

process may be protracted, the Committee considered other courses of action for achieving Indian self-government: the courts, the bilateral process and legislative action.

The Courts

The Committee considered the usefulness of a judicial ruling to establish whether self-government is an existing aboriginal right and therefore a right of Indian First Nations in Canada.

The courts may eventually rule on this issue. An Indian First Nation government might assert jurisdiction as against the federal or a provincial government and seek to have its right to exercise that jurisdiction challenged in the courts. The issue might also arise peripherally in another case. Obtaining a judgement in the Supreme Court of Canada is a very lengthy process. The fundamental issue may not be directly addressed. In any event, a single court ruling could not define the full scope of Indian government or even design a new structure accommodating Indian government, although it might provide some impetus to political action. Clearly, it is an option that Indian First Nation governments might pursue, and they are free to do so. But the Committee regards this procedure as difficult to execute and uncertain in its outcome.

The Bilateral Process

It was strongly argued before the Committee that an Indian order of government already exists in Canada; that the federal government already has the authority to recognize Indian First Nations as self-governing entities without constitutional change; and that through bilateral discussions, jurisdictional arrangements could be agreed to between the federal government and Indian governments.

The proper way to define and establish relations between our Indian governments and the rest of Canada is not through legislation or constitutional amendments, but by a basic political agreement, a covenant or social contract. A basic compact will respect the principle of the equality of peoples. It can be an integral part of the Canadian Constitution while it serves as a constitution confederating Indian nations in Canada. But as a social contract it cannot be changed without the consent of both sides. As a part of the constitutions of both parties, each side will be required by Canadian law, by traditional aboriginal law and by international law to respect its terms. (Bella Coola District Council, Special 6:81)

The treaty-making process provides both the basis of, and a model for, the bilateral process. In the Indian view, treaties guaranteed the right to self-government:

The right to Indian government was guaranteed by our ancestors under the spirit and intent of the treaties. Treaty No. 4 of 1874 stipulated that the Indian way of life would not be changed but would survive in perpetuity. International law and basic principles of human rights recognize that for a way of life to survive the people concerned must have the right to develop politically in any direction they choose. This treaty guarantee acknowledges the inherent right to self-government, which flows from the choice of the people. (Starblanket Band, Special 11:9)

Witnesses also pointed out that the Royal Proclamation of 1763 recognized the existence of Indian governments and nations in its reference to "the several Nations and Tribes with whom We are connected and who live under Our protection".