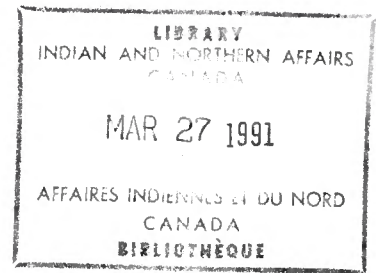


THE INDIAN ACT AND
INDIAN SELF-GOVERNMENT

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THE INDIAN ACT AND INDIAN SELF-GOVERNMENT

- I - Limitations on Indian self-government

- II - An explanation of the current revision proposal for Indian Government.

Mark Manitowabi
PCBG, July 23, 1980.
D.I.A.N.D.

PREFACE

This paper is not intended to reflect Department policy, opinion, or viewpoint. Because of exceptions and varying interpretations that are most certain to exist, this article also cannot be construed as being absolutely accurate for all or any actual circumstances that might occur. Therefore, it can serve only as a broad statement of effect rather than as a comprehensive analysis of topic material.

This article is intended to provide a brief statement of the limitations on Indian self-government that are to be found in the present Indian Act. The article then goes on to describe the current Indian Act revision proposal for Indian self-government that is now under consideration by this Department.

This paper was prepared by Mark Manitowabi, Policy Advisor, for the Policy Coordination and Band Government Development Branch under the supervision of Richard Paton, A/Director, PCBG.

July 23, 1980.

INTRODUCTION -

The people in a community want to make their community a desirable and agreeable place in which to live. The thing that contributes to this desirability is fair and equitable distribution of:

1. Representation (responsible and accountable government which is concerned for the locality)
2. Regulations (protection of peace, person, property, environment, standards of services)
3. Resources Administration (land use, jobs, services, economic climate, public revenues)

These things directly affect the way of life in a community. In order to effectively exert some control over the place in which they live the people need a community-based government. Any type of power or structure given to a body derives from the laws governing that particular activity. In the case of Indian Reserves the 1951 Indian Act is the controlling document.

I. What climate for community based government does the Act create?

Very little. The Act is the administrative document for the Minister - not for Reserves. Most of the Act does not relate to the Indian community government at all.

A. The Act does not:

1. make provision for local programs;
2. enable Band governments to assume local accountability and responsibility;
3. enable Bands to exercise powers except in a very limited manner;
4. make Band Councils legal entities, and
5. make sufficient allowance for variations and needs of differing communities

B. The Act does:

1. give Minister almost absolute discretionary authority over almost every aspect of Band concerns;

2. make Minister responsible to Parliament,
not Bands;
3. give the Minister the task of carrying out
Band affairs;
4. provide some protections of land and
property;
5. allow Federal regulation of Band affairs,
and

C. All of this leads to:

1. A large administrative burden placed upon
for tasks and responsibilities which:
 - (a) makes Minister responsible for day
to day Band Affairs;
 - (b) makes Minister primarily responsible
to Parliament;
 - (c) results in a cumbersome process
which protects the Minister but
makes it difficult for Bands to
take control of anything;
 - (d) makes a Band council responsible to
the Minister - not to the Band
members.
 - (e) requires a large bureaucracy which
carries out the Minister's tasks.

To sum up, "The Indian Act deals only partially with true Indian local government. It is primarily a document outlining how Government will administer the affairs of Indians. Because of the diversity of Indian communities across Canada, it is very likely that no consensus will ever be reached on many of the administrative revisions proposed in the new Indian Act. In any case, Indian local governments should do this for themselves. The present act is negative, coldly administrative, and blocks many worthwhile initiatives by Indian governments either in an outright fashion, or by reasons of delay in interpretation. This type of administrative act cannot form the basis for the entirely new approach being recommended; to the extent that the present Indian Act attempts to do this or to become the administrative vehicle for Indians, it is outmoded."¹

II. What is provided for in the Act for Indian Government?

¹ NISEDC - To Have What Is One's Own

Oct, 1979, page 50

The primary need of a community is to establish its own form of local government. Ideally, this government should be representative-comprised of residents of the community; accountable to the community for actions carried out on behalf of the community and responsive to local needs and conditions.

The political organizing of a community takes three steps:

1. Determining the form of government
2. Election proceedings (eligibility, process, etc).
3. Giving the government its job
 - a. Regulatory powers
 - b. Administration of Resources

We will see how this takes place under the Indian Act.

1. Determining the form of Government (Representative structures)

S 74(1)(2) - Indian Bands may have only one form of government - Chief and Council.

"Wherever he deems it advisable... the Minister may declare ... chief and councillors, shall be elected in accordance with this Act.

Composition of Council, meaning members of councillors is fixed "Unless otherwise ordered by the Minister..."

2. Election proceedings - putting the government in office

S 74 (3) - The method to be used by a community to
S 75-79 put the people it wants in its government is
fixed by the Minister.

"The Governor in Council may make orders and regulations with respect to Band elections ..."

The Provisions for election proceedings are at the discretion of the Minister. Numbers of councillors, eligibility for voting and holding office, procedures, are directed by the Minister. The only local discretion allowed is whether the Chief shall be elected at large or from the slate of councillors. There is no clear procedure for exercising this discretion.

REGULATIONS

The authority to regulate activities in the Reserve for the benefit and protection of the community is a basic duty of local governments. But the power of the Band Council is severely restrained.

- S 80 - The Band Council meetings are conducted by regulations set by the Governor in Council
- S 81 - The Band Council may make certain bylaws but these are limited, unclear as to enforcement, and superceded by the Act (S 73) in event of conflict.
- S 82 - Bylaws are subject to approval by the Minister
- not the community.
- S 83 - Band needs Minister's approval to pass self-taxing bylaws.
- S 85 - Minister may revoke S 83.

It can be seen there, then, that the Band Council may function as a Council only according to terms set by the Minister, pass regulations only with the approval of the Minister, and can have local authority only at the pleasure of the Minister. The community has no legislated influence in any of these areas. Further, except in matters requiring a referendum the Band Council has no direct authority to operate local services-only powers of puniton.

ADMINISTRATION OF RESOURCES

After the political and regulatory organization of a community has taken place, there is the process of providing for the management of community resources. Communities generally have some land, money, and programs.

LAND

- S 20-27 - Individual occupancy is subject to approval of Minister.

- S 28 - No person other than a Band member, even with Council approval, may reside on a Reserve without the approval of the Minister.

- S 37 - Control and administration of surrendered land is removed from the Band.

- S 38(2) - The only control of a Band has on land surrendered for lease is to make a conditional surrender.

- S 58(4)(b) - The Minister may dispose of sand, gravel, clay, on a Reserve without approval of the Band Council.

S 93 - Minister's approval required in order for a Band to sell soil or wood.

MONEY-

S 61-66 - The Minister manages all capital and revenue funds of a Band.

S 83 - Internal taxation - subject to approval of Minister.

PROGRAMS - Local governments must be able to deliver services.

S 114-123 - The Minister may operate school and require students to attend.

This is the only program mentioned in the Act.

There is an awkward implementation process attached to all of the foregoing. The Band has little real power and can exercise its powers only at the direction of the Minister.

Supernumary powers of Minister

Because the Minister is responsible for the day to day affairs of Reserves, such powers as he requires to carry out these responsibilities are included in the Act.

S 43 - The Minister requires Bands to maintain roads and bridges. In other words, the Band is responsible to the Minister for the upkeep of roads - not to the people who will use the roads.

S 73 - The Governor in Council can make regulations which supercede Band Bylaws.

The connection among the government functions just described is that all are exercised at the direction and discretion of the Minister or the Governor-in Council and are fraught with an awkward implementation process which falls outside of the Act.

The line of authority drawn by the Act transcends the divisions of Federal and Local governments. These divisions do not exist in the application of the Act. The Minister exercises the same control and responsibility on a Reserve as he would within the Department. By this, the Band Council is an administrative extension of and responsible to, the Minister.

By these interpretations, the Act is not suitable enabling legislation whereby a Band can reach towards self-government. Anything given under the Act is also limited by the Act and is tied responsibility to Parliament.

Presently, the only provisions for any form of local government are in the D series of circulars - D1, 2, 3, 4, and Contributions arrangements. These can be revoked by a "stroke of the pen" as they are not entrenched in any legislative instrument, i.e. the Indian Act, Indian Government Act or whatever. In any event, these instruments contain detailed requirements for the execution of programs and make a Band Council further accountable to the Department and less to Band members.

Clearly, then, a Band desiring assured powers of local government, freedom to design its own functions, must look at an entirely new model for self-government than is provided in the present Indian Act.

The following pages will describe one such model now under discussion. This model is actually made up of two parts. A new section of the Act is proposed. This Part II would be an enabling section which would be used by a Band to exempt itself from selected parts of Part I, the present Act. When a Band invokes Part II, that Band may design a Band constitution which would enable the community to design its own government model, its powers, and responsibilities.

The idea, generally, is to create flexible legislation which will allow those Bands that desire major change to do so under their own terms. Bands desiring a more conservative approach to self-government would be allowed to develop in their own time.

The following is a description of a current model for Indian Government now being proposed.

I. A Model for Indian Government Legislation

1. There is broad agreement within the Indian community and the Department of Indian Affairs that self-government and self-determination at the Band level can be achieved only by the establishment of Indian government designed by and for Indian people and endowed with the powers and responsibilities necessary for Indian communities to exercise control over their affairs. Legitimate government cannot be imposed or legislated; by its nature it must arise out of the collective will of those to be governed.

2. The proposals for Indian Government described in this paper are intended to provide a system for Federal Government recognition of Indian government constitutions. Recognition of constitutions will guarantee to Indian communities the ability to determine their affairs according to their particular needs and desires while maintaining the special relationship of the Federal Government and the Minister with the Indian people.

3. The proposals are based upon the fundamental concept of community control and self-determination. Indian communities that desire it must have the legal capacity to pass their own laws, administer their own programs, design their own Government, and arrange their own finances. They will do this free from the restrictive legal and administrative constraints of the existing band government system.

II. The Need for Changes in Indian Government

4. The essence of government is to make authoritative decisions and to assume accountability and responsibility for decisions affecting the representative, allocative, and regulative functions of that government.
5. The Band government provisions of the Indian Act provide for a very limited and Federal government-regulated system of local decision-making. Indian communities are governed by a Chief and Council with limited by-law making powers which are subject to Ministerial disallowance. As a result, there is a very limited degree of real self-determination provided by the present system.

6. Under the present Indian Act and system of program transfers, Band Councils have been given administrative control over numerous DIAND programs but not the responsibility and accountability that go with that control, or the design and decision-making power necessary to make the programs relevant to actual needs. These transfers have resulted in a dramatic increase in the range of activities that councils are involved in and in the number of people councils employ. However, Band councils function essentially as administrative extensions of the Department and not as governments with their own powers and authority.
7. Bands assumed these programs for varying reasons. An administrative overhead allowance was provided on a percentage basis of program cost. Transfers were used for Bands to gain and train their own expertise. Districts transferred programs in order satisfy evaluation criteria. Some programs were taken over by Bands in order to do a better job for the Department.

8. The transfer of program funds to band councils has caused many problems for the Department and the Bands. Although the band councils administer the programs, the Minister remains responsible and accountable to Parliament for the expenditure of the funds. Some Bands have incurred Bank deficits which threaten their own assets, or have book liabilities which occur because of the inability to transfer funds between Activities. Band Councils cannot effectively address DIAND programs towards local problems. Bands must wait until a government agency offers a program and hope that it will solve local problems. Self determination cannot arise from this because there is no inherent design for Indian government in the first place.
9. The proposed system of Indian government is designed to allow Indian communities to assume the responsibility and accountability for the government of their communities in the way and to the degree they desire. It is also designed to enable Indian governments to be funded in such a way that they are responsible and accountable to

their communities for the funds they raise and expend and are free from detailed Departmental control of their financial affairs, and are free to design programs as needed to solve their community problems. It is hoped that by this means Bands can establish their own commitments and identity.

III. The Precedents for Indian Government

10. Indian government derives from historic, legal and philosophical precedents. Indian people had institutions of self-government before the arrival of the Europeans. Treaties, proclamations and other official commitments recognize and provide for the preservation of these institutions.

11. Section 91(24) of the B.N.A. Act provides the Parliament of Canada with exclusive legislative authority for those matters which relate to "Indians and Lands reserved for Indians". The legal powers and responsibilities of bands and band council are exercised pursuant to Section 91(24) of the Constitution.

12. The idea of representative government is the basic tenet for achieving responsible government.

13. In trying to decide which level of the government should perform a given service, there is little doubt that one of the guiding principles should be efficiency of performance. Citizen-participation in government can be greater and the performance of services more responsive to citizens' need when services are provided by local government. In other words, in the broader sense of efficiency - in the sense of effectiveness - local administration is preferable.

IV. Principles of Indian Government Constitutional System

Indian government will encompass responsibilities for a broad range of functions affecting the social, economic, cultural and political well-being of the Indian communities. This, in addition to the special relationship between the Federal Government and the Indian people, characterizes Indian government as an authority unique to the Indian community and involving responsibilities, functions and powers corresponding to federal, provincial and municipal powers.

15. Indian governments at the band level must be the foundation of the Indian Government system. District, regional or other groupings of Indian governments should derive their authority from community level Indian governments.

16. Indian government must have the flexibility to cope with the wide diversity in the economic, cultural, political and administrative development of Indian governments across the country. The constitutional system concept is based on the principles of flexibility and "opting-in". The process will be initiated only at the request of the particular band desiring a constitution and no band will be required to adopt the same system as any other band.

17. With the exception of the changes in the Indian Act discussed in other discussion papers (ie. education, land surrenders, membership, anachronisms) the present Act, which will constitute Part I of the revised Act, will remain the same. Bands that do not opt for constitutions will continue to be governed by the existing band government provisions of the Act. They need not concern themselves with Part II, Indian Government, unless they wish to do so themselves.

18. A Band with its own constitutional form of Indian government will enjoy certain rights. Access to the Minister and other services of the Department will not be impeded. To as great an extent as possible, the design, implementation and administration of programs and activities currently under the control of the Department will be transferred to Indian governments. The system will also enable Indian governments to develop their governments without requiring Parliamentary approval each time they desire a change.
19. The establishment of community goals, then, is given over to the initiative of the Band. In the exercise of these rights comes certain responsibilities. Indian government should be based on the principles of responsibility and accountability to the community. To as great an extent as possible, Indian government should be financed in a way which enables full accountability and responsibility to the community for their own expenditures, thus decreasing the need for detailed Departmental control of finances. At the same time, the functioning of Indian government must be consistent with the principle of the Minister's responsibility to Parliament.

20. The Department will take on a new role towards opted-in Bands.

21. DIAND will, to as great an extent as possible, shift its focus from supervision and control to advice and support via advice expertise and money, while at the same time maintaining the Minister's responsibility to Parliament.

22. Under the proposed system of Indian government, Indians and Indian bands will continue the whole Federal relationship through:
 - (1) the special status of Indians and Indian lands;

 - (2) their special relationship with the Minister of Indian Affairs and especially the Minister's responsibility to preserve Indian lands and resources;

 - (3) their unique and continuing relationships to the Federal Government;

- (4) rights given them pursuant to law or treaties;
- (5) their access to programs and financing provided by the Government of Canada.

V. Components of Indian Government Constitution System

23. A mutual understanding of terms is necessary in order to discuss Indian government further.

- (1) Indian government - government systems designed by and for Indian communities;
- (2) Self determination - the ability to exercise discretionary powers - initiatives reside with the Band

24. (3) Constitution - A constitution is a fundamental set of rules, practices and principles that recognize the authority of a governing body to exercise certain powers and rights on behalf of and with the consent of the members of the community.

25. (4) Band Constitution System - a means of providing, in law as opposed to the present ad hoc, a framework for designing and recognizing Indian government constitutions. The proposed Indian government system is intended to facilitate the development of self-government by providing a statutory framework for the drafting and recognition of Indian government constitutions. These constitution procedures will enable Indian communities to design and implement their own system of government.

(5) Enabling legislation - Part II of the revised Act which specifies the means of recognizing constitutions.

26. The present form of the Act cannot accommodate the proposed changes or needs of varying Bands.

Therefore, in order to facilitate matters, it is proposed that the Act has been restructured into two parts. Each Band will have a free choice to decide to come under either Part I or Part II of the Act to the degree that the Band feels capable and needful in agreement with the Minister.

27. Where a Band has chosen not to adopt a constitution, that Band will continue to operate with the Band government provisions of the present Indian Act. This would be referred to as Part I.
28. Part II of the Indian Act would outline the basic framework for instituting Indian government constitutions including guidelines and criteria for the recognition of constitutions and the mechanisms necessary for the ratification of constitutions.
29. Indian governments under Part II will be exempt from the provisions of Part I (present Act) to the extent that their constitutions claim authority over matters dealt with in Part I.
30. The exemption from the provisions of Part I will free Indian governments (with constitutions) from many of the restrictive sections of the current Act as well as regulations passed pursuant to them.
31. For example, depending on the specific terms of an Indian Government constitution, Indian government's might be exempt from the following sections of the Act and regulations passed pursuant to them:

- S(61) Indian moneys to be held for use and benefit;
- S(64) Expenditure of capital moneys with consent;
- S(66) Expenditure of revenue moneys with consent of band;
- S(69) Management of revenue moneys by band;
- S73(1) Powers of Governor in Council to make regulations;
- S73(2) Penalty for violation of regulations made pursuant to 73(1);
- S(74)-(80) Elections of Chiefs and Band Councils;
- S(81) Powers of the Council;
- S(82) Power of the Minister to disallow by-laws;
- S(83)-(86) Money by-laws (power to tax).

Subject to the terms of their constitutions Indian governments might also be exempt from the following regulations:

P.C. 1953-1313 Band Council Procedures;
P.C. 1954-1367 Band Elections;
P.C. 1958-1451 Referendum;
P.C. 1954-856 Dog Control;
P.C. 1960-1531 Amusements;
P.C. 1954-1368 Traffic Regulations

32. The Indian Government Constitution

An Indian government constitution will be a description of the extent of the Indian government's legal authority. These authorities, or powers would be as agreed upon between the Band members and Minister.

33. Indian governments could, according to their needs, desires, and capabilities, include in their constitutions some or all of the powers are described in the following paragraphs. This is a general description of the powers an Indian government could assume. The actual constitutions would include detailed descriptions of the powers.

34. Since Indian government is a representative system, the representative functions must be provided for.

This category of powers includes those powers necessary to enable an Indian Government to establish its own system of decision-making.

The basic areas of jurisdiction in this category are:

Selection of officers: the election or selection of chiefs, councillors or other officers of Indian government, their terms of office, their duties, the holding of meetings, vacancies, disqualifications, corrupt practises, contestation of elections and the qualifications of electors or selectors and of candidates for office;

Definition and powers of governing body: holding of meetings, procedures, method of decision making (eg. vote of council), freedom of information;

Referenda: the holding of band referenda to approve, amend or surrender constitutions, to ratify the selection of officers of the Indian government, for the surrender for sale of reserve lands and other purposes which the band deems necessary;

Finance: The Indian government must spend money in the interests of the community so must be allowed to make decisions or money matters on behalf of the community.

Intergovernmental negotiations: power to negotiate and execute agreements with other levels of government.

35. Indian government must also make provision for the areas where it will distribute or allocate services and resources.
36. This category deals with the powers that an Indian government could assume for the provision of government services. Indian government will be able to assume responsibility for the design, administration, purchase, and implementation of programs including but not limited to:

health, health services, hospitalization and
disease control;

social assistance and social services;

education;

economic development;

housing infrastructure and community facilities
public works;

cultural development;

recreation

environmental protection

37. The Indian government must also have regulatory functions in order to fulfill its obligation to protect the best interests of the community.

38. This category deals with the range of powers required by an Indian government in order to regulate social, commercial, recreational and other similiar matters on the reserve. Regulatory powers would include but not be limited to:

- (a) the control and regulation of natural resources on the reserve;
- (b) the preservation, protection and management of fur-bearing animals, fish and other games;
- (c) the control and regulation of domestic and other animals;
- (d) the control and destruction of insects, pests and noxious substances;
- (e) environmental pollution and nuisance;
- (f) the regulation, construction and maintenance of roads, bridges, ditches and other local works;

- (g) the regulation, construction, maintenance and use of public wells, cisterns, reservoirs and other water supplies;
- (h) the regulation, construction, repair and use of buildings whether owned by the band or its individual members;
- (i) the regulation, establishment and maintenance of lighting, heat and power sources;
- (j) the regulation of matters dealing with the health and safety of residents and the prevention of disease including: garbage and waste collection and disposal, the inspection of premises to prevent overcrowding, and the establishing of standards to provide for sanitary conditions in private and public premises, and other such matters;
- (k) zoning;
- (l) the survey and allotment of reserve lands to individuals and the setting apart of reserve lands for common use;

- (m) the expropriation of reserve lands for Indian government purposes and payment of compensation;
- (n) the regulation and control of traffic;
- (o) the regulation of the use of liquor on reserve;
- (p) the regulation of public games, sports events and other amusements;
- (q) the regulation and licensing of business, callings, trades and occupations;
- (r) the regulation of persons other than residents entering the reserve;
- (s) the regulation of certain matters dealing with band membership; public affairs
- (t) the establishing of curfews;
- (u) the control of firearms;

- (v) the prevention of disorderly conduct;
- (w) the enforcement of band by-laws;
- (x) the imposition of fines for contravention of by-laws.
- (y) All aspects of Land Management except alienation.

Contingencies

- 39. The effectiveness of the Indian government system will depend to a great extent on the ability of Indian governments to enforce the by-laws they pass.
- 40. This will require changes in the courts and policing mechanisms currently used for the enforcement of by-laws.
- 41. One option for ensuring enforceability would be to increase the authority of Indian Justices of the Peace appointed under S. 107 of the Indian Act.
- 42. The area of by-law enforcement and the more general area of administration of Justice is currently being studied by DIAND and various Indian organizations.

Criteria and Guidelines

43. The Federal Government and the Minister of Indian Affairs have a special responsibility to protect the interests and resources of the Indian people. This special responsibility makes it incumbent upon the Federal Government to ensure that Indian government constitutions conform to certain limited, but fundamental, criteria and guidelines. These guidelines are designed to ensure that the interests and resources of Indian communities are protected.

The following criteria and guidelines for the drafting of constitutions would be included in Part II of the Act.

(a) Chiefs and Councillors

Each Indian government would be required to pass a law relating to the selection of chiefs and council or other officers as provided in the constitution. The by-law would deal with the following matters:

- (i) number of chiefs and councillors, or other officers,
- (ii) terms of office,
- (iii) qualifications,
- (iv) procedures respecting the conduct of the selection such as method of voting, polling hours, notice, electoral divisions, proxies, supervision of polling stations, details of customary systems, etc.,
- (v) eligibility of electors,
- (vi) vacancies in office,
- (vii) disqualification,
- (viii) conflicts of interest.

The selection by-law would require ratification by referendum.

Any properly interested party would have the right to contest an election on the grounds that the election did not conform with the governing bylaw or that there were improper practices in the conduct of the election.

(b) Financial Responsibility and Accountability

Each Indian government would be required to implement procedures to ensure that their communities were kept informed of how their government funds were expended and raised. One method of doing this might be to pass a by-law requiring public disclosure, discussion, and perhaps community approval of all major budgetary matters. There would also be a requirement to have well defined financial management systems.

(c) Legal Status

The Indian government Sections of the Act would give Indian governments a specific legal status.

Like other levels of government (federal, provincial) Indian governments would, by virtue of their legal status, be capable of suing and being sued in their own name and having perpetual succession. In addition, as legal entities, Indian governments would be capable of having all the functions, duties

and responsibilities conferred on them by the Act, their constitutions, or pursuant to the administration of government programs, as well as all powers, functions, duties and responsibilities necessarily incidental and/or ancillary to the exercise of these.

The exemption from seizure provisions of S89 and 90 will continue to apply to Indian governments except in those cases when an Indian government decides it would be in its best interest to pledge specified assets as collateral on a contract. This would facilitate economic development projects by making it easier for Indian governments to negotiate loans with financial institutions.

(d) Referenda

Indian governments will, if they choose, have jurisdiction over matters which could effect the basic nature of a reserve community.

Examples of such matters are decisions on: the permanenet alienation of reserve lands, expenditure of large sums of band capital

funds, membership, term of office, ratification of constitutions. In order to guarantee that the wishes of the community will be carried out, Part II of the Act will require that all such fundamental decisions be ratified by a referendum. Procedures for the conduct of referenda will be specified in the Act.

(e) Regulations

The Minister, after consultation with Indian governments would have the power to recommend to the Governor-in-Council regulations for purposes of implementing the provisions of Part II. Regulations might be used for purposes such as setting minimum standards that Indian governments would be required to meet in the provision of programs such as social assistance or education. In line with the aim of increasing the authority and responsibility of Indian governments the use of regulations would be strictly limited.

(f) Land Management

Indian governments would be required to establish a land registry, tenure system, and other such instruments as are needed for the orderly and lawful transactioning of land.

Recognition of Indian Government Constitutions

44. As part of the Minister's special relationship with the Indian people he has a responsibility to ensure that Indian people have the means available to them to make the basic decisions regarding the government of their communities. The Minister will fulfill this responsibility by:

- introducing amendments to the Indian Act;
- recognizing the constitutions of Indian governments;
- negotiating and ratifying amendments to constitutions;
- intervening in the operations of an Indian government when there is clear evidence of a gross violation of the terms of a constitution.
- participate with Indian governments in a review of constitutions every five years.

45. The Minister will have no authority to interfere in the day to day operations of a Indian government. Once its constitution has been recognized the Indian government will have full freedom of action within the terms of that constitution.

The Process:

46. There are two main elements to the whole Indian Government process. Enabling legislation must be passed in order to give the weight of law and legal status to Indian government constitutions.
47. After appropriate consultation and discussion with concerned parties the Minister will introduce to Parliament legislation to enable the establishment of a system for the recognition of Indian government constitutions.

Negotiation and Recognition of Constitutions

48. At the request of a band - and only at their request - negotiations will be begun for the drafting of a constitution for that band.

49. Negotiation of constitutions will be carried on between the Minister, and/or staff designated by him, and the concerned band. By mutual agreement, other organization, such as the Indian Government Commission or an Indian association, could take part in the discussions.

50. The constitutional system is based on the principle of opting-in: no band will be forced to adopt a constitution which is not satisfactory to it. In the case of a dispute over the terms and conditions of a constitution either party will have the right to refuse to agree to a proposed constitution.

51. In determining the specific areas of jurisdiction to be included in a constitution the characteristics of the community would be taken into consideration. Some of the elements that might be considered are:
 - (a) resource availability;

 - (b) location and access to services;

 - (c) political will of the community;

(d) leadership resources;

(e) internal communication.

52. The Minister's power to refuse to recognize a constitution will not be arbitrary. Part II of the Act will specify the factors, such as those noted above, that the Minister will be required to take into consideration when deciding on.

53. A constitution will come into force when signed by the Minister and duly authorized representatives of the Indian government requesting recognition. A community referenda will be required to ratify a proposed constitution.

54. Briefly, the process will be as follows:

- (1) Indian band proposes a constitution describing powers of:
 - a. Representation - establishes model of government.
 - b. Regulation - establishes powers to be exercised.
 - c. Allocation - establishes program to be operated.

- (2) Minister discusses constitution with band.
 - a. Agreement on standards, accountability, responsibility
 - b. Agreement on funding levels and programs.
(Basic, extended, capital)
 - c. Agreement on Review system and Minister's role.

- (3) Public hearings at the community level (if desired).
 - a. Band Council to receive approval from community to apply to exercise powers as local government.

- (4) Band ratification of constitution.
 - a. Appropriate referendum held
 - b. Appropriate bylaws passed

- (5) Ministerial ratification of constitution.
 - a. Band is recognized as legal entity for purposes under constitution
 - b. Band operates with legislated authority.

Continuation

After a Band Constitution has been in force for a while.

Amendments

55. At the request of the Minister or an Indian Government, discussions will take place to amend a constitution. Negotiation and ratification of amendments will be carried out in the same manner as the original negotiation and ratification of the constitution.

Intervention

56. In cases where there is clear evidence of a gross violation of the terms of a constitution the Minister will have the power to appoint a trustee to manage the affairs of an Indian Government or in more severe cases to revoke a constitution. In both cases the Act and/or regulations will specify factors to be taken into consideration in making a decision. The Minister will be required to state his reasons.

Standards

57. The assumption of program powers by local Indian governments particularly over areas involving other departments such as N.H.&W. and C.M.H.C. (health, housing) or other governments (education), raises the issue of standards which Indian governments will have to achieve in order to assume further responsibilities or to continue to be assured of government support. While the assumption of broad powers over programs by Indian governments would not preclude the prescription of external standards (especially in areas such as health and education where general societal standards are considered desirable), local control and factors such as culture, climate and demography may require greater flexibility of standards in order to accommodate local needs and aspirations. It has not yet been determined how these details will be specified or whether they should appear in the Act or in constitutions. In some instances the standards may be negotiable under individual agreements especially where the impact of a program is highly localized and its implications do not extend beyond the reserve.