

One remedy is for band members to incorporate as a company to carry on business ventures, own land or undertake other activities for the benefit of the band. This solution presents additional difficulties; because a corporation is not "an Indian" for purposes of the Act, it cannot benefit from tax exemptions available to Indian people. Incorporation has many other implications. For example, land held by the corporation may not be considered "Lands reserved for the Indians" (under the *Constitution Act, 1867*, formerly the *British North America Act*). Thus provincial, not federal, laws will apply.

Section 81 of the *Indian Act* sets out the by-law making powers of band councils. These powers are totally inadequate for the varied situations of Indian peoples in the twentieth century. The Musqueam Band, for example, is located in Vancouver and owns prime residential land. If that land were to be developed, the band would need the power to enact zoning and building by-laws, among other matters, powers that bands do not have now.

Even the limited powers of band councils are further diminished because they can be rendered invalid by federal laws, federal regulations or the Minister's disallowance. Provincial laws 'of general application' also interfere with band council powers. Councils are virtually powerless as governments. Many witnesses described the council's role as administrator of government policy:

Under the current system of band government, the chief and council are so restricted in providing the three basic functions of government that it can hardly be called government at all, but more properly the administration of federal policy at a local level. Under the current Act the council can regulate little, except weeds and dogs on the reserves, without the blessing first of the Minister and his administrative arm.

The council's role in representation of the people's wishes is, for the most part, ignored by both senior levels of government. All too often band governments must resort to confrontation, to media events, to expensive lobbying just to get heard.

... Again, in a government's function of allocation the bands of our experience are for the most part restricted by the Act and the Department's policy to the delivery or distribution of resources as allocated by the Department.

Stripped of the authority to operate the fundamental functions of government, current band governments are little more than factotums of federal control. (Quesnel Community Law Centre, Special 20:168-169)

### Recent attempts to revise the *Indian Act*

The last major revision of the *Indian Act* occurred in 1951 following a detailed review in 1946-48 by a Special Joint Committee of the Senate and the House of Commons. A departmental history notes that the main features of the 1876 legislation were not altered:

The new *Indian Act* did not differ in many respects from previous legislation. The main elements of the earliest Dominion legislation, i.e., protection of *Indian lands* from alienation and *Indian property* from depredation, provision for a form of *local government*, methods of ending Indian status, were preserved intact.\*

The history also described the reduction in the Minister's responsibilities to a "supervisory role, but with veto power". Nevertheless, the remaining powers of the Minister are considerable.

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\* Canada, DIAND, *The Historical Development of the Indian Act* (Ottawa, 1978), p. 149.