

regulatory reach of the government into virtually every nook and cranny of Indian life. Indians, unlike other Canadians, were not faced with a plurality of governments and government departments but rather with a single government and a single department. Although the Act presented a veneer of self-government and Indian participation in the control of their lives, even the veneer was an illusion.*

Restrictions on band and band council powers

Bands and band councils are creatures of the *Indian Act*. That is to say, all their legally recognized powers are defined in and, more importantly, limited to those specifically mentioned in the *Indian Act*. Many important matters necessary to the functions of government in modern society are omitted from the Act. These omissions have resulted in great uncertainty about the legal capacity of bands and of band councils and have raised questions as to whether a band council can sign contracts, bring law suits, and generally act in the name of the band. A band's legal status depends on other statutes:

The cases have concluded that a band is not a corporation, even though bands do exhibit some of the characteristics of a corporation. A band has been held to be a person, and an employer, in some instances, but these instances are restricted to the particular statute involved and the definition of the person or employer. For example, in the *Moses Tom* case from Manitoba, a band was not a person capable of making application for custody of one of its members because it was not a person within the meaning of the Act. On the other hand, under the *Coroner's Act* of B.C. the Masset Band Council was held to be a person that was capable of demanding an inquest into the death of one of its members. So whether a band is a person or an employer is entirely up to the statutory interpretation of the applicable statute, and whether a band is a person or employer by its own merits has not been judicially interpreted. (Canadian Indian Lawyers' Association, Sub 13:10)

Because there are no general rules in the *Indian Act* or elsewhere in Canadian law, each case is decided narrowly by interpreting the statute that applies in the circumstances. Each new situation raises new questions. This uncertainty has been a great impediment to band initiatives.

The Canadian courts have held that bands cannot acquire title to land. Nor can they sue or be sued. As the Association of Iroquois and Allied Indians noted, this means that the federal government "is often involved in band transactions where it has no active role but is made a party out of uncertainty as to the band's capacity to do business. . . . Creditors often look to the federal government for payment of band accounts since bands are considered to be non-suable." (Special 16A:11)

A Halifax law firm, Aronson, MacDonald, described the practical problems that result from this uncertainty:

The uncertainty permeates all dealings between bands and employees, suppliers, contractors, financial institutions and governments. It is constantly assumed that there is no point in taking a band to court as it is not a suable entity. Section 89(1) of the *Indian Act* is frequently called in aid to support this assumption, although the provision is concerned only with granting an immunity to effectively collect a debt from a band, an immunity commonly granted to governments. However, the assumption clearly affects many commercial transactions and the legal manner of entering into contracts, for example. (Written Submission, November 29, 1982)

* J. Rick Ponting and Roger Gibbins, *Out of Irrelevance: A Socio-Political Introduction to Indian Affairs in Canada* (Toronto: Butterworths, 1980), p. 12.