

The band government proposal

The Minister argued that legislative change is needed immediately. He explained that a minority of bands are constrained in pursuing economic development by the restrictions in the current Act:

There have been bands. . . that are on the outskirts of municipalities and that want to get ahead with developmental projects, want to have control of their own land, want to get under way with certain economic development, and they are being hampered because of the fact—and criticizing me. I acknowledge they are a minority of bands, but they are very critical of the fact that we have not proceeded. (Sub 2:35)

The Department has explored several alternatives for providing “a new base from which Indian bands could exercise the equivalent level of political responsibility enjoyed by all other Canadians within their own local communities”. The alternatives include a complete revision of the *Indian Act*; partial revision of and additions to the *Indian Act*; the development of a series of subject acts affecting Indians (an Indian Education Act, an Indian Financial Administration Act, and so on); development of a series of regional or individual band Indian Acts; and the development of companion legislation to the *Indian Act* to allow for optional Indian band government at the community level.

The Minister expanded upon the latter option in *The Alternative of Optional Indian Band Government Legislation*. Such legislation would be based on the concept “that the primary locus of decision-making is within the Indian band itself” and might include some of the following elements or characteristics:

Optional legislation: It should be optional since no single approach is universally appropriate. “Bands which wish to continue to operate under that present system should be allowed to do so.”

Band charter: Each interested band would develop its own band charter; this would be “one of the requirements for entry into Indian band government legislation. This charter, or constitution, would outline, in its own terms, the nature of the relationship which would exist between the Indian band government and the band membership.”

Expanded powers: “The power to pass authoritative by-laws; the power to adopt other pertinent laws by reference if they so choose; the ability to enter into agreements with other bands and other government authorities and agencies to provide services on reserves; the ability of developing that service delivery capability themselves; the power to enter into agreements with banks and other financial institutions in their own right; the power to raise additional financial resources within their own jurisdictions by levying taxes on both Indian and non-Indian interests.”

Control over lands: The legislation would give the band “authority and responsibility to grant interests in land to both Indians and others” while ensuring that lands remain “lands reserved for the Indians, in order to keep such lands within the legislative competence of the federal government.”

Membership: Bands would “be able to determine their own membership, subject to respect for acquired rights, and some minimal connection, either by descent or by marriage, of the individual with the band.”

Enacting by-laws: There would be “a clear statement of the capacity of Indian band governments to enact by-laws in order to allow for the implementation of their program powers.”