

system is outdated and it is costly. The organization does not relate to the aspirations of Indian leaders and band membership. The organization is program- rather than people-oriented. The system promotes dependency on the Department instead of self-reliance. Department structure does not lend itself to the amount of work done. Bands are unable to pay staff reasonable wages; for example, many have not received a raise in years. Also, bands want to be trained in the management of their own lands. (Federation of Saskatchewan Indian Nations, Special 11:36)

The legal framework has remained, and it has limited the Department's implementation of devolution. The *Indian Act* was not intended to provide opportunities for Indian administration of programs. The Minister commented on the difficulties of continuing the policy of devolution with the current Act in force:

... In consultation with the Indian leadership, we in the Department, and I think of myself as minister and my predecessors, have been attempting to stretch the *Indian Act* as far as we can to accommodate demands for change. . . We have done this largely through devolution, but our ability to respond adequately to Indian needs is severely limited, and there are several reasons for this. The formal requirements of control which we must follow in accordance with the estimates, are incompatible with the current practice of devolution. (Sub 2:16-17)

Departmental views on the *Indian Act*

In his first appearance before the Sub-committee, the Minister tabled two documents, *Strengthening Indian Band Government in Canada* and *The Alternative of Optional Indian Band Government Legislation*, which he subsequently circulated to all bands. *Strengthening Indian Band Government in Canada* outlined the Department's views of the major practical difficulties caused by restrictions in the *Indian Act*:

First, the exercise of all these powers is subject to various kinds of control by the Minister and/or the Governor in Council. In most instances, the federal government's power of discretionary control of by-laws and other powers is not exercised in practice if a band is acting within the law. The fact that it exists, however, complicates the accountability of band government and often leads to interminable technical complications to accomplish the simplest act.

Second, land tenure system under the *Indian Act* is based on the historical view that reserve lands were meant for the exclusive use of Indians and were to be protected for Indians until they could control their lands like anyone else. This protection was for both bands and individual members of the band. The *Indian Act*, therefore, limits the ability of both the band and the individual to deal with the land.

Third, the Minister also has trust responsibilities in relation to band moneys which prevent him from permitting band governments to control their own assets and to use them as they would wish for their own development.

Fourth, band governments have few legislative powers in social and economic development areas. The Department of Indian Affairs has devolved the administration of many such programs to numerous bands, but has retained the power of program definition.

Fifth, the legal status of band governments has been put in question by the courts. It is currently unclear whether band governments have legal power to contract with other legal entities.