

HELPING INDIANS TO HELP THEMSELVES
--A COMMITTEE TO INVESTIGATE ITSELF
-THE 1951 Indian Act Consultation
Process

E92
J63
c.1

HELPING INDIANS TO HELP THEMSELVES --
A COMMITTEE TO INVESTIGATE ITSELF
THE 1951 INDIAN ACT CONSULTATION PROCESS

by

IAN V.B. JOHNSON

for

Treaties and Historical Research Centre
Indian and Northern Affairs Canada

1984

E92
J63
c.1

This study would not be what it is without the support and assistance of my research associate Cynthia C. Wesley, Executive Director of KYKAIK.



Indian and Northern Affairs Canada Affaires indiennes
et du Nord Canada

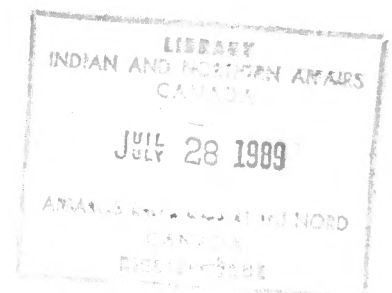
LIBRARY - BIBLIOTHÈQUE

E92 J63 c.1
Johnson, Ian V. B.
Helping Indians to help
themselves

10-482 (1-88)

Let us have Christianity and civilization to
leaven the masses of heathenism and paganism among
the Indian Tribes; let us have a wise and paternal
government faithfully carrying out the provisions
of our treaties [Native people] are wards of
Canada, let us do our duty by them

(Morris, 1880:296-97)



Contents

Introduction	v
Helping Indians to Help Themselves: The 1951 Indian Act Consultation Process	1
Conclusion	54
Appendix A - Excerpts from Committee Minutes	56
Appendix B - Summary of Conference Proceedings	58
Bibliography	62

Introduction

The Indian Act is the single most important piece of legislation dealing with Indians in Canada. In its present form it is the culmination of two hundred and fifty years of British-Canadian policy directed at governing relations with the aboriginal peoples in Canada. Indians have been the subject of continuous special legislation in Canada aimed at attempting to bring them into the mainstream of society and reducing their cultural and political independence. In many ways this approach has worked, but to a great extent these areas remain peripheral to more serious concerns. Today Indians endure low life expectancy, high infant mortality, alarming rates of violent death and suicide, unemployment statistics in the 80-90 per cent bracket, the lowest average income levels of any Canadians, alcoholism and rates of incarceration far above the national average, and in some communities total social breakdown.

While social disintegration has accelerated, the political philosophy of Indian nations has remained quite consistent. Indians continue to look toward their aboriginal and treaty rights as the foundations of their independence from Canada. Some First Nations take this political philosophy to its historical roots in sovereignty and the right to self-determination. Others express it in terms of a separate order of government within the Canadian federation. The Indian Act

and government by band council under the Act have spread deeper roots in some communities than others. The philosophy of independence covers a broad spectrum of alternatives.

In this study, consultation between Indians and the Canadian government between 1946 and 1951 on revising the Indian Act will be analyzed. Indian views on the Indian Act and on Indian/government relations in general will be given a great deal of attention in an attempt to provide an accurate sample of opinion. The most important and most frequently cited issues will form the focus for Indian views examined in this paper. The consultation process itself will be examined, with the accent on the predilections of the Special Joint Committee through its terms of reference and the opinions expressed by its members. The testimony of select expert witnesses and public service personnel will also be examined. Finally, the recommendations of the Special Joint Committee and their effects on legislation and the Department of Indian Affairs will be discussed. The historical development of the Indian Act will be dealt with briefly by way of introduction to post-war concerns about Indian affairs. Certainly the contrast between the impressive war record of Indian veterans and their predicament upon returning to Canada served to spark calls for revisions to the Act and better treatment of Indians.

It is interesting to note the parallels between Indian and government opinion in the 1940s and the views expressed in the 1980s. The philosophical dichotomy separating Indians and government today on political, economic and social issues has not changed over the past thirty-five years. While the government and the Indian Affairs department are less obviously paternalistic today, Indian leadership has become increasingly aggressive and vocal in their efforts to communicate their views to Canada. The question of self-government, resurrected in the public forum by the Penner Committee in 1983, looms as the central issue in the post-war period. The evidence is instructive.

Helping Indians to Help Themselves:
The 1951 Indian Act Consultation Process

Protection, assimilation and isolation have been the various goals of Indian policy since Britain first began to settle what is now Canada. These goals were pursued at various times by British governments seeking alternately to protect settlers from Indians, protect Indians from settlers, integrate Indians into the dominant society, and isolate Indians from the mainstream of Canadian settlement. One of the central themes of government action on these policies has been legislation to 'protect' the person and property of Indians from exploitation by non-Indians. Legislation dealing with Indians has been based on the special political status of Indians in Canada conferred by treaties.

Interestingly, it has also been the government's purpose to eliminate this special status through the ultimate goal of assimilation. This would be achieved by educating Indians in the cultural norms of 'white' society and providing training aimed at 'civilizing' Indians by instilling Euro-Canadian values. Through this process, it was thought, Indians would lose their cultural identity and no longer require special status. However, legislation aimed at facilitating this goal has acted more often to undermine it.

The underlying principles of Canada's Indian policy are rooted in the Indian policy developed by Britain prior to Confederation. The British had a military interest in Indians that lasted until the end of the War of 1812. For the century prior to this war, Native people had outnumbered Europeans in North America. The British therefore established military alliances with Indian nations to assure their foothold on the continent.

To maintain these alliances, the British established an Indian Department in 1765. (Alvord, 1908:24-26) Indian relations were a responsibility solely of the Imperial government. As settlement spread, the Indian Department also assumed responsibility for protecting Indians and their lands from encroachment. This policy was incorporated in the Royal Proclamation of 1763. (Cummings & Michenberg, 1972)

The Royal Proclamation, which has the effect of a statute in Canadian law to this day, also provided that Indian nations had the right to self-government over their people and lands. It also established clear principles for the extinguishment of Indian land title. This process was still in effect when land surrender treaties were undertaken. (Scott, 1913:700-719)

Throughout this period, military considerations were paramount. Policy dictated relations with the Indians as equal and independent

entities. However, as the nineteenth century approached, settlement interests gained the upper hand. As a result, the winds of change began to blow in Indian affairs. They would culminate in mid-century with Sir Francis Bond Head's removal plans. In the interim, Indians came to be seen and treated more as obstacles to settlement than as strong allies upon whom the early settlers had relied to survive in the new environment. Encroachment on Indian lands, breaches of treaty promises, fraud, theft and myriad other social crimes were committed against Indians. The Native population lost its economic base, became debilitated by alcohol, and suffered as the butt of jokes and pranks.

After 1815, Britain adopted a policy based on 'civilizing' the Indians. The policy developed out of the evangelical humanitarian movement in Britain, which sponsored missionary work among Native populations. These societies worked to bring the 'boon' of British civilization to Indians in the form of technical and religious training. The Aborigines Protection Society worked in Upper Canada to persuade both the Imperial and colonial governments to foster instruction of the Indians in European civilization. (Surtees, 1969:87-90)

In response, the government initiated several experimental agricultural communities among the Indians of Upper Canada in the 1830s. They were essentially Indian reserves where the indigenous population was instructed in religious matters and agricultural

techniques. They were, in fact, social laboratories where Indians could be instructed, acculturated and eventually released into the larger society as 'civilized' individuals. The experiments failed because they did not take into consideration the integral strength of Indian society.

By 1850 legislation was passed to protect Indian lands from white encroachment. This was done to entrench the isolation policy of Bond Head, who had succeeded in gathering Indians onto large reserves for their 'protection'. At the same time the first liquor act concerning Indians was passed in an attempt to stop the debauchery that was plaguing Indian communities. (Statutes of the Province of Canada 1839, 1840, 1850)

Also in 1850, the reserve system came under attack. While maintaining that the goals of these social laboratories were positive, the technique of isolating Indians was questioned. Many thought that it would be better to instruct the Indians in an urban environment where they would benefit more rapidly through a natural assimilation process. (Hodgetts, 1955:210)

This reflected another nascent change in Indian policy. Civilization was being abandoned in favour of total assimilation. Indians were no longer to be taught to survive as a racial or ethnic minority in a foreign social milieu, they were to become 'European' in every sense

of the word. To facilitate this process, Indians were given special status through legislation. "An Act to Encourage the Gradual Civilization of the Indians in this Province, and to Amend the Laws Respecting Indians" was passed in 1857. (S.P.C., 1857)

This Act set the stage for later developments. After outlining its goals of encouraging 'civilization' and removing all legal distinctions between Indians and Canadians, the Act proceeded to define who was an Indian and stated that an Indian could not be offered the rights and privileges of Canadian citizenship until he had proved that he could read and write, was free of debt, and was of good moral character. If he met these criteria, he would be put on a probation list for one year to demonstrate his 'civilized' character, after which he could be enfranchised. Thus the Act that sought to remove distinctions actually introduced more rigid social criteria than ever before. In fact, many European colonials at the time could not have satisfied the criteria.

These principles continued unchanged, but the emphasis placed on them did fluctuate. Protection of Indians and their lands slowly gave way to a process for the gradual 'civilization' of Indians. Assimilation eventually emerged as the ultimate goals. These priorities were retained by Canada under the authority of section 91(24) of the British North American Act. (Dreiger, 1967) Legislation passed by the Parliament of Canada in 1868 consolidated all previous colonial

legislation. Only the definition of who was an Indian and the penalties for trespass on Indian property changed. (Statutes of Canada, 1868)

In 1869 the goals of civilization and assimilation were incorporated in "An Act for the Gradual Enfranchisement of Indians ...". While this Act alluded to a continuation of pre-Confederation policies, it also announced a shift in pace. Whereas colonial legislation had promoted gradual civilization, this Act sought total assimilation through enfranchisement. An important aspect of this legislation was the power vested in the Governor in Council to impose elected councils on Indian reserves and to remove from band office those considered unqualified.

The new federal government developed its own Indian policy in the 1870s. It was during this decade that Canada adopted the principles of the Royal Proclamation of 1763 and entered into treaties with the Indian nations of the plains. Canada also established the reserve system in the west as a laboratory for cultural change. (Morris, 1880) In addition, Parliament passed the "Act to amend and Consolidate the laws Respecting Indians", more commonly known as the Indian Act, in 1876, thus laying the foundation for Canada's future Indian legislation.

The new Indian Act contained all of the protective elements of the earlier legislation, including stricter prohibitions against non-Indian use of Indian lands. The most innovative change in the new Act was the introduction of the location ticket. This meant that reserves were surveyed into individual lots, and band members were assigned these lots. To show title, the Superintendent of Indian Affairs issued location tickets. Location tickets were given only to those individuals who could show that they were 'civilized', as defined in the earlier legislation. Once the location ticket had been 'awarded', an Indian went on probation for three years, during which time he could earn the 'right' to be enfranchised. Upon enfranchisement the individual received title to his land. (S.C., 1876)

The new Indian Act also included provisions for more immediate enfranchisement. Simply by attending university or earning a professional degree an Indian would be enfranchised. Such an accomplishment in itself was thought to demonstrate acceptance of the values of the dominant society.

It is clear from this legislation that Canada wanted Indians to adopt Euro-Canadian social norms and wished to suppress Indian values and Native culture through education in 'white' religion, political systems, economic principles, concepts of property and social mores. The goal was to annihilate Indians as a separate and distinct ethnic group, after which the social laboratories designed to achieve this end would disappear as well.

Indians from Ontario eastward rejected the new Indian Act. (Indians west of Lake Superior were not immediately affected, because the government did not consider them 'advanced' enough to take advantage of it.) They knew that if they accepted the Act and the elective system it imposed, they would give the government too much control over their affairs. They registered their protests with the government.

In 1880 the Indian Act was altered. (S.C., 1880) The changes provided for the management of Indian affairs by a newly-created Department of Indian Affairs within the federal civil service. The elective system was reinforced, but otherwise the Act remained largely unchanged.

The persistent emphasis on the system for electing band councils was believed necessary to destroy the indigenous tribal political system, which often proved remarkably resilient. The work of missionaries, the operation of the reserve system, and other provisions of the Indian Act were thought to be well on the road to undermining the rest of Native culture, and it was left to the elective system to acculturate Indians to the Canadian political system. This emphasis on the elective system was reflected in the passage of the Indian Advancement Act (S.C., 1884), which was designed to confer certain privileges on bands that adopted the elective form of government.

Although most bands rejected the Advancement Act, the elective system prescribed under the Indian Act was imposed on bands by the government. Many bands had been electing their traditional leaders as a means of getting around the Indian Act system. The 1884 Act prohibited re-election to the office of Chief, thereby undermining this clever manipulation.

The Advancement Act failed, despite government interference in Indian politics. Nevertheless, the government did gain control over Indian resources and used that control to allow development of Indian resources without band approval.

Efforts to 'civilize' Indians regardless of the costs, which had characterized legislation since 1870, were beginning to wane by the turn of the century. It was becoming increasingly evident that a different approach was required to satisfy the special problems of Indians and to respond to the regional differences across Canada.

While Clifford Sifton, Minister of the Interior after 1896, thought that Indians should be maintained on reserves, instructed in agriculture and self-government, and prepared for assimilation, his Prime Minister, Sir Wilfred Laurier, voiced these sentiments on the subject:

The question is whether these Indians shall have the right to pass by-laws which the statute gives them the power to pass, untrammelled by the Superintendent General of Indian Affairs. The law provides that certain powers shall be exercised by the councils of the Indians. Is there any reason why they should not have the power of any municipal council, and that their by-laws should not become valid by the mere fact that they have been passed by the council? Any other council can pass by-laws which cannot be affected one way or the other by the interference of the Government. The argument which is used is that if these men are allowed to vote in national affairs, 'a fortiori' they should have the right to vote on their own local affairs. Certainly, if they have the right to pass judgement as to who shall be the Superintendent General of Indian Affairs, they should have the power to decide who shall be the toll-keeper on their own reserve. If they can vote as to who shall be the Prime Minister, they should have the power to appoint a constable. It seems to me if they have the greater power, they should have the lesser power also. (C.S.P., 1890:2738)

This attitude was echoed by William Paterson, Member of Parliament for South Brant, in 1894:

One of the great difficulties in framing an Indian Act is the different stages of advancement of the various tribes ... It seems to me that in the case of the more advanced bands, we should legislate to give them greater control of their own affairs and not take away from them the limited powers that they already have. It seems to me we should not take from the Indians and centre more power in the Superintendent General. (C.S.P., 1894:5546)

Amendments to the Indian Act in 1895, however, tended to strengthen the authority of the government and the discretionary power of the

Superintendent over band affairs. (C.S.P., 1895) This was also true of amendments in 1898. (C.S.P., 1898) This was illustrated by statements such as the following with respect to section 70 of the Act:

The occasion might arise when most important improvements of a public character on an Indian Reserve might be opposed and altogether prevented by the Indians. In such case I think the Governor General in Council should have the power to authorize the expenditure without the consent of the band. I think it advisable to submit expenditures for all purposes except those specially mentioned in the clause to the Band, as it will then be evident that the Superintendent General or the Governor in Council do not wish to act in an arbitrary way; but in cases of special need, where a Band refused to vote money in its own interests the Governor in Council should have the power to take it without their consent.
(PAC, RG10, vol. 6809, file 470-2-3)

By the turn of the century, people began to question whether the reserve system was working as the social laboratory to facilitate assimilation it had been designed to be. In fact many thought that the system presented a formidable barrier to assimilation. The degree of government interference required to make the system work was oppressive. In many ways the effects of the policy were the opposite of those intended.

Resistance to the system within the Indian community was strong then and remains strong today. The Indian agent for the Mississauga of New Credit described Mississauga opinion in 1901:

It is the opinion of this Council, that the Indian Act and Indian Advancement Act should be so amended as to confer more powers on the council, in dealing with their affairs, and that a Councillor be appointed to examine the said acts and report the desired changes to be made. (PAC, RG10, vol. 6809, file 470)

The Deputy Superintendent General of the Indian Department had an opposing view:

There has of course been comparatively little experience of the working of this advanced stage of the Department's policy; but the question presents itself for consideration, as to whether it may not be advisable to curtail the course of training and expedite the desired end by providing some more simple system for general enfranchisement, and possibly making it at a certain stage compulsory. The question, however, is beset by many difficulties, and can only be approached with extreme caution. (D.I.A., 1898:XXVI)

The civilization policy of John A. Macdonald's Conservative government had failed. Indian legislation in the post-Confederation period had heightened the ethnic and racial differences between Indians and the rest of Canadian society rather than diminishing them. The following quotation is an insightful comment on the failure:

It seems strange and can not be without significance, with what rare exceptions, Indian communities have refused to avail themselves of the provisions of the advancement part of the Indian Act, designed as a stepping stone to municipal government. It is not that the Indians lack the spirit of independence nor the desire to conduct their own affairs, but that

they fail to recognize the benefits likely to accrue from the adoption of the white man's methods. This without question, largely results from the limitation of interests and ambitions imposed by the segregation of existence upon reserves, and as a natural consequence the somewhat ill-defined craving of the Indians for progress, rather seeks scope in the direction of an effort to return to the independence of the old tribal form of government, a desire which keeps cropping up afresh amongst communities possessed of most life and character, and which is often too hastily assumed to be the mark of a retrogression on their part. How this misdirected energy is to be guided into proper channels, how the reserve-imposed limitation of interest is to be broken down, seems a hard problem to solve. (D.I.A., 1909:XX)

The Indian Act, burdened with amendments enacted since 1886, had become internally contradictory and much too cumbersome for practical use by 1906. A new, consolidated Act appeared in the Revised Statutes of 1906, with the Indian Advancement Act incorporated as Part II. (C.S.P., 1906)

For the next two decades the central thrust in the administration of the Indian Act was to strengthen the Superintendent General's discretionary power over Indian bands. In practical terms, band councils became mere consultative bodies to decision makers in the Department of Indian Affairs. The Indian Act placed limitations on the functions and authority of band councils through the discretionary powers of the Superintendent General and the statutory authority of provincial governments. The consequences of this system have been described as follows: "Wide discretionary power attached to local

offices held by outsiders leads inevitably to power manipulation, wide and arbitrary interpretation of official capacities and instability of strategies adopted toward Native people." (Smith, 1975:36-40)

It soon became apparent that too much arbitrary power was vested in the Superintendent General of Indian Affairs and that too much authority was being delegated to local Indian agents to interfere in the business of band councils. Indians complained that they could get no business accomplished because of constant interference by the Department of Indian Affairs. The complexities of the administrative system also caused frustration for Indians. In the final analysis, the Indian Act system undermined the foundation of Indian government and created a unique kind of dependency upon the Department of Indian Affairs. The situation was worse because the Superintendent General was supposed to be both the representative of the government and the guardian of Indian rights. Without question the Superintendent General "found it impossible to advance the interests of both parties at the same time." (C.S.P., 1947)

When the Depression hit Canada, the business of the Department of Indian Affairs slowed down as concern about the national economy took precedence over other business. On the heels of the Depression, World War II also distracted attention from Indian matters. What business was carried on seems to have been conducted somewhat aimlessly and without a clear policy mandate or direction. In part, this may have

reflected a realization that the Indian Act system had not been working as planned. Nevertheless, the racist attitudes that had spawned the Indian Act remained intact, and the goal of complete assimilation was not lost. The following statement clearly reflects this:

Our Indian Act has been aptly described by a prominent official of the United States government as 'A road to full citizenship'. Our whole administration is based upon the principle of advancement, and our objective, remote though it may be, is final and more or less complete assimilation of the Indian population into the white communities. There is no logical reason, in my opinion, for keeping an individual or group of individual Indians in status when they have, through biological change and other circumstances, reached the stage of civilization equal to that of white men in adjacent communities. Full citizenship should follow proper and intelligent development, and preparation to exercise that right. Our persistent and consistent efforts to develop local self-government on reserves are looked upon as preliminary to enfranchisement. (PAC, RG10, vol. 6810, file 470-2-3)

Public interest in Indian affairs was rekindled after World War II, and attention focused on the racist legislation and policies that treated Indians as 'uncivilized'. In fact, Indians were not even seen as citizens of Canada by virtue of their legal designation as Indians under the Indian Act. Numerous social organizations, churches, veterans' associations, and interest groups pressed the federal government to remedy the situation. A Royal Commission was called for to revise the Indian Act and put an end to racial discrimination.

(RG10, vol. 6810, file 470-2-3, Vol. 12, part II) In response to these pressures, a Special Joint Committee of the Senate and House of Commons was created in 1946 to review the relationship between Indians and the government and to make recommendations for revising the Indian Act and Canada's Indian administration. The committee was ordered to examine the Indian Act, the general administration of Indian affairs and, specifically,

1. Treaty Rights and Obligations.
2. Band Membership.
3. Liability of Indians to pay taxes.
4. Enfranchisement of Indians both voluntary and involuntary.
5. Eligibility of Indians to vote at Dominion elections.
6. The encroachment of white persons on Indian reserves.
7. The operation of Indian Day and Residential Schools.
8. And any other matter or thing pertaining to the social and economic status of Indians and their advancement, which in the opinion of such a committee, should be incorporated in the revised Act. (Canada, S.J.C., 1946:iii)

It is interesting to note the priority assigned to various issues by Parliament. It is also significant that many important issues were not addressed, particularly political questions such as the power and authority of chiefs and councils on reserves, funding mechanisms and trust accounts, jurisdictional disputes with the provinces and Indian self-government.

The various members of the Committee already held strong views on the general administration of Indian affairs; these views pre-determined many of the recommendations the Committee was to make. During its three years of operation, the Committee spent almost as much time debating form, process and other matters unrelated to Indian concerns as they did examining the evidence and discussing substantive issues. One member stated early in 1946 that the objective of Indian policy should "consist basically in assisting the Indians to assist himself to absolute equality in Canadian society". (S.J.C., 1946:663) The co-chairman of the Committee, D.F. Brown, made this predilection more specific when he stated to the Committee: "And I believe that it is a purpose of this Committee to recommend eventually some means whereby Indians have rights and obligations equal to those of all other Canadians. There should be no difference in my mind, or anybody else's mind, as to what we are, because we are all Canadians." (S.J.C., 1946:744)

This paternalistic disposition to their task was accentuated by the Committee's decision to hear evidence from government officials and expert witnesses before listening to Indian concerns. "The settled policy of the Committee is that we must have the departmental presentation completed before we hear from any outside organization." (S.J.C., 1946:No. 7) The paternalism reached discriminatory proportions on at least one occasion when Major Mackay, Indian

Commissioner in British Columbia, told the Committee, "An Indian requires constant assistance and supervision. It does not do to suggest certain things to them and leave it at that." (S.J.C., 1946:124)

Nevertheless, the Committee recognized its obligation to collect evidence relevant to revising the Indian Act, and R.A. Hoey, Director of the Indian Department, reminded the Committee that "the British North America Act placed on the federal government the responsibility for the care and general advancement of Indians".

Hoey then described to the Committee the diversity and complexity of the task at hand:

May I now turn to a more general discussion of ways and means for the welfare and advancement of our Indian population. It must be borne in mind, in this connection, that we are called upon to deal with a group who differ widely in economic achievement and in cultural attainments, a group the members of which cannot be described as, in any sense, homogeneous. When we pause to consider material and social advancement, we immediately think of groups of Indians in certain sections of Ontario particularly and in British Columbia who have advanced to a stage that renders them almost indistinguishable from their white neighbours; but we must also think of the nomadic bands in the north who still live in tents, dilapidated shacks or teepees. This group has, in my judgement, a peculiar claim on the resources of the nation to provide them with the educational, medical, and other facilities necessary to their well-being and gradual advancement. (S.J.C., 1946:23)

In an effort to be conciliatory, the Committee broke its established protocol on the request of Andrew Paull, President of the North American Indian Brotherhood. Mr. Paull was invited to make a statement before the Committee during the 1946 sessions. By way of introduction, the co-chairman made a statement as to the intent of the Committee. "Permit me ... to assure all Canadian Indians and everyone interested in their welfare, that this Committee is doing and will do all in its power to ensure that the forthcoming revision of the Indian Act will, in every sense, be the Magna Carta of Canadian Indians." (S.J.C., 1946:418)

Andrew Paull had a different interpretation of what the Committee was about. He told the Committee that Indians in Canada had called for an investigation of Indian/government relations by a Royal Commission constituted with Indian representation. Instead, Paull said the government had established the Special Joint Committee. "Now you are sitting here as a committee investigating yourselves." (S.J.C., 1946:420) Paull also complained that the Committee had no Indian representation on it. When the chairman asked Mr. Paull to restrict his comments to the terms of reference of the Committee, the determined national President levelled this stern response: "I might as well warn you that I am going to say a few disagreeable things, so you might as well be prepared." (S.J.C., 1946:420) With that the witness was permitted to continue his statement.

Paull addressed a number of concerns among Indian people in Canada, not all of which fell within the terms of reference of the Committee. He first asked the government to decide whether it intended to deal with Indians as wards or as citizens. This was necessary before any other terms of the Indian/government relationship could be defined. (S.J.C., 1946:420-421) This point was also central to the question of whether Indians were subject to taxation in Paull's argument. Paull condemned the Indian Act as "an imposition, the carrying out of the most bureaucratic and autocratic system that was ever imposed upon any people in this world of ours". He then charged the Committee, "representing the Government of Canada, with having violated and abrogated the treaties...". "Why does someone make a treaty with somebody?" Paull queried. "You have to be equal to somebody before you can make a treaty with somebody. We say to you now that those Indians at that time were your equal when they made the treaties." (S.J.C., 1946:422) Paull went on to illustrate how treaties had been abrogated. He cited the April 16, 1894 Act transferring title of the natural resources in Ontario to the government of Ontario. He argued that this transfer was beyond the authority of the government of Canada, "because in that conveyance they violated and they abrogated the terms and conditions of the treaties that were made with the Indians in the Province of Ontario". (S.J.C., 1946:424-425)

Paull also called for Indian self-government. (S.J.C., 1946:427) In doing so he was interested primarily in eliminating Indian agents and

the administration of Indian affairs by the Department of Indian Affairs. "We condemn as a piece of useless legislation, whatever you white people call it, that department of your government which is called Department of Indian Affairs". (S.J.C., 1946:426) Paull told the Committee that what was most important in improving the Indian situation in Canada was "to lift up the morale of the Indians in Canada. That is your first duty. There is no use in passing legislation about this or that if you do not lift up the morale of the people. The only way you can lift up the morale of any people is to let their members look after themselves and look after their people." (S.J.C., 1946:427)

In conclusion, Paull filed an official statement from the North American Indian Brotherhood which addressed some of these points (see Appendix A). (S.J.C., 1946:428-29)

In response to what must have been a dramatic appearance by Andrew Paull, Committee member B.H. Castleden introduced a motion that five Indians representing the distribution of Indian people across Canada be invited to monitor the Committee's proceedings. (S.J.C., 1946:No. 11) The resolution was lost among disparaging comments from other Committee members, such as the following from Mr. Reid: "...I think it is useless to have Indians sitting around here." (S.J.C., 1946:485) Other members suggested that choosing five Indian representatives would cause too much internal conflict in the Indian

community and that it was premature to have Indians in Ottawa "wasting their time". (S.J.C., 1946:485-494) The Committee adopted the following motion on the subject: "That while the Committee is happy to welcome to any open meeting, any person interested in the proceedings of the Committee, it is not of the opinion that at the present time the work of the committee would be facilitated or expedited by authorizing the constant attendance before it, with watching briefs, of any number of Indians or other representatives." (S.J.C., 1946:494) By contrast, R.A. Houey, Director of Indian Affairs, and his executive assistant never missed a meeting of the Special Joint Committee.

The public credibility of the Special Joint Committee was subsequently damaged when the Canadian Press carried a story about Castleden's defeated motion on its national wire service. (S.J.C., 1946:535) An article in the Toronto Star was headlined "Defeat Move To Let Indians Give Opinion". (S.J.C., 1946:512) The Owen Sound Daily Sun-Times ran an article entitled "Refuse To Name Indian Members To Commons Body" and concluded its story with a quotation from Mr. Castleden: "We don't get a proper picture of the Indian problem unless we have Indians here to listen to the departmental evidence and then give us their opinion of it. The Indian hasn't been given a square deal; here is an opportunity to give him British justice." (S.J.C., 1946:512) This incident caused hard feelings among some Committee members and cast public suspicion on the proceedings of the Committee, but otherwise the business of the Committee went on as usual.

Brigadier O.M. Martin, Magistrate for the County of York and a Six Nations Band member, was called as an expert witness. Martin emphasized the general distrust among the Indian population for the Department of Indian Affairs: "...but one thing they have in common is an antipathy towards the Indian Affairs Branch, more especially among the older people. It is most unfortunate that this is so, because the opposite should be the case. In looking for the reasons for this feeling of distrust, and, in some cases, active antagonism which the Indian feels toward the Branch and its officials...", Martin offered to relate some personal experiences. (S.J.C., 1946:746)

He related how the Six Nations Council had decided to send two boys to law school so that the Six Nations government would have the benefit of dealing with the Canadian government within the same conceptual framework. The Department of Indian Affairs refused to approve the release of Six Nations Band monies to the band council for the boys' benefit. Years later, Martin stated, he had an opportunity to ask the Deputy Superintendent General of Indian Affairs why the request had been refused. Martin recalled his answer: "It's no use sending you Indians to school, you just go back to the reserve anyway." (S.J.C., 1946:747)

Martin also related how his sister had become ill and died after becoming embroiled in a jurisdictional dispute between federal and provincial health authorities. Sent to the Toronto General Hospital

by her doctor at Six Nations, she was refused treatment because she was Indian and under federal jurisdiction. (S.J.C., 1946:748-753)

O.M. Martin recommended self-government as the solution to the problem. He argued that the interest from Indian Trust Accounts could be used as operational budgets. (S.J.C., 1946:747) According to Martin, bands should control education and public services and should have greater local authority, including input into the appointment of Indian agents. (S.J.C., 1946:762-63) He also suggested that Indian Affairs should become a separate department within the federal government (S.J.C., 1946:756)

In 1947, in direct contrast to Martin's statements, the Committee listened to the celebrated anthropologist Diamond Jenness. At the time, Dr. Jenness was Chief of the Inter-Services Topographical Section, Department of National Defence. In his statement Jenness compared the condition of Indians in Canada to the concentration camps in Nazi Europe. (S.J.C., 1947:307) As the centrepiece of his presentation, Jenness introduced his "Plan For Liquidating Canada's Indian Problem Within 25 Years". (S.J.C., 1947:310-11) The stated objective of his plan was "to abolish, gradually but rapidly, the separate political and social status of Indians (and Eskimos); to enfranchise them and merge them into the rest of the population on an equal footing". The plan included the abolition of Indian reserves,

which Jenness called "leprous spots in many parts of the country". Education in an integrated educational system was seen as the key to assimilation.

This paternalistic and aggressively assimilationist plan was received enthusiastically by the Committee. As Mr. Reid stated, "I think I voice the views of all the committee when I say that this is one of the finest talks we have heard, and at the same time we have had presented to this committee a real plan, and with most of what has been said by Dr. Jenness I am personally in entire accord." (S.J.C., 1947:311) It is not surprising that the plan was well received, given that it supported the assimilationist predilections of the Committee and emphasized education as the humanitarian social vehicle to deliver Indians from the unhappy predicament perceived by the Committee and Dr. Jenness. By comparison with Indian political positions at the time, this approach could not have been more wrong-headed or have expressed a more subjective Euro-centric bias. The fact that the Committee had had no contact with Indians and Indian views was becoming increasingly obvious.

Witnesses from Indian bands and associations did not appear before the Committee in any numbers until mid-way through the 1947 session. The evidence suggests that some bands wanted to draw on their band funds to send delegates to the Committee but were refused access to their funds, thereby effectively preventing their attendance. (PAC, RG10,

vol. 8583, file 1/1-2-16, pt. 1) Most of the evidence representing Indian opinion is found in letters to the Committee, which are filed in the appendices of the Committee Minutes. There is no record that those submissions were discussed by the Committee.

A wide range of issues was addressed in the written submissions and by those Indian representatives who attended and made statements. A broad divergence in political philosophy was also evident, but generally, it could be said that the preponderance of opinion among Indians across Canada leaned toward self-government for bands and tribal councils. The Haudenosaunee of Ontario and Quebec were the most aggressive in advancing their position.

The submission by the Longhouse chiefs at Akwesasne greeted the Committee in the following fashion. "Gentlemen: - We, the Chiefs of the Mohawk Nation who swear allegiance to the Six Nations Confederacy, as the only true government for our people...". (S.J.C., 1948:209) Their summation of the relevant facts continued in this vein:

- (1) We occupy our territory, not by your grace, but by a right beyond your control.
- (2) We hold original title.
- (3) We have never voluntarily submitted to the domination of the Canadian government, and have never been conquered by it in a just war.
- (4) According to International Law, no nation can legislate over another without first acquiring title to the land...

The Akwesasne Mohawk from the St. Regis Reserve also demanded the reinstatement of traditional law and government and made the following statement:

We members of the St. Regis Iroquois Band want to retain our tribal identity, with our reservations. We have no desire to cast these aside. We have no wish that whitemen enter our reservations, using the Indian Act as an excuse, to create works of any kind (over the heads of our Chiefs and people) to interfere with our tribal life...

We are confined and dictated to by federal and bureaucratic departments with no representations by our Chiefs or by our people. We have no share in the disposing of our destiny and rights! (Witness - Elective form of trustees appointed and started by Canadian law - without our consent; forfeiting our homes if on relief - without our consent; building a nursing station on our lands - without our consent; drilling wells, making roads, erecting buildings, surveying our lands - all without our consent!) (S.J.C., 1947:1744)

These demands were echoed by the Mohawk of Caughnawaga. They argued that their treaty rights had been abrogated by Canadian legislation and that the Indian Act interfered with their traditional form of government. In their opinion, Indian Act Indians should be separated from Treaty Indians. (PAC, RG10, vol. 8583, file 1/1-2-16, pt. 1) Treaty Indians, they argued, were not subject to Canadian law. The Caughnawaga Mohawk lobbied the Committee for the restoration of the Great Law, their traditional constitution, in place of the Indian Act. (RG10, vol. 6810, file 470-2-3, vol. 10)

The statement made by the Six Nations Council recalled the historical roots of the sovereignty of the Haudenosaunee. They pointed to the Haldimand Deed to the Grand River Valley as evidence of British recognition of the Six Nations as allies rather than subjects. (S.J.C., 1947:1273) Based on this statement of independence, they argued for self-government. The Six Nations Council was prepared, however, to operate its government "insofar as it may be reasonable and just to the people of the Six Nations and to the dominion government".

The Six Nations were divided in their reactions to the Joint Committee. The hereditary chiefs presented the case that they were a sovereign nation and demanded abolition of the Indian Act. The chiefs elected under the Indian Act system, on the other hand, suggested changes that would make the Act more acceptable. (S.J.C., 1947:1706-12, 1743-45, 1773-88) The following statements reflect their feelings toward the Act:

The officials of the Indian department have overruled regulations in the Indian Act to suit their purposes. They also, especially the Indian Agent, make all arrangements and agreements for companies and provincial governments to make roads, bridges, towers for electricity, etc., without the consent of the band...

The Act retards the progress of our nation, and as it stands today can be criticized from the beginning to the end, every section of the Act. It is too dictatorial and the powers invested in the Indian Agent and Superintendent General are too arbitrary and autocratic...

We therefore insist that treaties, as made by our great forefathers, were in the form of agreements between two equal sovereign nations, but that you the whites took the attitude that we, the Indians, were not your equal, when you abrogated treaty clauses which guaranteed to the Indians of the Six Nations rights of self-government as an independent Nation. (S.J.C., 1947:1708)

The militant independence of the Haudenosaunee is a historical constant that can be understood only by examining the historical relationship between the Confederacy and the British which began during the colonial period. The principle that Indian nations are allies of the Crown, and not Canadian subjects, was also advanced in the submission of the North American Indian Brotherhood. (S.J.C., 1946:829)

The Tyendinaga Indian agent told the Committee that the Indians on the Tyendinaga Reserve were displeased with the current state of affairs:

There is also a noticeable change in the attitude of the Indians towards Departmental Officials and the Indians quite often express the opinion that they are dominated by rules, regulations, and decisions that have not been fair to the Indians and made without their being given any voice to express approval or disapproval, who maintain they are being treated more like a conquered minority without much voice in the management of their affairs or their future destiny as citizens of this country. (PAC, RG10, vol. 6811, file 470-2-3)

Chief Councillor James Adams of the Nishga Tribal Council of British Columbia also made reference to the political rights of his people, which predated relations with Canada and were not adequately recognized: "...no attempt has been made to adjust our general rights, such as fishing, hunting and water rights, health, education, agricultural and financial, etc." (S.J.C., 1947:172) The general thrust of these statements indicates the Indian view that the Committee's terms of reference were far too restricted and did not address the fundamental issue of the political relationship between Canada and Indian peoples.

Just as Andrew Paull had addressed the treaty relationship and the Haudenosaunee Councils had emphasized their independence, the Chief and Council of the James Smith Band of Fort à la Corne, Saskatchewan, pointed to their treaties as the foundation of their future:

It takes two nations to make a Treaty - a solemn covenant based on sacred faith and understanding. No laws of Parliament, Orders in Council or regulations can alter the wording of any Treaty and we can safely say we have kept our faith and the obligations from our ancestors to the present generation. We played the game with loyalty to the British Crown and we want the Dominion Government to live up to the Treaties the way our ancestors understood them. Our ancestors had no other way to keep the sacred promises given to them, only by memory. They said then their brains were like paper. They thought that all the promises given to them were written on the parchment. We hope the Special Joint Committee will repeat the words of our Treaties and live up to their obligations. We want our Treaties to be as good now as when made. (S.J.C., 1947:1123)

The Canadian Legion of the British Empire Service League also submitted a statement to the Committee requesting recognition of Indian treaty rights. (S.J.C., 1946:845)

The most widely held opinion among Indians and their supporters was that self-government was a fundamental first step toward acknowledging the treaty relationship between Indians and the Crown and toward resolving the administrative and social problems on reserves. Coupled with expressions of support for self-government and for greater power and autonomy for chiefs and councils, were criticisms of the Indian agents and calls for limits on their authority. The Protective Association for Indians and their Treaties argued in their presentation that a clear division between those areas reserved for band control and those areas reserved for government control should be made. (PAC, RG10, vol. 6810, file 470-2-3, vol. 10) The Association argued that under the current Indian Act, band councils were little more than debating societies.

John Calihoe, President of the Indian Association of Alberta, wanted the discretionary powers of the Superintendent General removed and made the following statement in support of fundamental changes to the Act:

We believe as an association that the revised Indian Act must be based upon broad principles of human justice. It must, we know, provide for the

development of the Indian peoples of Canada. In the development of the people we believe that the new Act must place more and more responsibility upon our Chiefs and Councils to act as governing bodies. For example, the great and arbitrary powers of the Superintendent General must be limited and more opportunity for appeal from such decisions provided. The free will of the people expressed to the Chiefs and Councils must have far greater authority than in the past. (S.J.C., 1947:541)

The Serpent River Band of Ontario submitted a statement calling for self-government and a reduction in Indian agent authority over band affairs. (S.J.C., 1947:1343-45) The Chief and Council of the West Bay Band on Manitoulin Island echoed this statement, calling the Indian agent "more a hindrance than a help". (S.J.C., 1947:1359)

The Chippewas of Georgina Island submitted a statement that called for Indian control of local affairs. Chief Lorenzo Big Canoe began his submission with the recommendation that "all treaties be reviewed as to terms and obligations of parties concerned and new interpretations devised to coincide with present day conditions." (S.J.C., 1947: 1440-1441) Chief Big Canoe urged greater band control over membership, education and economic development. The Mississaugas of Alderville echoed the call for greater band control of band affairs. (S.J.C., 1947:76)

In the west, the Indian Association of Alberta, representing twenty-seven bands, recommended greater local control. (S.J.C., 1947: 799-816) The Confederacy of the Interior Tribes of British Columbia

hired legal counsel to safeguard their "legal and aboriginal rights". (S.J.C., 1948:193) The thrust of their submission was also toward greater recognition of local autonomy. Chief C. Nanawin of the Poplar River Band also called for self-government. (S.J.C., 1947:58) He told the Committee that the chiefs needed greater authority and decision-making power on the reserves.

Some Indian representatives indicated a desire for Indian political representation in Parliament. Many cited the Maori situation in New Zealand to reinforce their arguments. The following request came from the Aboriginal Natives of the Fraser Valley and Interior Tribes of British Columbia:

The true emphasis of our sincere contentions; the time has come for the recognition of us Natives as people with equal intelligence and integrity, eligible to exercise equal status of full citizenship privileges, as we are ... maintaining all our traditions, aboriginal rights, interests and benefits, a system identical to that granted the Maori Indians of New Zealand, viz. representation in Parliament, and in the administration of the Natives General Affairs. (S.J.C., 1947:52)

The Carrier Indians of Central and Northern British Columbia echoed this demand for federal political representation and called for a British Columbia Indian representative in the provincial assembly as well. (S.J.C., 1948:214)

The Indian Defence League of America, an international Indian rights organization, wrote to the Joint Committee calling for recognition of Indian treaty and aboriginal rights. (S.J.C., 1947:1290-92)

Melvin Johnson, the Grand Secretary, pointed to the Maori and recommended Indian self-government. He also called for an "Indian Bill of Rights" to replace the Indian Act. In a similar vein, the United Native Farmers' Organization of the Stahlo Tribe, Sardis, B.C. recommended changing the name of the Indian Act to the "Native Canadian Act". (S.J.C., 1946:848)

In addition to this general push for greater Indian control of their own affairs, many Indian submissions recommended changes in the administration of Indian affairs. Most were directed at limiting or eliminating the role of the Indian agent. Many horror stories of incompetence appear in the submissions by Indians. The President of the Confederacy of the Interior Tribes of British Columbia,

Frank Assun, stated: "I cannot impress upon you that you must have men acceptable to the Indians. It is a waste of time and effort to place a man in a position over Indians whom they have no confidence in, and having him there is just a detriment to Indian Affairs".

(S.J.C., 1948:196)

The Okanagan Society for the Revival of Indian Arts and Crafts outlined detailed recommendations regarding the criteria and training for Indian agents as well as definitions of their powers. (S.J.C.,

1946:615) The Six Nations Council agreed completely with these recommendations in their submissions. (S.J.C., 1947:1275) At the local level, it was the Indian agent who continually came into direct conflict with Indian attempts to exercise self-government. When agents were incompetent, it only made the problem worse.

The use of band monies from Indian Trust Accounts caused concern across the country. The B.C. Indian Arts and Welfare Society submitted recommendations to the Committee, including the following statement on Indian Trust Funds:

We recommend that a complete resurvey of the administration of Trust Funds be instituted, with a view to determining the most efficient use of these funds for the general improvement of the conditions of life among the Indians, and that pertinent information be made available to tribal bands. (S.J.C., 1948:206)

The management and disbursement of and accountability for trust account monies was also raised by the James Smith Reserve of Fort à la Corne, Saskatchewan.

The Trust fund we have was created by the sales of our lands. We want amendment of the agreement made between the Band and the Indian Department officials as to the management of our money. We want assurance that the money held in Trust funds is our money. We want authority as to the expenditure of our money. We want an itemized statement so the Chief and Council will know how much they will have to work on for the benefit of the Band. (S.J.C., 1947:1126)

The Indian Association of Alberta demanded that the Department of Indian Affairs be accountable for monies spent on behalf of Indians. (S.J.C., 1946:816) They also asked that the annual reports of the Department of Indian Affairs and of the Auditor General be provided to Indian bands. John Calihoe, President of the Indian Association of Alberta, demanded that the Superintendent General's power to dispose of Indian trust fund monies be reduced. (S.J.C., 1947:541) All of these demands and recommendations point to a desire for greater Indian control.

Some statements went well beyond criticizing Indian agents and called for a new and independent Department of Indian Affairs. This recommendation reflected the Indian wish to be treated with the respect and importance appropriate to their historical position in Canada. One association from British Columbia stated:

We earnestly request for a re-establishment of a New Department specifically for the administration for the Affairs and Welfare of the Natives, and employed therein, experienced and intelligent Natives with integrity to familiarize the Native problems and requirements, instead of the present system of the administration of Indian Affairs lodged in a small corner of the Department of Mines and Resources. (S.J.C., 1947:52)

The Serpent River Band in Ontario made a similar request. (S.J.C., 1947:1345)

The United Native Farmers' Organization of the Stahlo Tribe, B.C., proposed a Native Bureau, "to be located in Ottawa to co-operate with the Native (Indian) Department". (S.J.C., 1946:851) This Native Bureau would "interpret the mind of the Natives so that the Native (Indian) Department will have a better idea of how to help the Natives in all their affairs which concern their future progress and advancement". These proposals reflect the concern of Indians in Canada that the Indian administration simply wasn't working. The B.C. Indian Arts and Welfare Society took concerns about maladministration a step further, recommending that a standing Committee on Native Indian Affairs be established to examine the problems of Indian administration on an ongoing basis. (S.J.C., 1948:208)

The Department of Indian Affairs had received similar advice from within the government. C.H. Bland, Chairman of the Civil Service Commission, recommended a new organizational system for the Department to improve administration. (S.J.C., 1946:704) At the close of the 1946 session of the Joint Committee hearings, the Committee made recommendations to Parliament that certain immediate administrative improvements would likely remedy many of the problems in Indian affairs without the need for legislative revisions. (S.J.C., 1946:vi) This view that the administrative process, rather than any fundamental philosophical differences between Indians and government, was at the root of the problem foreshadowed many of the Committee's future actions.

Indian submissions identified an important constitutional problem that was complicating the administration of Indian affairs. The conflict between the federal and provincial governments over the delivery of services to Indians caused serious problems at the band level. The Union of Saskatchewan Indians addressed the issue in their submission to the Committee, recommending "that the administration of any joint agreement between the Provincial and Federal Government be carried on in a manner to avoid over-lapping and duplication". (S.J.C., 1948:203) The Canadian Welfare Council and the Canadian Association of Social Workers echoed this call for federal-provincial co-operation in the planning and administration of services to Indians in their comprehensive reports to the Committee. (S.J.C., 1947:154-161)

In the area of services to Indians, education was seen as the key to the future by every band association that submitted evidence to the Committee. But even before the submissions were received, the Committee had begun to focus on education as a central issue, though not for the same reasons that the Indians were doing so.

John Calihoe, President of the Indian Association of Alberta, told the Committee in 1947 that education was the most important subject to be dealt with. (S.J.C., 1947:339) Many submissions condemned the residential school system as inadequate at best and destructive of family life at worst. Day schools were preferable in the view of most witnesses. (S.J.C., 1948:206; 1947:1344; 1948:200; 1946:699) A

number of witnesses were prepared to accept residential schools, but all insisted on the institution of provincial curriculums. (S.J.C., 1947:1344; 1947:1364; 1948:206)

Differences of opinion were voiced by Indians regarding the use of denominational schools. The Carrier of British Columbia (S.J.C., 1948:213) and the Chippewas of Georgina Island, Ontario, (S.J.C., 1947:1440) recommended abolishing the system of missionary teachers and religious schools. The Carrier emphasized that this did not mean a rejection of Christianity. "Catholic Missionaries are most wanted men by the Carrier Indian Catholics for their Spiritual affairs, but we believe that in education, religious affairs should be separate from the schools." (S.J.C., 1948:214) But others emphasized the importance of religious instruction to their people. The Serpent River Band in Ontario emphasized the importance of religion. "Indian schools both day and residential, should be denominational. Education is not worthy of the name of education if it does not extend to the moral training of the person to be educated". (S.J.C., 1947:1344) The James Smith Reserve in Saskatchewan also stressed the significance of religion in education. "Survival of a nation is religion". (S.J.C., 1947:1125) The solution to this potentially contentious issue would appear to have been to grant local autonomy in the choice of an educational system.

Chief Lorenzo Big Canoe of the Chippewas of Georgina Island recommended that education on his reserve be supervised through an adjacent white community school board, with Indian representation on the board from his Band. (S.J.C., 1947:1440) This notion, advanced for its time, envisaged federal-provincial-Indian co-operation in Indian education. Chief Big Canoe also advocated increased financing for advanced education and technical training. This notion was advanced by the Fraser Valley and Interior Tribes as well, who asked for assistance for graduates in establishing themselves in vocational practices. (S.J.C., 1947:53) Chief Dominic Migwans of the West Bay Band on Manitoulin Island took the idea of Indian control of Indian education a step further, recommending that teachers on his reserve use the Ojibwa language in the primary grades. (S.J.C., 1947:1359)

The education issue was clearly of major concern to Indians across Canada. In many ways, attitudes and views on education paralleled opinion on self-government. In many submissions, the exercise of self-government and local control of education were closely connected. A number of bands and associations emphasized the importance of education to the future of their people and saw it as an integral component of increased local control by band governments.

Economic development issues were also addressed in several submissions. Many witnesses recommended increased financial assistance to encourage Indian economic self-sufficiency, to bolster

Indian businessmen against financial difficulty and to assist in capital investment. One association asked rhetorically, "What of us natives who own this country? Are foreigners greater than people who own a country?". (S.J.C., 1947:54) Other bands outlined particular local needs with respect to economic development. (S.J.C., 1947:1441; 1948:203)

The status of Indian women was another issued addressed by many Indian political leaders. The Indian Defence League of America highlighted the significance of the role of women in Indian societies. "Our Indian women enjoyed for centuries political equality with men and today outnumber men in arts and education, but have no place in the Indian Act. In our present organization, our women enjoy this privilege and many are the real leaders in the community." (S.J.C., 1947:1291) Similar sentiments were expressed by the Grand General Indian Council of Ontario, which passed a motion to the effect that "Any Indian woman shall have the same status as provided for a male member of any reserve...". (S.J.C., 1947:1363) The Council also stated that illegitimate children with Indian blood should be admitted to band membership. Several submissions to the Committee recommended that Indian women be given the vote in band decisions and be eligible for election to band councils. (S.J.C., 1946:853; 1947:1275)

When Mr. Case of the Joint Committee visited the Cape Croker Reserve in Ontario in the summer of 1947, he recorded the following comment by

ex-councillor Alfred Jones on the subject: "...if an Indian woman marries a whiteman she forfeits entirely her Indian status and rights and so do her children. Yet, if an Indian woman becomes the common-law wife of a whiteman, she is still recognized as an Indian ... This provision should be revised, as at present it encourages living in sin and tends to lower the moral standard of the band." (S.J.C., 1947:85) This observation struck at the heart of the legislative problem facing Indian women and Indian bands with respect to legal status. Interestingly, the Calgary branch of the Canadian Author's Association also issued a statement in support of Indian women's rights. (S.J.C., 1947:199)

A final issue that received a great deal of attention in submissions involved treaty and aboriginal rights. Indian concerns stood in stark contrast to opinions in the Department of Indian Affairs.

Department Secretary T.R.L. MacInnes stated that "the annual treaty payments...are merely a token payment." (S.J.C., 1946:79) He explained to the Joint Committee, "the treaty money is only a token of good faith which was agreed upon at the time of the treaty, that each Indian would get a small annual payment." (S.J.C., 1946:80) This view of the treaty process was antithetical to statements by Indian leaders like Andrew Paul and Chief Tom Jones of Cape Croker. (S.J.C., 1946:436) Frank Assun, President of the Confederacy of the

Interior Tribes of B.C., called for a "Claims Commission" to be appointed by the federal government to inquire into Indian claims arising out of treaty and aboriginal rights. (S.J.C., 1948:193-95)

The Committee evidence reveals a significant philosophical dichotomy between Indians and the Canadian government, as represented by members of the Special Joint Committee and public service personnel testifying before the Committee. While they examined the same facts and focused on the same institutions, they did so with fundamentally different visions of the future for Indian people. The Committee contemplated assimilation, while Indian political leaders argued for self-government or independence.

The Special Joint Committee dealt with issues such as self-government and education, but in their view this meant municipal government and 'civilization'. Indian bands and associations viewed these issues from a very different perspective. No single statement could be said to represent a national Indian position on Indian-government relations, but certainly the preponderance of opinion was that Indians needed greater input into the management of their own affairs and that this right to greater control was based on their aboriginal status and treaty relations with the Crown.

Indians wanted greater control over the policy decisions affecting their affairs, and many expressed a greater or lesser sense of

independence from the Canadian government system and Canada as a whole as a matter of political principle. The Committee agreed that bands should be permitted greater autonomy in local government matters, but what they had in mind was something akin to municipal government.

The Minister of Citizenship and Immigration actually argued that some reserves should become fully autonomous. In British Columbia, for example, submissions recommended that band councils be given authority similar to municipal councils. The Native Brotherhood of B.C. (1947) and the Okanagan Society for the Revival of Indian Arts and Crafts (1946) also argued that Indians should be allowed to make laws within their own territory. (PAC, RG10, vol. 6811, file 470-3-6, vol. 1)

In its recommendations, the Joint Committee advanced the view that the protective features of previous Acts could be removed, since Indians were well on the road to 'civilization'.

Bands did receive authority in the areas of lands, band funds, and the administration of by-laws. In these areas of property Indians now had greater managerial input, but restrictive administrative requirements limited their real political power. It was the issue of money that was seen as one of the major problems besetting Indian bands. This issue was argued before the Committee:

The difficulty that faced an Indian or band council in enforcing their rights was largely one of money. The difficulty was further enhanced by the fact the council cannot use its moneys to finance a lawsuit and they take up collections among the members to see that one who commences an action should have fees and expenses. We have provided in the bill an omnibus clause whereby the band council can spend its moneys for anything that will be in the interests and for the benefit of the Band. That clause, which was not in the old Act, may permit the expenditure of Band funds for lawsuits, should they be for the purpose of enforcing rights the band feels are being abrogated. (S.J.C., 1951:16)

It was also argued before the Committee that bands needed greater latitude in their efforts to achieve self-government:

I think sir, that our policy should be to extend self-government to all reserves as soon as possible. It might be argued that this would give to band councils on the reserves greater powers than are now held and exercised by municipal authorities in our form of government, but if that would be the result surely we can impose safeguards to see that a band council does not exercise authority greater than a municipal council unless it is in the interests of the band. (S.J.C., 1951:1352)

After reviewing the evidence it had heard, the Committee recommended that bands should have more independence through financial assistance and that they should have the same status as municipalities. It also recommended that the Indian Department assist in establishing Indian government. More specifically, the Committee recommended:

1. The complete revision of every section of the Indian Act and the repeal of those sections that were outdated.
2. That the new Indian Act be designed to facilitate the gradual transition of the Indians from a position of wards up to full citizenship. Therefore the Act should provide:
 - a. A political voice for Indian women in band affairs.
 - b. Bands with more self-government, greater responsibility, and more financial assistance.
 - c. Equal treatment of Indians and non-Indians in the matter of intoxicants.
 - d. That a band might incorporate as a municipality.
 - e. That it might be the duty and responsibility of all officials dealing with Indians to assist them to attain the full rights and to assume the responsibilities of Canadian citizenship.
 - f. That the offence and penalty sections of the Indian Act be amended to conform with similar sections in the Criminal Code and other Statutes.
3. Guidelines for future Indian policy were to be:
 - a. The establishment of a Claims Commission.
 - b. Redefinition of the meaning of 'Indian' in the Act and the revision of Band Membership lists.
 - c. Taxation of income earned off-reserve should remain in effect.
 - d. Easing of enfranchisement.
 - e. Extension of the franchise to the Indian.
 - f. Co-operation with the provinces in extending service to the Indian.

- g. Education of Indian children with non-Indians to prepare Indian children for assimilation.
- h. Appointment of a Select Standing Committee on Indian Affairs.
- i. Dominion-Provincial conferences to deal with co-operative measures in:
 - i) Education
 - ii) Health and Social Services
 - iii) Fur Conservation
 - iv) Fish and Game laws
 - v) Liquor legislation
 - vi) Tribal marriage customs

(S.J.C., 1948:186-190)

The Committee recommended that assimilation continue to be the goal, but advised new methods for reaching that goal. They also recommended turning over responsibility to the provinces for social services. This would help break down the constitutional protection enjoyed by the Indians through section 91(24) of the British North America Act.

Recommendations for "administrative improvements which could be effected without revision of existing legislation" were made to Parliament in 1948, as they had been in 1946 and 1947. (S.J.C., 1948:189) This became a contentious issue during the 1948 session. Mr. Reid and Mr. Harkness of the Special Joint Committee alleged that the Committee's recommendations for administrative improvements had

not been carried out by the Department of Indian Affairs.

Dr. Keenleyside, the deputy minister of the department, responded to the question:

This is a very brief summary made up because of the suggestion that has been made that the recommendations of the Committee had not been attended to by the department, it even being suggested in certain cases that we had paid no attention to them at all. In general, of course, I do not think it is necessary to say that that is not true. We are just as much interested in these recommendations as the members of the committee are. We are very much pleased that the recommendations were made, and are doing our best to carry them out.

This is a summary of the 10 recommendations in 1946 and the 26 recommendations in 1947. There were 2, one in each set, that overlapped, and in consequence there was a total of 35 recommendations. Of those 35 there were 11 that were matters of government policy over which the department had no control, or else were matters relating to the procedures of the committee itself, or else referring to some department other than the Department of Mines and Resources. There are 11 in that category. That left a total of 24 recommendations on which the department was more or less free to act. I say more or less because in certain cases action depended on other departments or on the Civil Service Commission as well as on our own department.

Of those 24 there are 18 that were carried out, or are in effect. There were 4 that were partially carried out or are partially in effect, and there were 2 that have not been acted upon. Instead of being delinquent on the whole 35, as has been suggested, the department failed to act on only 2 recommendations, and I am prepared to explain the failure on those two. In other words, in the relatively short time that has elapsed since the 1947 report of the committee the recommendations, with two exceptions, have been carried out as far as the department is concerned. It seems to me that is not a wholly unsatisfactory report. (S.J.C., 1948:38-39)

Mr. Harkness and Mr. Reid remained unconvinced that appropriate action had been taken on the recommendations. After a period of questioning and debate, Harkness stated:

The whole point is that I have not been satisfied in my own mind, and I am not satisfied yet, that the recommendations that we have made in previous years have been carried out. As a matter of fact, the evidence we had from Dr. Keenleyside indicated that in a considerable number of cases our recommendations have not been implemented; and it seems to me that the department is not taking the steps it should to carry out the recommendations of this committee. I can see no sense in the world of the committee spending months of its time and accumulating thousands of pages of evidence on the basis on which we have made recommendations if the department is going to set aside those recommendations and in their own wisdom say, 'Well, if we like your recommendations we will carry them out, but if we do not, we will not pay any attention to them'.
(S.J.C., 1948:159)

It had been suggested that:

The Committee should draft the proposed revision of the new Act, and immediately transmit the same to all Indian organizations of Canada. (PAC, RG10, vol. 8583, file 1/1-2-16, pt.1)

It was further recommended that the organizations be given one year to examine the proposed changes to the Act before any legislative action began in Parliament.

The first bill placed before Parliament to revise the Indian Act, Bill 267, failed. A conference was then held in Ottawa between February 28 and March 3, 1951 to discuss Bill 79, a second draft of the proposed legislation. A summary of these proceedings was appended to the House of Commons debates of March 16, 1951 (see Appendix B).

Among the sections of the proposed Act opposed by the representatives present, taxation, enfranchisements and intoxicants appear from the record to have been the main issues. The conference summary also reveals a growing awareness on the part of the government of the complexity of the Indian predicament in Canada.

It was evident from the discussion that the problem of Indian affairs varied greatly from reserve to reserve. It was recognized that the Indians of the several provinces appeared to have differing rights and experiences, and that these differences accounted for the variety of viewpoints expressed towards particular sections of the bill. Nevertheless, the opinions of all present were stated not only for the purpose of presenting the local viewpoint, but also in an effort to find a common, advantageous ground so as to advance the welfare of the Indian people (House of Commons Debates, 16 March 1951)

The question of self-government, however, remained a common interest among the delegates.

All of the representatives present at the conference agreed that the Government of Canada should continue to extend self-government to the Indian band councils

consistent with their demonstrated ability to exercise increasing responsibility. (House of Commons Debates, 16 March 1951:1364)

On first appraisal, the 1951 revised Indian Act appeared greatly changed from the original 1876 legislation. The authority of the Minister of Indian Affairs was greatly reduced; in fact, his "powers were reduced to a supervisory role" and he had no veto power over band resolutions. (S.C., 1951) Fifty sections were deleted, including most provisions regarding aggressive assimilation. However, the principle of self-government appeared nowhere.

Despite appearances, however, and notwithstanding the work of the Special Joint Committee, three years of public hearings, parliamentary debate and draft revisions, the Indian Act of 1951 actually differed only slightly from its predecessor. Governmental intentions remained the same: assimilation. Enfranchisement was made easier in 1951 by eliminating the probationary period required in earlier legislation, and band council powers were enhanced somewhat, but final authority continued to rest with the Minister.

Even during the parliamentary debate on the proposed legislation, one member of Parliament argued for greater autonomy for Indian bands.

One of the criticisms I have is that in more than 70 clauses of the bill the responsibility rests upon the minister or the governor in council without

consultation with the bands or with any of the Indian representatives. If we are aiming to educate these people, to teach them to assume responsibility, we must give them some responsibility and not place these matters entirely in the hands of the minister or the governor in council, without even consulting with the band or with the people concerned. (House of Commons Debates, 1951:3060)

It would appear that the philosophical dichotomy between Indians and government continued unresolved. In 1958, an inter-departmental memo on Indian affairs from H.M. Jones, Director of Indian Affairs, purported to identify matters for investigation in Indian/government relations, but more significantly it highlighted the fundamental communication problems between government and Indians and within the government bureaucracy. (PAC, RG10, vol. 8583, file 1/1-2-16; 1/1-8-35A) The matters for investigation were identical to the terms of reference of the Special Joint Committee. It was noted that treaty rights and obligations and band membership had been looked after by the 1948 Committee. This conclusion is ridiculous in light of the evidence. The memo also suggested that the issues of Indian liability to pay taxes and white encroachment on Indian reserves had been fully explained by the 1946 Committee. It went on to advise that the questions of enfranchisement, voting eligibility, and the operation of Indian day and residential schools remained to be resolved.

New matters raised for Indian department investigation were recommended to the deputy minister. Education, enfranchisement, voting eligibility, municipal government for bands, credit facilities

for Indians, encouragement of commercial enterprise on the reserves, assistance to Indians to establish residence off-reserves, medical services, social welfare, and all other matters of a social and economic nature were proposed as issues for investigation. While some of these questions appear to have arisen from an examination of Indian concerns, others seem to indicate either a lack of familiarity with the Special Joint Committee hearings or an admission that the recommendations of the Special Joint Committee had not been dealt with adequately by legislation or Indian Affairs administration. There is evidence to suggest that the department ordered a synopsis of Indian presentations to the Joint Committee, but this synopsis has not been available for examination. (PAC, RG10, vol. 8583, file 1/1-2-16, pt. 2)

In the final analysis it would appear that the Special Joint Committee did not achieve very much. Certainly it provided a forum for Indian opinions and grievances. It also served to reveal a cross-section of government opinion on Indians and Indian issues. Perhaps most significant, it revealed the fundamental differences in outlook between Indians and government during the post-war period. The 1951 Indian Act succeeded in consolidating and organizing previous legislation and provided for greater Indian involvement in administration at the band level. But this administrative involvement was at something resembling a clerical level rather than at the decision-making level sought by the Indians who made submissions to the Special Joint Committee.

Conclusion

The Special Joint Committee highlighted a profound problem in Indian/government relations. The government of Canada sought to facilitate the civilization and assimilation of Indians into Canadian society as equal, enfranchised citizens through revision of the Indian Act.

Indians received news of the consultation process hopefully, in anticipation of gaining recognition for the right to self-determination and creating locally controlled services relevant to their needs. Unfortunately, there was no point of resolution between these two positions.

This fundamental philosophical dichotomy is illustrated by the evidence submitted to the Joint Committee. Nowhere is this more apparent than in the discussions on self-government. While the Joint Committee was prepared to recommend local involvement in administration by those bands that were deemed adequately civilized, Indians were calling for independence and local control or complete sovereignty. The dichotomy was also clear in discussions on aboriginal and treaty rights. Where Indian delegates talked of equality and international law, government representatives spoke of token annuity payments and the fulfilment of treaty obligations. Words such as 'citizens', 'wards' and 'allies' conjure very different conceptual frameworks and result in what are often diametrically opposed visions of the future.

There was implicit agreement on the fact that Canadian relations with Indians were not constructive, that services were inadequate, and that Indians needed to be more involved in local affairs. Whether the goal was independence, responsibility, or assimilation, the pre-war status of Indian administration and legal rights had to be changed. In identifying the areas of concern the Joint Committee was successful, but in their recommendations for improving the situation they were less successful. In terms of enacting legislation or instituting administrative change, Parliament reacted inadequately, and the Department of Indian Affairs reacted slowly and bureaucratically. Some positive suggestions were heard by the Committee, which in turn put forward some positive recommendations. But many of these recommendations remain at issue in ongoing consultations between Indians and government today.

APPENDIX A

Excerpts from the Minutes
of the Special Joint Committee

422

SPECIAL JOINT COMMITTEE

The CHAIRMAN: Not at all.

The WITNESS: For the next 15 minutes I would like to ask your counsel and liaison officer to read this paper, then we will speak about it this afternoon.

The CHAIRMAN: Very well, is that agreed?

Mr. GRIFFIN: We have read the paper.

Mr. BLACKMORE: I suggest we allow Mr. Paull to have his way.

The CHAIRMAN: It is wholly within the province of this committee, whether you allow Mr. Lickers to read this paper and put it on the record.

Mr. MACNICOL: It would take only five minutes to do so.

The CHAIRMAN: Very well. All those in favour? Contrary? Mr. Lickers, would you please read the statement.

Mr. LICKERS: This is a written recommendation in general terms. It reads as follows:

The secretary having read to the meeting the telegram from the clerk to the joint committee of the Senate and House of Commons on the Indian Act addressed to Mr. Paull inviting him to give evidence before the committee on the 27th of June, the meeting resolved:

That Mr. Paull attend on behalf of the North American Indian Brotherhood, and make a statement on their behalf upon their position under, and attitude towards the present Act, and its administration, dealing with the following subjects under the reference to the joint committee, and expressing the views of this meeting as contained in the following several paragraphs viz:—

- (1) That the joint committee enquire into the Treaty Rights and the encroachments upon the rights and privileges of the several bands hereunder;
- (2) That the powers of the Department of Indian Affairs in respect of the admission and expulsion be abolished, and that the right of membership both as to admission and expulsion be placed under the jurisdiction of the band and council, and the Indian Act be revised accordingly, and any right to appeal from the council's decision be referred to a board on which the Indians shall have representation;
- (3) That by virtue of their treaty rights, Indians are not liable for payment of taxes either to the dominion or to the provincial governments;
- (4) That by virtue of their treaty rights, Indians are not liable to any provincial laws within their territories respecting fishing, hunting and trapping, and, therefore, are not liable to take out licences from the provincial governments to fish, hunt and trap within their territories, or within any lands covered by their treaties;
- (5) That the policy of enfranchisement of Indians involving loss of treaty rights be abolished;
- (6) That all denominational schools within reservations be abolished and the education of Indians be committed to regional boards upon which Indians in the regional districts shall be represented by Indians;
- (7) That Indians are not now prepared to discuss the question of the right to vote at Dominion elections, but that the question of the right of Indians to elect their own member to the House of Commons should be studied;
- (8) That the interests of Indians demand that the administration of Indian affairs be decentralised and administered by provincial regional boards under a federal department or board responsible to parliament;
- (9) That the administration of Indian affairs should be such that qualified Indians should be employed in all departments in the administration of Indian affairs;

- (10) That local Indian councils be given full authority in the management of their local affairs;
- (11) That in view of some tribes having the privilege of travelling on all railroads at half fare, that the Railway Act be amended to give that privilege to all Canadian Indians;
- (12) That the band or tribe be given full authority to policing their own reserves;
- (13) That no centralization scheme of any bands or tribes be carried out with the consent of the majority of the bands involved.

The CHAIRMAN: Thank you very much, Mr. Lickers. Now, gentlemen, it is about a quarter to one. Would you care to call it one o'clock?

Mr. MACNICOL: I move, Mr. Chairman, that we call it one o'clock.

The CHAIRMAN: We shall re-convene at 4 o'clock when we will hear Chief Jones for a few minutes, and then continue with Mr. Paull.

Mr. MACNICOL: And ask questions?

The CHAIRMAN: Yes, you will have an opportunity to ask questions.

Mr. BLACKMORE: Chief Jones will be given a chance to complete his statement?

The CHAIRMAN: Chief Jones will go on at 4 o'clock but only for a few minutes. We shall adjourn now until 4 o'clock. I would ask you to meet at the entrance because there is a picture to be taken.

—The committee adjourned at 12.40 o'clock p.m. to meet again at 4 o'clock today.

—The committee resumed at 4.00 o'clock p.m.

The CHAIRMAN: Shall we come to order? We are to hear first this afternoon, if it is your pleasure, Chief Jones, of the Cape Croker Reserve. Is it your wish to hear Chief Jones?

Some Hon. MEMBERS: Agreed.

By the Chairman:

Q. Chief, you are the chief of what band?—A. The Cape Croker Reserve, Nawaash band. We belong to the Ojibway tribe.

Q. You live in Ontario, somewhere in Bruce county, isn't it?—A. Yes.

Q. How long have you been chief?—A. I am starting my third term. I have finished six years.

Q. You are now beginning your seventh year?—A. Yes.

The CHAIRMAN: Is there any question that any member of the committee would like to ask the chief as a preliminary? If not, would you like to proceed, sir?

The WITNESS: If it is your wish, sir.

The CHAIRMAN: Yes, if you will, you may sit, or stand, as you wish.

Chief Tom Jones, Cape Croker Reserve, called:

The WITNESS: Mr. Chairman, Honourable Members of the House of Commons and the Senate: this is an honour to me, appearing before you this afternoon, and it is an honour which you have conferred upon all of my people across the Dominion of Canada. Never in the history of Canada have our people had this privilege; and I take it as a personal honour to myself being asked to state briefly some of the facts which are foremost in my mind with regard to my people.

200-21

APPENDIX B

A Summary of the Proceedings of a Conference with Representative Indians held in Ottawa, February 28-March 3, 1951

Appendix "B"

A SUMMARY OF THE PROCEEDINGS OF A CONFERENCE WITH REPRESENTATIVE INDIANS HELD IN OTTAWA, FEBRUARY 28-MARCH 3, 1951

1. On February 28, March 1, 2 and 3 of this year, a conference was held with representative Indians and officers of Indian associations from all of those regions of Canada where there is an Indian population, except the Northwest Territories. The minister attended all of these meetings in the capacity of chairman. The deputy minister and officials of the Indian affairs branch of the department were also present.

2. The main purpose of this historic conference was to discuss the provisions of Bill 79 to revise the Indian Act and to give the representatives an opportunity to present their opinions. Every section of the bill was read in the conference and was explained. Opinions were expressed and recorded, and if, after discussion, suggestions for changes were made, these were noted.

3. Upon conclusion of this phase of the work of the conference there was a general discussion about all matters of Indian affairs and administration of the Indian Act which proved most useful and, where appropriate, will be used as a guide for future action by the department.

4. It was evident from the discussion that the problem of Indian affairs varied greatly from reserve to reserve. It was recognized that the Indians of the several provinces appeared to have differing rights and experiences, and that these differences accounted for the variety of viewpoints expressed towards particular sections of the bill. Nevertheless, the opinions of all present were stated not only for the purpose of presenting the local viewpoint, but also in an effort to find a common, advantageous ground so as to advance the welfare of the Indian people.

5. One of the representatives stated that as far as he and his people were concerned, they did not wish to have any changes made to the present Indian Act since they found it to be satisfactory for their purposes.

6. Subject to this statement, the conference noted that there was unanimous support for 163 sections of the bill. Opinion varied with respect to the remaining sections as will be explained in more detail later. However, the results of the discussions by these representatives favoring new legislation may be summarized as follows: of the 194 sections, 163 sections were unanimously supported; 118 sections were supported by the majority of those present; only 6 sections were opposed by a majority of the representatives and of these, 2 were unanimously opposed.

7. All of the representatives present at the conference agreed that the Government of Canada should continue to extend self government to the Indian band councils consistent with their demonstrated ability to exercise increasing responsibility.

8. The representatives at this conference were assured that all of their representations had been noted and would be drawn to the attention of the government and parliament during the later stages of the Indian bill. It was also indicated that full consideration would be given to the suggestions made for alterations to those sections of the bill which did not meet with the general approval of

the representatives. To this end, the representations which were made at the conference will now be outlined to the house.

9. The first sections to be dealt with will be those which were opposed by all of the representatives present.

10. With respect to section 86, all of the representatives were of the opinion that this section did not go far enough in providing tax exemption for Indians, and they were opposed to sub-section 2 because it relates to a waiver of exemption under the Dominion Elections Act. They recommended that voting privileges should not be conditional upon signing a waiver. It was also asserted that under Article 13 of the Terms of Union between Canada and the province of British Columbia the Indians of British Columbia were not liable to be so taxed. It was suggested that some consideration should be given to amending the Dominion Elections Act in order to do away with the waiver.

11. All of the representatives were opposed to section 112 which is the section dealing with enfranchisement after enquiry and it was drawn to the attention of the conference that the opposition to this section had been recorded in a number of briefs submitted to the minister.

12. Of these six sections opposed by a majority, four (93-96) dealt with the sale to Indians, and possession by them, of intoxicants.

13. Regarding these sections, there were three views expressed:—(1) that the provisions dealing with intoxicants contained in the present act be continued; that is, complete prohibition; (2) that provincial liquor laws be made applicable to Indians; (3) a compromise measure, such as is contemplated by section 95, which would allow the Indians to consume intoxicants in public places in accordance with the laws of the provinces, but which would not permit them to be in possession of package goods nor to take liquor on a reserve.

14. There was a wide range of opinion with respect to these sections. Many of the representatives favored provincial liquor laws, while others were strongly opposed to any change in the act. It was said that the present liquor provisions could not and should not be changed with respect to those Indians under Treaty 6 in Alberta and in other parts of the province not covered by this treaty. Some of the representatives stated that if the provincial laws could not be made applicable to the Indians, they would be prepared to accept the provisions made in Bill 79. It is apparent, therefore, that with so many different views expressed, the conference did not reach any general agreement on this subject.

15. The following sections were opposed by one or more of the nineteen representatives but were approved by a majority of these representatives present. The number opposing any of these sections never exceeded six.

16. It was suggested, with respect to section 11, that the present band lists be accepted as final as to those on those lists, and not subject to revision as provided in the bill (section 9) and that the deletion and addition of names should apply only with respect to those who may hereinafter be added to the band lists.

Appendix "B"

17. It was also stated by one representative, with reference to sub-section (a) of this section, that it was unfortunate that an illegitimate child of an Indian woman should be entitled to band membership.

18. Section 12 (1) (a) (iv) dealing with those persons not entitled to be registered was objected to also on the grounds that it would be possible for persons of predominantly Indian blood to be deprived of band membership through the operation of this provision.

19. Section 19, dealing with surveys of sub-divisions of reserves, was considered to be very beneficial by some representatives because they felt that it was only through these surveys that an individual owner could definitely establish his claims to land on a reserve. Suggestions were made that in some areas these surveys should be expedited.

20. However, two other representatives were opposed to this section on the basis that it might lead to allotment. It was indicated that there was no objection to external surveys of reserves but there was objection to surveys for sub-divisions. For instance, it was pointed out that the Indians in southern Alberta were not opposed to surveys of reserves, but that the Indians of central and northern Alberta definitely were, and that because of this opposition no surveys should be made without the consent of a band council.

21. Similarly, opposition was expressed by two representatives to section 20 (2) dealing with the certificate of possession, the reasons being that the allotment system was not suitable in Alberta.

22. Sub-section 4 of this section, dealing with temporary possession, was objected to by one representative on the basis that temporary possession led to a feeling of insecurity and that once land had been allotted to an Indian by the band council it should be a permanent allotment not subject to conditions to be imposed by the minister.

23. Section 32 was approved by all except two of the representatives of the conference. There was opposition initially to the section by one representative who took the view that the Indians should stand on their own feet and gain a knowledge of business by experience. However, this representative withdrew his opposition when it was pointed out that this could be accomplished by the frequent use of sub-section 2, and he was given the assurance that this sub-section would be used when advisable. Another representative, on the other hand, stated very strongly that the Indians should be given the protection provided for in this section and was in opposition to the use of sub-section 2.

24. Section 61 (3), dealing with the interest payable on Indian monies held in the consolidated revenue fund, was the subject of considerable discussion. It was the general feeling of all of the representatives present that interest upon Indian monies should be not less than 5 per cent and it was suggested that the phrase "of not less than 5 per cent" might be written into the sub-section.

25. With respect to section 64 (a) dealing with the expenditure of capital monies with consent of the band council, two representatives were opposed to this section if it were possible for successive per capita distributions to be made. They were of the opinion that only the per capita amount set out in a surrender should be paid to the members of a band and that the remaining amount should remain as capital funds forever. Other representatives, however, favored subsequent capital distribution.

26. Section 64 (2) providing for the expenditure of money without consent for the sick, disabled, etc., was generally approved but some representatives were of the opinion that the expenditure of band funds for this purpose was not proper but should be made from public monies.

27. Similarly, with respect to section 66 (3) (b) regarding the expenditure of band funds for the

prevention and control of diseases on reserves, one representative stated that band funds should not be used for this purpose on the grounds that the Department of National Health and Welfare were providing health services to Indians at the present time.

28. The operation of farms by the department on Indian reserves provided for in section 70 met with approval except for one representative who was opposed to this section because it did not provide for the consent of the band council.

29. The taxation of Indian dogs (section 72 (1) (d)) was objected to by one representative because he considered that dogs were a necessity to many Indians.

30. The composition of the band council as outlined in section 73 (2) was discussed at length, and several of the representatives objected to the minimum number of councillors (3) as being too small. The British Columbia representatives, for instance, pointed out that there were many bands in that area where the councillors may work away from the reserve, and therefore it would be difficult to obtain a quorum at a meeting under this section. It was suggested that the minimum of 3 might be raised to 4.

31. Section 77 (1) dealing with the tenure of office of chiefs and councillors was also discussed at length and by a considerable number of the representatives. Several of the representatives favoured the 2 year term of office, but other representatives were of the opinion that a term of 3 years was too short a period for chiefs and councillors to gain sufficient experience for the most effective management of band affairs. These representatives thought that a period of from 3 to 5 years would be more suitable. It was also suggested by one representative that the election of chiefs and councillors might be staggered in order to obtain continuity of experienced councillors on the band council.

32. The question of absentee councillors (section 77 (2) (b) (ii)) was discussed at some length and it was felt that the provision that the office of the chief or councillor becomes vacant when a chief or councillor has been absent from council meetings for three consecutive months was not practical with respect to those bands who do not hold monthly meetings. It was felt that it would be better if the section were to read "three consecutive meetings" rather than "months". Consideration will be given to those special areas where band councils do not meet monthly.

33. Section 91 (1), which prohibits departmental employees from trading with the Indians without a licence, was opposed on the basis that it might permit the minister to issue a licence to a departmental employee to trade for profit with an Indian. Although it was pointed out that there are certain civil service regulations which prohibit full-time civil servants in engaging in other business enterprises, it was suggested by the delegation that if it was intended that this section should apply only to part-time agents, then this should be written into the statute.

34. Section 110 (2) which provides for the grant of land to enfranchised Indians, was discussed by representatives who were of the opinion that this provision might lead to loss of reserve lands, but as the matter rested with the council to make the allotment and because of the ten-year waiting period, the section was agreed to.

35. Section 111 (2) which provides that a majority vote is required for an order of enfranchisement, was discussed and it was suggested by three representatives that the percentage of electors required to signify their approval should be raised from 50 per cent to 75 per cent. They considered that this was necessary in order to protect the minority.

Appendix "B"

36. The following sections were discussed at length but were accepted in principle by all of the representatives after clarification:

37. It was felt by some of the representatives that Indians should be represented in the administration as a means of recognition (section 3 (2)). The representatives were advised that the question of the appointment of an assistant commissioner of Indian status was one which would have to come under the civil service commission as to recruitment, and that the matter would be given further consideration.

38. There was considerable discussion on sections 8-9 dealing with the registration of Indians and the methods in which these provisions would operate were explained in detail to the representatives. There was general agreement with the provision for appeal of decisions of the registrar regarding the addition to or deletion from band lists to a judge of a county court for final determination.

39. Payments to persons ceasing to be band members as provided for in section 15 (1) (a) were explained at length, but one of the representatives was of the opinion that the crown had no legal right to pay one per capita share of capital and revenue moneys of a band to an Indian upon enfranchisement. It was suggested that a person born into the band had an inalienable interest in property held in common by the band and, therefore, should be entitled to take his share with him when enfranchised. It was also suggested, in connection with this section, that in some instances the Indian band councils had not been notified when Indians applied for enfranchisement. The representative was advised that in the future it would be the policy to advise the band council whenever an application for enfranchisement had been received.

40. Clarification was requested with respect to section 16 (3). It was thought by one representative that a woman, on transfer from one band to another on the occasion of her marriage, should forthwith receive the full amount of any surplus capital coming to her. It was contended that the minister should not have the discretionary power as to the manner and times at which such a sum should be paid to her. However, it was pointed out that the various cases would be reviewed on their merits, and where it was thought that the woman required the full amount of the difference to set up housekeeping, for instance, then it would be given to her. In other cases where it was thought that the woman concerned might use the money unwisely then it would be in the interest of the Indian woman herself, if the money was paid out over a period of time instead of in one lump sum.

41. Clarification was sought with respect to section 18 (2) and the representatives were assured that the general intention of this section was to provide authority for the acquisition of land for administrative purposes such as schools, hospitals, cemeteries, and other necessary facilities which would be in the interest of the Indians.

42. It was suggested with respect to section 20 (2) which provides for the issuing of permits to occupy or use a reserve, that reserve property should not be used privately without the consent of the band council. It was pointed out, however, that permits could not be issued under this section for long periods. Provision is made in this section for temporary use of reserve lands for short periods limited to one year.

43. Section 34, which is concerned with roads and bridges, was discussed at some length. The question as to the upkeep of roads within a reserve that were, to a large extent, used by the general public was raised. It was contended that, in as much as the Indians paid gasoline taxes, the Indian bands should get the same share of those taxes

as are paid to the municipalities by some of the provinces. It was pointed out that the disposition of the gasoline tax was wholly within the competence of the provincial government.

44. Section 35 was the subject of a considerable amount of discussion. One representative expressed the fear that it would enable a corporation or a municipality to obtain a statutory authority to expropriate parts of an Indian reserve. Opposition, however, in this case was withdrawn by this representative when it was pointed out that the purpose of this provision was not the wholesale acquisition of land, but that it was intended to cover the use of lands for public utilities and other similar services. This section was accepted after an explanation had been given.

45. Re section 37 there was an enquiry as to the meaning of the phrase at the beginning of the clause which reads "except where this act otherwise provides" but it was pointed out for purposes of clarification that this phrase refers to action under sections 35 and 110 (2).

46. When section 38 was discussed it was pointed out by one representative that Indians in the past had surrendered parts of their reserve without knowing thoroughly what was contained in the surrender. It was stated that where an interpreter is used he should be put under oath to give a true account of the terms of surrender. The conference was informed that the departmental regulations or instructions would be examined and that provision would be made for placing such interpreters under oath as requested. It was agreed that there would be no objection to using a non-Indian interpreter, but that in all cases the best interpreter available should be obtained.

47. With respect to section 46 which deals with wills, it was suggested that it should not be left to the Indian agent to decide whether the Indian was capable of making a will under sub-section (1) (b). The conference was informed that the Indian agent did not make this decision under such circumstances, but that evidence would be obtained from expert sources.

48. It was agreed by many of the representatives that section 49, which is concerned with the distribution of property, and that those sections relating to wills and descent of property were very beneficial and were in accordance with the recommendations which have been made in this respect. There was some complaint about the length of time it sometimes took to dispose of estates. It was admitted that there were occasions on which there was some delay with respect to the disposition of estates but this was due to a shortage of qualified officers to handle these matters. The conference was informed that, if necessary, additional staff would be employed for this purpose.

49. It was claimed by one of the representatives that in the past Indian agents had acted in a bureaucratic way in the matter of leasing uncultivated or unused lands (section 50). However, it was pointed out to the conference that this section provided that this could be done only with the consent of the band council. The disposition of sand and gravel from reserves without consent was also discussed. It was pointed out to the conference that this would be done only where there was undue difficulty or delay in obtaining the consent of the band council. This arises where the council members are absent in summer months. The conference was assured that, in any event, leases given under such circumstances would only be renewed with the consent of the band council.

50. Section 55, dealing with the expenditure of capital, met with general approval. One of the representatives indicated that some difficulty had been experienced in obtaining land for an extension to a hospital. It was pointed out, however,

Appendix "B"

that action could be taken under section 18 to obtain the land for band purposes and compensation paid from capital moneys for such lands taken under this provision.

31. The provision of loans to an Indian (section 69) was commended generally by those who commented on it. An enquiry was made as to why these loans could not be extended so that they might be used for building houses. It was pointed out to the conference that the main objective of this section was to provide for loans to Indians for revenue producing projects and that housing, unless it were for rental purposes, was not revenue producing.

32. There was some objection by some representatives to Indian agents attending council meetings (section 79). However, many representatives thought that the Indian superintendent should be required to attend all council meetings and that he should not deputize anyone to sit in for him.

33. Discussion of section 80 (powers of the band council) revealed that several of the representatives were concerned about the regulation of motor traffic through their reserve. These representatives were informed that the band council would be able to make by-laws regarding the regulation of traffic within the reserve under this section. On the general question of by-laws, it was explained to the conference that by-laws which did not conflict with regulations made by the minister or the governor in council would be effective. It was generally felt that the powers to be exercised by the band council had been considerably broadened by the bill. The question of licensing non-Indians to operate businesses on reserves was also raised when sub-section (2) of this section was discussed. It was suggested that by-laws regarding businesses could also be made to apply to Indians in a business on the reserve.

34. With respect to section 82 dealing with money by-laws, some of the representatives were apprehensive that the governor in council might have some power to force Indians to pass money by-laws to tax Indians. The conference was assured that once this section had been applied to a band action under it was by the band council.

35. The conference representatives asked for clarification of section 87, dealing with the application of provincial laws, and was informed that provincial laws would not apply if they contravened any treaty, and/or any act of parliament, for example the Indian Act.

36. Regarding the appointment of a Justice of the Peace, under section 105, the conference was advised that Indian superintendents would not act as magistrates, except for special reasons, and in areas where ordinary court facilities were not readily available.

37. The remainder of the sections were approved after explanation.

SCHEDULE "A"

Conference Members

George Barker, Esq., Hole River, Man., Chief, Hollow Water Band.
Joseph Beeuvals, Esq., Caughnawaga, Que., Councillor, Caughnawaga Band Council.
Joseph Dreaver, Esq., Duck Lake, Sask., Chief, Mistawasis Band.
Gilbert Faries, Esq., Moose Factory, Ont., Chief, Moose Factory Band.
Thomas Favel, Esq., Poundmaker, Sask., Chief, Poundmaker Band, and Representative of Queen Victoria Treaty Protective Association.
Thomas Gideon, Esq., Restigouche, Que., Chief, Restigouche Band.
James Gladstone, Esq., Cardston, Alta., President, Indian Association of Alberta.
Dr. P. R. Kelly, Cumberland, B.C., Chairman, Legislative Committee of Native Brotherhood of British Columbia.
Stephen Knockwood, Esq., Micmac, N.S., Chief, Shubenacadie Band.
John Laurie, Esq., Calgary, Alta., Secretary, Indian Association of Alberta.
Gus Mainville, Esq., Fort Frances, Ont., President, Grand Council Treaty No. 2.
Daniel Manuel, Esq., Merritt, B.C., Chief, Upper Nicola Band.
Arnold C. Moses, Esq., Ohsweken, Ont., Secretary, Six Nations Band Council.
Andrew Paull, Esq., North Vancouver, B.C., President, North American Indian Brotherhood.
Lawrence Pelletier, Esq., Manitowaning, Ont., Manitoulin Island Unceded Band.
Sam Shipman, Esq., Walpole Island, Ont., Chief, Walpole Island Band.
William Scow, Esq., Alert Bay, B.C., President, Native Brotherhood of British Columbia.
John Thompson, Esq., Pine Falls, Man., President, Indian Association of Manitoba.
John B. Tootoosis, Esq., Cutknife, Sask., President, Union of Saskatchewan Indians.

Bibliography

Allen, R.S. A History of the British Indian Department in North America, 1755-1830. Ottawa:1971.

Alvord, Clarence W. "The Genesis of the Proclamation of 1763".
Michigan Pioneer and Historical Society, Vol. 36, 1908.

Canada, Department of Indian Affairs. Annual Report. Ottawa:1898.
(cited in the text as D.I.A.)

Canada, Sessional Papers. Ottawa:1890-1948. (cited as C.S.P.)

Canada, Special Joint Committee of the Senate and the House of Commons
Appointed to Examine and Consider The Indian Act. Minutes
of Proceedings and Evidence. Ottawa:1946-1949. (cited as
Canada, S.J.C.)

Canada, Statutes. Ottawa:1839-1951. (cited as S.C.)

Cummings, P.S. and M.H. Mickenberg. Native Rights in Canada.
Toronto:1972.

deForest, John W. Lamentations 5:2-4, 13-16. Used as the motto of a
History of the Indians of Connecticut from the Earliest
Known Period to A.D. 1850. Albany:1871.

Drieger, E.A. A Consolidation of British North America Act.

Ottawa:1967.

Hodgetts, J.E. Pioneer Public Service. Toronto:1955.

Morris, Alexander. The Treaties of Canada with the Indians of Manitoba and the North-West Territories. Toronto:1880.

Public Archives of Canada. Record Group 10, Indian Affairs Files.

(cited as PAC, RG10)

Randall, Martha C. "The New Indian Act". Canadian Forum Vol. XXXI, no. 374 (March 1952).

Scott, Duncan C. "Indian Affairs 1867-1912" in Canada and its Provinces. A. Shortland and A.G. Doughty, eds. Vol 7. Toronto:1913.

Smith, Dereck G. Natives and Outsiders: Pluralism in the Mackenzie River Delta, Northwest Territories. Ottawa:1975.

_____. Canadian Indians and the Law: Selected Documents, 1663-1972. Toronto:1975.

Surtees, R.J. "The Development of Indian Reserve Policy In Upper
Canada". Ontario History Vol. CXI (June 1969).

Tobias, John L. "Protection, Civilization, Assimilation: An Outline
History of Canada's Indian Policy", The Western Canadian
Journal of Anthropology Vol. IV, No. 2 (1976).

Upton, L.F.S. "The Origins of Canadian Indian Policy". Journal of
Canadian Studies Vol. VIII (1973).