responsibility for bridges and roads, use of band funds, and disposal of the resources of the reserve were left in the hands of the band, subject to the minister's approval.

10. In those few areas where the minister was still able to initiate action, approval of the band council was needed.

11. In other areas we find that sharper definitions of Status were made, and as many as fifty sections and subsections of earlier acts were deleted because they were thought to be antiquated or too restrictive.

12. In the process most of the provisions for aggressive civilization and compulsory enfranchisement were lost.

13. Very few changes were made to the act after 1951. The few amendments were for clarity and precision, rather than any major changes. It remained an act designed for a co-operative approach between Government and the Indian people towards the goal of eventual assimilation.

14. However, like all the other Indian Acts, it did not result in large numbers of people enfranchising themselves. Instead, the Indian and the reserve gave all appearances of becoming permanent features of Canadian Society.

G. ABANDONMENT OF GOVERNMENT RESPONSIBILITY FOR THE INDIAN

1. The failure of the co-operative approach, and the recognition of the failure of all past efforts of Government to bring about assimilation of the Indian through legislative means and special programs caused the Government of Canada to undertake a reappraisal of what had been attempted over a period of more than a century.

2. Moreover, the government believed that the Indian policy had been unjust and discriminatory. Therefore in 1969 the Government of Canada announced that it was abandoning the old policy, and would bring about the end of the special status of the Indian.

3. This announcement of what was basically the enfranchisement of all the Indian people, caused such a storm of protest that the Government had to reconsider, and shelve the new policy.

H. CONCLUSIONS

1. The approach to Indian Affairs administration, and Indian-European relationships in Canada has always been based on one principle - the superiority of European values and European "civilization" to that of any non-European peoples.

2. The manner in which this belief has manifested itself throughout the three hundred years of Indian-European Relationships was heavily dependent upon the circumstances of both peoples.

3. For the first century of the relationship there was a basic respect for the Indian's rights to his land and way of life, for the European had no alternative

but to accept these things if he wanted to survive in North America.

4. However, by the 18th century, after having firmly established himself, the European exploited and looked down upon the Indian, which led to strife between the two groups.

5. However, when the inter-European conflicts occurred in North America, the aid of the Indian was sought in these struggles. In order to get and maintain that aid, the British Government decided to act as protector of the Indian's rights to his lands, and to keep the European colonist from exploiting, defrauding, and destroying the Indian.

6. Therefore, beginning in 1755, the relationship between the Indian and the Government of the European peoples was one of protection of the Indian. The Indian did not object because his old lifestyle and his person were not endangered.

7. The protective phase of the Indian-European relationship lasted for almost three quarters of a century. Then with the end of inter-European struggles in North America, the Indian was no longer needed as an ally.

8. However, because of the dependency of the Indian on European protection and trade goods, and the military superiority of the European, the relationship altered; particularly when the British Government and colonists developed the idea that they had a moral responsibility to elevate the Indian from his inferior status, to the status of the European, by implanting the European culture on the Indian.

9. For this purpose the reserve policy was developed as an instrument for "civilizing" - that is Europeanizing - the Indian.

10. However if the reserve, like the Indian, was Europeanized their reserve would disappear. This process was one that would gradually occur, and would take place with little or no coercion, and was characteristic of the quarter century prior to 1855.

11. Europeanization was a goal that was considered difficult to achieve and until it was reached, the Indian needed to be protected not only in the lands left to him, but also from being debauched by the vices that were a part of "civilization".

12. As a result, legislation was passed to protect the reserves from encroachment by non-Indians, and to prevent liquor being given to the Indian.

13. As the years passed, and the Indian had increasing training in European values on the reserves, it was thought possible to assimilate the "Europeanized" Indian and thus remove the protective mantel that was established for the "non-civilized" Indian.

14. However, before this could be done, the Indian had to prove that he no longer needed protection by meeting certain criteria that were legislatively established for that purpose.

15. Thus, a process know as enfranchisement was initiated, and became another characteristic of the European-Indian relationship between 1855 and 1876.

16. When the colonists established their autonomy in domestic affairs from the British through Confed-

eration, they took over a fairly well established policy on Indian Affairs and made it their own.

17. Moreover, as the boundaries of the new state of Canada expanded to cover the northern half of the Continent of North America, this policy was extended to the Indian peoples of the newly acquired areas through the treaty system. These people were fit into the administrative system established for dealing with the Indians of the east.

18. However, the existing policy and means to implement it were regarded as too slow in bringing about assimilation, so that a more rapid "Europeanization" process was developed. Therefore the legislation for the first quarter century of Canada's self rule was designed to hasten the "civilization" process and allow the Government to be more forceful in directing the process, which would end the need for the reserves, and bring about the demise of the Indian through the complete destruction of Indian cultures, and the assimilation of the red "European".

19. Thirty years of the policy of aggressive civilization did not produce the desired result of assimilation. Instead the Indian preferred, even though partially "Europeanized", to remain on the reserve and protect his separate and special identity.

20. Not wanting this result, the European-Canadian sought means to prevent it from happening. The European-Canadian saw the reserve as the instrument that allowed the Indian to resist assimilation and realized that the reserve, and therefore the

Indian might become permanent features of Canadian life.

21. Therefore, during the next thirty years, the Canadian Governments sought to remove many of the protective measures that isolated Indian reserves from that mainstream of Canadian development and European-Canadian influences. In addition legislation was passed that would permit compulsory assimilation of the Indian if this was found necessary.

22. This policy had only slightly more success than the earlier ones. But like all previous efforts to end the separate identity and special status of the Indian in order to assimilate him, compulsory assimilation through legislated enactments only served to emphasize the difference between the European and Indian, and to make the Indian try all the harder to preserve his identity.

23. Moreover, because of the measures taken by both sides to achieve their goals, the gap between the economic and social conditions of the two peoples widened, which only served to emphasize the failure of all previous Indian Affairs policies. This gap, by mid-century, could no longer be ignored and resulted in demands for an investigation of Canada's Indian Affairs policies.

24. A Joint Parliamentary Committee did conduct such an investigation, but because it, like all European-Canadians refused to accept the idea of allowing the Indian his own identity and sovereignty and did not want to permit the Indian to survive as a distinct people within Canadian society, its

recommendations which were enacted into law still stressed assimilation, but without compulsion.

25. However, this was no more successful than earlier policies, and realizing that it failed, the Canadian Government in 1969 wanted to solve the problem by dismantling the entire Indian Affairs apparatus, and in so doing bring about the assimilation of the Indian.

26. This proposal, usually referred to as the White Paper of 1969, was firmly rejected by the Indian people of Canada.

27. In retrospect, it is almost inconceivable that the Government of Canada should have chosen to ignore the lessons of the past by offering an Indian policy that was nothing more than a re-statement of past policies for detribalization and assimilation, and spelled an end to the treaties and special status: in a word, termination.

28. Current policies and practices of the Indian Affairs Branch, while they are frequently offered as proof of Government intention to abandon the goal of assimilation, are not convincing.

29. Given the character of Indian-Government relations established over the past century, the Indian people will not easily be assured that the course of events has changed; and there is presently insufficient evidence of any fundamental change in policy.

30. It must now be clear that any future Indian policy must, if it is to be successful -- which means acceptance by Indian people -- acknowledge the

treaties, special status and the integrity of the reserves, Indian Government and Indian community life.

31. Any future policy must move beyond the situation where Indian governments are allowed to manage their affairs with minimum external control only so long as they conform to Canadian conceptions of government practice.

32. There are many specific pieces of legislation, to numerous to analyze in detail here, which limit Indian sovereignty and which must be reviewed in the process of revising Canada's Indian Policies:

    a) The Income Tax Act
    b) The Appropriation Act
    c) The Migratory Birds Convention
    d) Provincial School, Health, Natural Resources, Social Services and other legislation.

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UNION OF BRITISH COLUMBIA INDIAN CHIEFS
REVIEW: LOCAL GOVERNMENT ADVISORS TRAINING BINDER

A. INTRODUCTION

This paper is an attempt to gain some knowledge of the direction which the Department of Indian Affairs intends to pursue in relation to Band Government. The binder, which forms the sole subject of this review, appears to have been compiled for an introductory, training seminar, for advisors employed by the Department's Local Government Branch. As such, it contains a variety of articles, directives, legislation and information relating to Band government.

However, much of the binder's contents is presented in wide general terms and deals with abstract theories of administration, organization, planning and management. As a whole, these sections appear to be merely extracts from various textbooks and articles on those topics. Except for a few hypothetical examples, the binder did not exhibit any serious attempts to apply those theories directly to the reserve situation. As a result, this review is largely concentrated on those portions of the binder which were supplied by the Department's Policy, Planning and Research Branch and by D.G. Sparks, head of the Local Government Branch for the B.C. Region.

It is clear, from those sources, that DIA intends the future of Band government to lie in incorporation, and that provincial municipalities will serve as the model. As the present reserve system includes some elements which are regarded as being inconsistent with the usual functions of municipal government, there will have to be changes. While these documents did not outline a plan showing methods and stages of implementation, they stressed that changes would have to occur in the role of the Band Councils, in the

present system of property-holding and in the residence, membership and voting requirements.

Very little of the discussion contained in the binder was directed at the possibility of incorporating Indian Bands through provincial legislation. By and large, the Indian Act is regarded as the means by which that development shall take place. In the opinion of the Local Government Branch, all of the above-noted changes could occur through the legal structure established by the Act. Possibly the most salient point that can be drawn from all the abstract discussions concerning the functions of the branch is that the Local Government Advisors are to regard themselves as being vehicles of change in the Indian community.

B. BAND COUNCILS

Under the present system, Band Councils are regarded as fulfilling two separate and, in the Department's opinion, contradictory functions:

- On the one hand, the Band Council is elected to provide local government services to those Band members who are resident on the reserve;
- On the other hand, that same Band Council is responsible for controlling and managing the Band assets which are owned by all the individual Band members, irregardless of place of residence.

The end result is that Band Councils are elected to represent a group of people defined by residence and through the same election, are to represent a group of people, irregardless of residence. This dual representation is regarded as being contradictory to the usual form of municipal government.

Local Government Role

Band Councils are viewed as the official body in mat-

ters relating to band affairs and as the formal instrument of local government in the Indian community. Under the Indian Act, the Band Council is roughly analogous to a rural municipality in that it:

i) represents the selection of a representative body, i.e. similar to a mayor and council. In Indian communities, the choice of leaders is made either by custom or by election under section 73 (3) of the Indian Act. It is Branch policy to "extend the provision of section 73 to an increasing portion of Indian Bands and field officials are encouraged to advise Indians in the advantages of the election provision". As a result, the majority of Bands now select their chief and councillors by election according to the provision of the Act. However, the application of section 73 to any particular Band is within the ministers perogative. In other words, a Band cannot elect its leaders unless the minister has first granted his approval. This discretion is criticized as being paternalistic. However, it should also be noted that the discretion is contrary to the usual rights obtained under the municipal government.

ii) can make by-laws. Under section 81 of the Indian Act, the Band Council has authority to make by-laws for the performance of certain local government functions such as traffic regulation, local works, public health and some social services.

It should be noted that the effectiveness of any by-law enacted under this section is dependent upon whether or not the particular by-law is deemed to be "inconsistent" with the Act. The minister has discretion to disallow any by-law within 40 days of having received a copy.

iii) has revenue raising authority. Section 83 of the Indian Act gives the Band Council powers to pass by-laws dealing with the raising of money by taxation, licensing and other means in order to cover Band expenses and projects.

Again, it should be noted that these by-laws are subject

to the minister's approval. In addition, the revenue-raising authority of a Band is dependent upon whether or not the Governor-in-Council (i.e. the cabinet upon the minister's recommendation) declares that Band to have reached an "advanced stage of development".

Nowhere is the phrase "advance stage of development" clearly defined but it appears to be related to business, or commercial activity.

iv) has authority to make expenditures. Section 69 (Indian Act) grants a Band the authority to "control, manage and expend its revenue monies in whole or in part". While this power is stated to be a Band power, it would presumably be exercised through the Band Council. Again, this authority is dependent upon obtaining the permission of the Governor-in-Council.

Section 60 of the Act allows the Band the right to control and manage its reserve lands. Again, the prior approval of the Governor-in-Council is required. The legal scope of this section is far from clear and as a result, it has been used only twice across Canada.

In summary, the Indian Act contains all the essential procedures for a system of local government similar to that of a rural municipality. That system is in place and in operation, to varying degrees, throughout Canada.

However, the extent of the powers exercised by any Band is always subject to the minister's discretion. It can safely be assumed that the competence of a Band Council is continually being monitored and that its level of authority is dependent upon its measurement of "sophistication" and "development" as determined by DIA officials. In that light, it could be argued that, in some cases, the extent of a Band's local government powers is equal to the extent of that Band's ability to cope with, or acquiescence to, Departmental regulations and supervision. (The parallel to rural municipalities weakens considerably at this point.)

Special Roles

In a number of important aspects, Indian communities differ significantly from non-Indian communities. Those differences are reflected in the special functions of Band Councils.

One of the major differences is that it is possible for a Band Council to represent a reserve which has no residents. As is well known, Indian status is legally defined. However, membership in a Band is usually ascribed at birth (or through transfer or marriage). Although Band membership is usually associated with living on reserve, that is not essential to retain the status of a Band member. Thus, a Band, unlike a municipality, has a continuing existence which is independent of the place of residence of its members. In short, a Band is still a Band and its members are still members even though no one may be living on that Band's reserve.

On the other hand, a municipality cannot exist where there are no people since it is regarded as an incorporation not of a specific area land. If there are no people, there is no municipality.

Another major difference is that Indian land is essentially communal, inasmuch as the legal title is in the Crown. The reserve land is held for the use and benefit of the Band. Land may be alienated to non-Indians only under special circumstances. Outsiders may only lease, not own, land on the reserve. Since the minister's approval is required for any allocation of Band land, there is no free market for reserve land, even among Band members.

A corollary of communal land possession is the existence of Band funds derived from the use of land or other resources held in trust for the Band. Band members, therefore, not only possess the lands in common, but also, and as a consequence, certain monies.

In summary, a Band can be said to have a double

existence: one aspect of a Band is comprised of the members who reside on reserve; another aspect is formed by all the Band members, including the off-reserve residents, who have a share in the Band land and assets. As noted earlier, this double existence is reflected in the functions performed by the Band Council. The Council represents Band members, resident and non-resident; in the corporate assets of the Band such as land, money and membership. It is also the political instrument of local government for the resident Band members.

As Band Councils acquire and exercise more powers of local government the distinction between the Band as a legal unit owning assets in common and as a self-governing local body will increase in importance. On one hand, Band assets are regarded as belonging to the Band as a collective whole and therefore, as being available for the provision of local services. On the other hand, Band members are regarded as having equal rights to those assets as individuals. Technically, Band funds belong to residents and non-resident members alike. As long as Band members and reserve residents are the same people, the double functions of the Band Councils would not appear to be an unmanageable problem.

However, D.G. Sparks suggests that, where a Band contains a significant number of off-reserve Indians, the possibility of tension or conflict between resident and non-resident members will increase. That tension would be further increased where a Band Council achieved greater autonomy from Department controls or where the dollar value of Band funds increased.

The overcoming of this problem was regarded as the most difficult area in the development of Indian government. The Local Government Branch suggests that the best answer could only occur through the separation of the Band Council's local government functions from its duties as manager of the Band assets. Only after that separation could the "management of the Band assets be put on a proper commercial basis and not

be confused with the political considerations which are inevitably intermingled with the government of the local community".

C. VOTING PROCEDURE

The above-noted separation of functions, if or when implemented, will necessarily entail changes in the voting rights of Band members. Technically, this relates to the definition of "ordinarily resident" on the reserve for voting purposes. This definition has lead to the questioning of the right to vote of a growing number of individuals who are either disqualified, which they feel is unfair, or allowed to vote with the subsequent possibility of the election being upset on appeal.

The suggestion that all Band members should have the vote has the disadvantage of giving non-resident members an equal say with resident Band members in matters relating to local government functions. The requirement that only residents be allowed to vote is discriminatory in that it deprives non-residents of a say in influencing the disposition of Band assets which all Band members have an equal interest and to which they have equal rights, regardless of their residence.

In addition, the present residency requirements are regarded as diminishing the incentives to off-reserve mobility.

D.G. Sparks suggests that the separation of functions would clarify the problem of voting rights. Voters for local government would be residents or property holders on the reserve, i.e. an election of a mayor and council. The management of the Band assets would be entrusted to another body elected by all the members who have a share in these assets - a Board of Trustees and shareholders.

D. RESIDENCE REQUIREMENTS

The present linking of residence, property interests, and Band membership is seen as greatly discouraging Indian mobility between reserves. Should the separation of functions be implemented, it would be possible for an individual Indian to have residence and voting rights on one reserve while still maintaining membership and rights to Band assets in another reserve. In other words, admission to membership on one reserve would simply be a matter of residence and that residence would include a right to a say in local government matters; similar to moving from the municipality of Victoria to the municipality of Saanich. However, residence on another reserve would not mean the loss of membership or rights in the individual's original reserve.

E. PROPERTY HOLDING

The separation of functions is complicated by the fact that not all reserve land is held in common. Therefore, the existing rights of individuals (ie. holders of certificates of possession) and the rights of the Band as a whole would have to be worked out in such a way that those rights are given appropriate recognition, probably, in the form of contracts between those parties and the body in charge of the Band assets, ie. the Board of Trustees. One paper, prepared for the Policy, Planning and Research Branch, suggested that, as Indian Local Government becomes more established and as the land needs of reserves are better defined, individual ownership of land would probably be the most valid method of organizing the reserves.

In his suggestions for implementation, D.G. Sparks sees the key to eventual incorporation of Indian Bands to be the separation of the functions presently performed by the Band Councils. In his words, the consequence of such a separation and the other above-mentioned changes would be the "breaking-down of the parochial identifications encouraged by the

present situation and the emergence of a more broadly based Indian identity. Further, such a change would facilitate interaction between Indian and Whites by allowing whites to live on reserves and acquire political rights. Not only would the local community be advantaged by being thrown open to the beneficial influence of a more diversified citizenry but individual Indians would be benefitted by the greater mobility they would possess".

He went on to state that "once the local government functions were separated from the Band management functions the major difference between Indian and non-Indian local governments in terms of function would be eliminated. This would facilitate the incorporation of the new community into the provincial framework should such be desired. It would facilitate the functional co-operation of contiguous Indian and non-Indian communities, even to the point of merger".

F. CONCLUSIONS

While many of the documents contained in the Binder were labelled "for discussion only" or "draft copy only", the underlying intent is clearly that Indian local government will take place through incorporation and that, to varying degrees, the existing system of municipal governments will be the model. However, it must be remembered that this review is based solely on the written documents contained in one training binder. Whether the underlying policies contained in that binder are in fact the policies of DIA and, if they are, the manner in which they are being implemented in the field will have to be explored. Just the fact that the binder was used to train employees gives it much credibility.

Plainly, the implementation of these policies will result in the eventual destruction of the Band and reserves system as we now know it. The recommendations do not con-

sider the Indian's spirit and tradition or his ties to his land and his people as being significant; the overriding consideration is the efficient and convenient administration of local government functions.

The obvious question is: "What can we do about it?" The answer to that question can only be obtained through answering questions such as: What do we mean by self-government? How much self-determination do we realistically want and need? What is the price that we are willing to pay in order to gain self-government? Is there some basic definition of self-government which all of the Bands would find acceptable? Are we ready for self-government? If not, what do we need and how can we get it?

The majority of the exising provincial Municipal Acts contain provisions for various levels of municipal organizations and the minimum requirements for each level or grade. The requirements usually relate to population size and, in some cases, to the tax base formed by buildings and other improvements on the land. The powers and responsibilities for any locality are determined by that locality's level of organization and it moves through the various grades as the basic requirements are met.

As it is unlikely, and perhaps, impossible for provincial governments to grant municipal status to Indian reserves and still recognize their special status, it seems highly probable that the incorporation of Bands for local government purposes will occur through a revised Indian Act. As it is the more convenient and efficient means of establishing municipalities, that revised Act will probably include provision for various levels of organization. In that light, it may be beneficial to anticipate those provisions and attempt to influence the revised act through determining:

i) the ultimate degree of self-determination that we, as Indian people, are to have;

ii) the categories of power and control that various Bands are

to have according to their size and stage of development, and the various stages that a Band may go through before it reaches the highest category;

iii) the nature of the ultimate powers that the most advanced Bands will possess;

iv) the nature of the legal structure which is required to allow the Bands the desired level of self-government and still provide the necessary protection for the Band's special status and rights.

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THE BRITISH NORTH AMERICA ACT

INTRODUCTION

The British North America Act passed in 1867 became effective on July 1 of that year, creating the Dominion of Canada. As the Constitution of Canada it lays the ground rules, the procedures and principles of government by which the federation of provinces will operate. It provides for a parliamentary form of government, which means that Parliament exercises certain powers and rights on behalf of the Canadian citizenship. It outlines the powers and responsibilities that the provinces and the Federal Government are to have. This delineation of power is contained in Sections 91 and 92. Section 91 lists all the powers that the Federal Government may exercise while Section 92 deals with the powers of the provinces.

If Indian people are to participate meaningfully in the Constitutional changes then it is important that we appreciate the seriousness of this document. A constitution is the strongest piece of legislation, no law can supercede it, because from it all laws are derived. All laws and regulations stem from the constitution. All government actions and decisions of the various departments and government officials arise from the BNA Act.

If Indian people are able to enshrine their rights in the BNA Act, then no law, no Minister or Prime Minister would be able to threaten those rights, to alter the status of Indian people and their lands. The following are the texts of Section 91 and 92 in their entirety.

The British North America Act

Section 91

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,-

1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least one each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House: Provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House.

   (NOTE: Added by the British North America Act (No. 2), 1949, 13 Geo. VI, c. 81 (U.K.) (No. 31 infra).)

1A. The Public Debt and Property.

(NOTE: Re-numbered 1A by the British North America Act (No. 2), 1949, 13 Geo. VI, c. 81 (U.K.) (No.31 infra).)

2. The Regulation of Trade and Commerce.

2A. Unemployment Insurance.

(NOTE: Added by the British North America Act, 1940, 3-4 Geo. VI, c. 36 (U.K.) (No. 27 infra).)

3. The raising of Money by any Mode or System of Taxation.

4. The borrowing of Money on the Public Credit.

5. Postal Service.

6. The Census and Statistics.

7. Militia, Military and Naval Service, and Defence.

8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.

9. Beacons, Buoys, Lighthouses, and Sable Island.

10. Navigation and Shipping.

11. Quarantine and the Establishment and Maintenance of Marine Hospitals.

12. Sea Coast and Inland Fisheries.

13. Ferries between a Province and any British or Foreign Country or between Two Provinces.

14. Currency and Coinage.

15. Banking, Incorporation of Banks, and the Issue of Paper Money.

16. Savings Banks.

17. Weight and Measures.

18. Bills of Exchange and Promissory Notes.

19. Interest.

20. Legal Tender.

21. Bankruptcy and Insolvency.

22. Patents of Invention and Discovery.

23. Copyrights.

24. INDIANS, AND LANDS RESERVED FOR THE INDIANS.

25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

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The British North America Act

Section 92

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,-

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. MUNICIPAL INSTITUTIONS IN THE PROVINCE.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:-

    a. Lines of Steam or other Ships, Railways, Canals

Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province:

b. Lines of Steam Ships between the Province and any British or Foreign Country.

c. Such Works as, although wholly situated within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
16. Generally all Matters of a merely local or private Nature in the Province.

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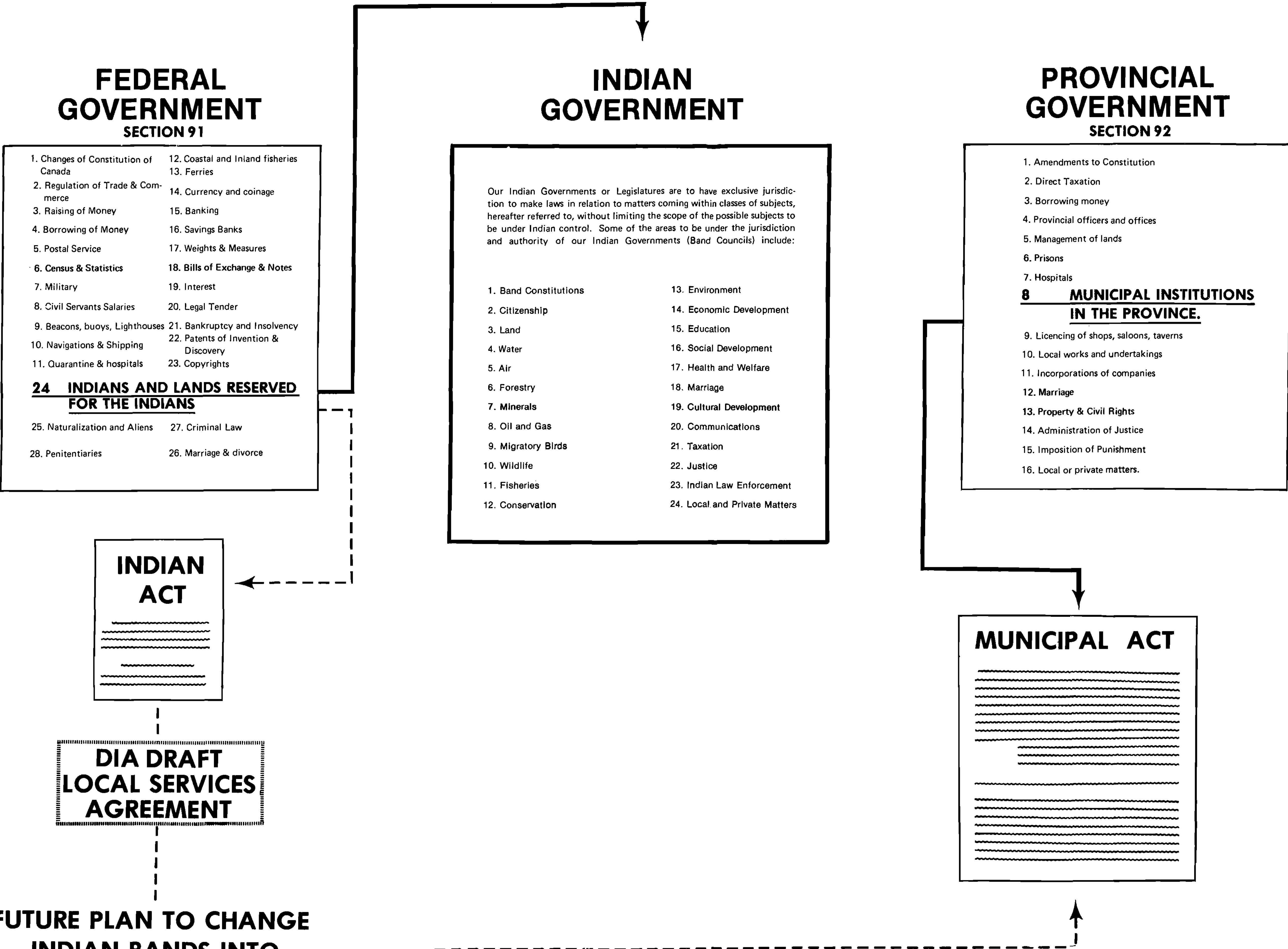
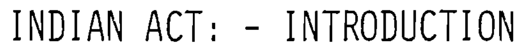
British North America Act
Indian Government
Union of British Columbia Indian Chiefs
3rd floor - 440 West Hastings Street
Vancouver, B.C. V6B 1L1.

BRITISH NORTH AMERICA ACT





INDIAN ACT: - INTRODUCTION

As we have stated earlier the Indian Act was enacted so that the Federal Government could have some guidlelines in carrying out its responsibility for Indians and Lands Reserved for the Indians, in accordance with Section 91(24).

There is no denying that the Indian Act is restrictive. It refuses the existence of our sovereignty; it denies us the right to exercise self-determination. However if we choose to look at Section 91(24) of the BNA Act as a recognition of "aboriginal rights", then we may regard the Indian Act as a ratification of our aboriginal rights, despite its oppressive nature.

In a move towards establishing control over our lives and our lands we can at this point make use of those powers that are available to us under the existing Indian Act. Following are those Sections of the Act that spell out the powers and status of Chiefs and Council, namely Sections 81, 82-86 and 88.

THE INDIAN ACT

Section 81

POWERS OF THE COUNCIL

81. The council of a band may make by-laws not inconsistent with this Act or with any regulation made by the Governor-in-Council or the Minister, for any or all of the following purposes, namely:

(a) to provide for the health of residents on the reserve and to prevent the spreading of contagious and infectious diseases;
(b) the regulation of traffic;
(c) the observance of law and order;
(d) the prevention of disorderly conduct and nuisances;
(e) the protection against and prevention of trespass by cattle and other domestic animals, the establishment of pounds, the appointment of pound-keepers, the regulation of their duties and the provision for fees and charges for their services;
(f) the construction and maintenance of water courses, roads, bridges, ditches, fences and other local works;
(g) the dividing of the reserve or a portion thereof into zones and the prohibition of the construction or maintenance of any class of buildings or the carrying on of any class of business, trade or calling in any such zone;
(h) the regulation of the construction, repair and use of buildings, whether owned by the band or by individual members of the band;
(i) the survey and allotment of reserve lands among the members of the band and the establishment of a register of Certificates of

Possession and Certificates of Occupation relating to allotments and the setting apart of reserve lands for common use, if authority therefore has been granted under section 60.

(j) the destruction and control of noxious weeds;

(k) the regulation of bee-keeping and poultry raising;

(l) the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies;

(m) the control and prohibition of public games, sports, races, athletic contests and other amusements;

(n) the regulation of the conduct and activities of hawkers, peddlers or others who enter the reserve to buy, sell or otherwise deal in wares or merchandise;

(o) the preservation, protection and management of fur-bearing animals, fish and other game on the reserve;

(p) the removal and punishment of persons trespassing upon the reserve or frequenting the reserve for prescribed purposes;

(q) with respect to any matter arising out of or ancillary to the exercise of powers under this section; and

(r) the imposition on summary conviction of a fine not exceeding one hundred dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a by-law made under this section. R.S., c 149, s. 80.

82. (1) A copy of every by-law made under the authority of section 81 shall be forwarded by mail by the chief or a member of the council of the band to the Minister within four days after it is made.

(2) A by-law made under section 81 comes into force forty days after a copy thereof is forwarded to the Minister pursuant to subsection (1), unless it is disallowed by the Minister within that period, but the Minister may declare the by-law to be in force at any time before the expiration of that period. R.S., c. 149, s. 81.

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THE INDIAN ACT

Sections 83 - 86

Money by-laws

83. (1) Without prejudice to the powers conferred by section 81, where the Governor-in-Council declares that a band has reached an advanced stage of development, the council of the band may, subject to the approval of the Minister, make by-laws for any or all the following purposes, namely:
    - (a) the raising of money by:
        - (i) the assessment and taxation of interests in land in the reserve of persons lawfully in possession thereof, and,
        - (ii) the licensing of businesses, callings, trades and occupations;
    - (b) the appropriation and expenditure of moneys of the band to defray band expenses;
    - (c) the appointment of officials to conduct the business of the council, prescribing their duties and providing for their remuneration out of any moneys raised pursuant to paragraph (a);
    - (d) the payment of remuneration, in such amount as may be approved by the Minister, to chiefs and councillors, out of any moneys raised pursuant to paragraph (a);
    - (e) the imposition of a penalty for non-payment of taxes imposed pursuant to this section, recoverable on summary conviction, not exceeding the amount of the tax or the amount remaining unpaid;
    - (f) the raising of money from band members to support band projects; and,
    - (g) with respect to any matter arising out of or ancillary to the exercise of powers under this section.

(2) No expenditure shall be made out of monies raised pursuant to paragraph (1) (a) except under the authority of a by-law of the council of the band. R.S., c. 149, s. 82; 1956, c. 40, s. 21.

84. Where a tax that is imposed upon an Indian by or under the authority of a by-law made under section 83 is not paid in accordance with the by-law, the Minister may pay the amount owing together with an amount equal to one-half of one percent thereof out of money payable out of the funds of the band to the Indian. R.S., c. 149, s. 83.

85. The Governor-in-Council may revoke a declaration made under section 83 whereupon that section no longer applies to the band to which it formerly applied, but any by-law made under the authority of that section and in force at the time the declaration is revoked shall be deemed to continue in force until it is revoked by the Governor-in-Council. R.S., c. 149, s. 84

86. A copy of a by-law made by the council of a band under this Act, if it is certified to be a true copy by the superintendent, is evidence that the by-law was duly made by the council and approved by the Minister, without proof of the signature or official character of the superintendent, and no such by-law is invalid by reason of any defect in form. R.S., c. 149, s. 85.

Legal Rights

88. Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made by or under this Act. R.S., c. 149, s. 87.

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