

APPENDIX EL

MEMORANDUM ON INDIAN STATUS AND ELIGIBILITY FOR BAND MEMBERSHIP, FOR CONSIDERATION BY THE SPECIAL JOINT COMMITTEE OF THE SENATE AND HOUSE OF COMMONS ON INDIAN AFFAIRS

Under Section 18 of the Indian Act the duty and responsibility of determining "who is or who is not a member of any Band of Indians and entitled to share in the properties and annuities" of an Indian Band is vested in the Superintendent General (Minister), whose decision is final, subject to appeal to the Governor in Council.

As no person other than an Indian can be a member of a Band, the Minister in reaching his decision as to membership must, therefore, also decide the question of status.

This he does and must do, "on the report of an officer" (of the Branch) or "some person specially appointed by him to conduct an inquiry" (factual). He assumes the responsibility for and makes the decision, the investigating officer deals only with facts and evidence supporting such facts. No investigating officer has any authority to reach conclusions or make decisions on those facts, as that is the sole prerogative of the Minister.

When the investigating officer reports on the facts and submits what relative evidence he can obtain in support of such facts, then each individual case is examined by the Minister and a decision reached and made by him. In reaching such decision he can and does call for such assistance as the special knowledge the Branch administrative officers, the Branch legal staff and the law officers of the Crown afford to him.

An ever present difficulty in connection with the administration of Indian affairs is that of ascertaining "Indian status". It is extremely difficult to reach any satisfactory conclusion as to who is an Indian and what an individual must have or be to qualify for the special rights and privileges to which an individual is entitled by reason of his having Indian status—and to what group of individuals the federal jurisdiction extends under the British North America Act.

Little help is to be found in the definition of "an Indian" in the present Act, though that definition has persisted without change in the Act since 1876. Nor is there much help to be found outside the definition, that is in the decisions of the Courts, opinions of the law officers of the Crown, or by departmental advisers, nor is there any help in the dictionary definitions.

Yet the proper definition of status—white or Indian—is at the root of a multitude of decisions which must be made daily in the administrative routine of the Branch.*

An individual must be an Indian before the Branch has any jurisdiction at all over him and moneys voted by Parliament may only be spent to promote the welfare of people who can truly be classed as Indians. To interfere with the normal lives of persons who are not of Indian status is clearly beyond any power or authority vested in the Superintendent General of Indian Affairs, (though this has often been done), and to spend moneys voted by Parliament to promote the welfare of Indians, for the benefit of persons who are not Indian is contrary to the purposes of Parliament and therefore illegal.

It is imperative, therefore, that some satisfactory definition of an Indian be written into the Act and some well defined principles laid down, by the

*See addenda attached.