

Indians have felt about the *Indian Act*—their resentment of its constraints and yet their dependence on it for the special rights it provided.”*

The *Indian Act* is a comprehensive piece of legislation that circumscribes activities in all sectors of Indian communities. It places constraints on the rights of Indian people and bands and limits their ability to govern themselves effectively. The main purposes of the Act, as described by the Department of Indian Affairs and Northern Development (DIAND), are:

to provide for band councils and the management and protection of Indian lands and moneys, to define certain Indian rights, such as exemption from taxation in certain circumstances, and to define entitlement to band membership and to Indian status.

The first consolidated *Indian Act* was passed in 1876; the Act was last amended over thirty years ago. It contains many anomalies and inadequacies.

Among the criticisms of the *Indian Act* is its failure to recognize the diversity of Indian peoples. The Act treats Indians as a homogeneous group without taking into account variations in culture, language, resources, size and location of communities. The absence of flexibility has also been perceived as a means of assimilation.

Serious objections were also registered with respect to the relationship between Indian band councils and the Department. Band councils exercise delegated powers. In fact, they are viewed for the most part as extensions of DIAND. Even the Department states that “band governments are more like administrative arms of the Department of Indian Affairs than they are governments accountable to band members”.** Band councils are the only Indian governmental organization recognized in the *Indian Act*. But tribal councils, treaty organizations, and provincial, regional and national associations of various kinds play a vital role in the political activities of Indian people. Further details about some of these institutions can be found in Appendix C.

Departmental control of Indian activities has been a consistent element of Indian life. In the past, an Indian agent representing the Department at the local level had control over virtually all aspects of life, even to the point of issuing passes to allow Indians to leave the reserve temporarily. While the Indian agent has disappeared, the Department still exercises considerable control, particularly over band governments. Witness after witness said that the Department makes planning and budgetary decisions without adequate input from bands.

Chiefs and councillors felt constrained by a system that does not enable them to respond to the needs of their communities. They are in a particularly awkward position because they are accountable to DIAND for moneys received, but they are also accountable to their people, whose priorities and needs are often at variance with departmental requirements. While various policy directives have emphasized consultation with the bands, real control still rests with DIAND. A recent study concluded:

Over the long run the most contentious aspect of the *Indian Act* was the sweeping power that it gave to administrators and to the federal government. The *Indian Act* extended the

* Sally Weaver, *Making Canadian Indian Policy: A Hidden Agenda 1968-1970* (Toronto: University of Toronto Press, 1981), p. 19.

**Canada, DIAND, *Strengthening Indian Band Government* (Ottawa, 1982).