

Proposals for Legislation Presented to the Committee

The Minister of Indian Affairs presented a discussion paper called *The Alternative of Optional Indian Band Government Legislation*. These suggestions for new legislative and administrative arrangements and witnesses' reactions to them were discussed in Chapter 2.

The Committee's assessment is that the DIAND approach would be unacceptable as the basis of a new relationship for a variety of reasons. First, it was described by the Minister, and perceived by the witnesses, as a revision within existing arrangements which have been found to be unsuccessful and limiting; it is a further extension of 'devolution', which has been rejected. The proposal envisages Indian governments as municipal governments and fails to take account of the origins and rights of Indian First Nations in Canada. A major objection is that permission to opt in would be a favour granted to bands that the Minister of Indian Affairs, in his discretion, deemed to be sufficiently "advanced". The paternalistic role of the Department would be maintained.

4. The Committee rejects the Department's band government proposal. Although there have been years of consultation, there was no general agreement of Indian representatives, and the proposal finally emerged from a unilateral government decision.

Several bands and organizations made constructive and creative suggestions for legislative change. In some cases, these proposals were based on the *Indian Act*. For example, the Union of New Brunswick Indians proposed increasing the powers of band chiefs and councils and removing all possibility that provincial laws would apply on reserves, but otherwise leaving the *Indian Act* intact. (Special 23:9) The Sawridge proposal outlined a complete revision of the Act, greatly increasing the powers of the Chief-in-Council, vesting all assets in the Chief-in-Council in trust for the use and benefit of the band, and revising the membership provisions. (Sub 11:14-16) Many other bands and organizations explicitly rejected any "tinkering with the *Indian Act*".

While the proposed amendments to the *Indian Act* would make much-needed improvements, the Committee believes that a more far-reaching approach, including legislation totally different from the *Indian Act*, would accommodate the special concerns of all groups. Legislation such as the Committee is proposing could be implemented quickly and should benefit all bands.

5. The Committee does not support amending the *Indian Act* as a route to self-government. The antiquated policy basis and structure of the *Indian Act* make it completely unacceptable as a blueprint for the future.

Witnesses also discussed entirely new proposals that they had developed to meet their particular needs. The Sechelt Band presented draft enabling legislation that would permit bands that met certain criteria (demonstrated administrative capacity, appropriate structures and practices, experience and readiness) to opt out of the *Indian Act* and operate under a band charter that would have the force of law for that band. This approach had the explicit support of a few band councils appearing before the Committee, since it would allow early relief from the limitations on their powers and jurisdiction imposed by the *Indian Act*. The Committee understands the objectives of the Sechelt Band and suggests that the proposal for legislation outlined in the next few pages would meet these objectives and, in fact, go much further.